

2005 No. 185

HOUSING; RATES

**The Housing Benefit (Miscellaneous Amendments No. 2)
Regulations (Northern Ireland) 2005**

Made - - - - - 31st March 2005

Coming into operation in accordance with regulation 1(1)

The Department for Social Development, in exercise of the powers conferred by sections 122(1)(d), 131(1), 132(3) and (4)(b), 132A(3), 133(2)(h) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a), and now vested in it(b), and paragraphs 4(5) and 20(1)(b) of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(c), and of all other powers enabling it in that behalf, with the consent of the Department of Finance and Personnel(d), and after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it(e), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2005 and shall come into operation on –

- (a) for the purposes of regulation 2(6) on 3rd April 2005;
- (b) for all other purposes, on 4th April 2005.

(2) In these Regulations –

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations (Northern Ireland) 1987(f);

“the State Pension Credit Regulations” means the Housing Benefit (State Pension Credit) Regulations (Northern Ireland) 2003(g).

(3) The Interpretation Act (Northern Ireland) 1954(h) shall apply to these Regulations as it applies to an Act of the Assembly.

(a) 1992 c. 7; section 132A was inserted by paragraph 3 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c.14) and section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)
(b) See Article 8(b) of S.R. 1999 No. 481
(c) 2000 c. 4 (N.I.)
(d) 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)); see also Article 6(b) of S.R. 1999 No. 481
(e) See section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)
(f) S.R. 1987 No. 461; relevant amending Regulations are S.R. 1990 No. 297, S.R. 1993 No. 145, S.R. 1995 Nos. 89 and 101, S.R. 1998 No. 81 and S.R. 2000 No. 367
(g) S.R. 2003 No. 197; relevant amending Regulations are S.R. 2003 No. 418
(h) 1954 c. 33 (N.I.)

Amendment of the Housing Benefit Regulations

2.—(1) Subject to paragraph (2), the Housing Benefit Regulations shall be amended in accordance with paragraphs (2) to (7).

(2) The amendments made by paragraphs (4) and (7) are to the Housing Benefit Regulations as modified in their application to persons to whom regulation 2 of the State Pension Credit Regulations applies.

(3) In regulation 5 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) –

(a) in paragraph (7A)(a), after “person” where it first appears, there shall be inserted “to whom neither paragraph (5)(a)(b) nor (8B)(c)(x)(c) applies”;

(b) for paragraph (8A)(d) there shall be substituted the following paragraphs –

“(8A) This paragraph applies to a person who is –

(a) detained in custody pending sentence upon conviction or under a sentence imposed by a court (other than a person who is detained in hospital under the provisions of the Mental Health (Northern Ireland) Order 1986(e)), and

(b) on temporary release from such detention in accordance with Rules made under the provisions of the Prison Act (Northern Ireland) 1953(f).

(8ZA) Where paragraph (8A) applies to a person, then, for any day that he is on temporary release –

(a) if such temporary release was immediately preceded by a period of temporary absence under paragraph (8) or (8B), he shall be treated as if he continues to be absent from the dwelling, despite any occupation of the dwelling;

(b) for the purposes of paragraph (8B)(c)(i), he shall be treated as if he remains in detention, and

(c) if he does not fall within paragraph (a), he shall be treated as if he does not occupy his dwelling as his home despite any such occupation of the dwelling.”;

(c) in paragraph (8B)(c)(viii) “or regulation 48A(1)(g)” shall be omitted;

(d) in paragraph (8B)(c)(x) there shall be omitted, “or (7A)”.

(4) In regulation 36 (notional income) –

(a) in paragraph (1)(a), before “the amount” there shall be inserted “subject to paragraph (1A),”;

(b) after paragraph (1) there shall be inserted the following paragraphs –

“(1A) Paragraph (1)(a) shall not apply to the following where entitlement has been deferred –

(a) a Category A or Category B retirement pension payable under sections 43 to 55 of the Contributions and Benefits Act;

(b) a shared additional pension payable under section 55A(h) of that Act, and

(c) graduated retirement benefit payable under sections 35 or 36 of the National Insurance Act (Northern Ireland) 1966(i).

(1B) For the purposes of paragraph (1A), entitlement has been deferred –

(a) Paragraph (7A) was inserted by regulation 3(f) of S.R. 1993 No. 145

(b) Paragraph (5)(a) was amended by regulation 3(a)(i) and (ii) of S.R. 1993 No. 145

(c) Paragraph (8B) was inserted by regulation 2(2)(c) of S.R. 1995 No. 101

(d) Paragraph (8A) was inserted by regulation 5 of S.R. 1995 No. 89 and amended by regulation 5(1) and (2)(a)(i) of S.R. 1998 No. 81

(e) S.I. 1986/595 (N.I. 4)

(f) 1953 c. 18 (N.I.)

(g) Regulation 48A(1) was inserted by regulation 3(6) of S.R. 1990 No. 297

(h) Section 55A was inserted by paragraph 3 of Schedule 6 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

(i) 1966 c. 6; sections 35 and 36 continue in force by virtue of Schedules 1 and 2 to the Social Security (Graduated Retirement Benefit) (No. 2) Regulations (Northern Ireland) 1978 (S.R. 1978 No. 105) and were amended by regulation 2(2) and (3) respectively of S.R. 2005 No. 121

- (a) in the case of a Category A or Category B pension, in the circumstances specified in section 55(3)(a) of the Contributions and Benefits Act;
- (b) in the case of a shared additional pension, in the circumstances specified in section 55C(3)(b) of that Act;
- (c) in the case of graduated retirement benefit, in the circumstances specified in section 35(4) and (4A)(c) of the National Insurance Act (Northern Ireland) 1966.”.

(5) Until 6th April 2005 the references in regulation 36(1B) (as inserted by paragraph (4)) to section 55(3) of the Contributions and Benefits Act, section 55C(3) of that Act and section 35(4) and (4A) of the National Insurance Act (Northern Ireland) 1966 shall have effect as if they were references to section 55(2) to the Contributions and Benefits Act, section 55C(1) of that Act and section 35(4) and (7) of the National Insurance Act (Northern Ireland) 1966 respectively.

(6) In Schedule 2 (applicable amounts), paragraph 13A(2)(a)(d) shall be omitted.

(7) In Schedule 4A (amounts to be disregarded in the calculation of income other than earnings), after paragraph 24(e) there shall be added the following paragraph –

“25. Except in the case of income from capital specified in Part II of Schedule 5ZA, any actual income from capital.”.

Sealed with the Official Seal of the Department for Social Development on 31st March 2005.

(L.S.)

John O'Neill

A senior officer of the Department for Social Development

The Department of Finance and Personnel hereby consents to the foregoing Regulations.

Sealed with the Official Seal of the Department of Finance and Personnel on 31st March 2005.

(L.S.)

Ciaran Doran

A senior officer of the Department of Finance and Personnel

(a) Section 55 was substituted by Article 273(1) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005 No. 255 (N.I. 1))
(b) Section 55C was substituted by Article 273(2) of the Pensions (Northern Ireland) Order 2005
(c) Sub-section (4A) was inserted by regulation 2(2)(a) of S.R. 2005 No. 121
(d) Paragraph 13A(2)(a) was inserted by regulation 3(b)(ii) of S.R. 2000 No. 367
(e) Paragraph 24 was added by regulation 2(14)(b)(iii) of S.R. 2003 No. 418

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Housing Benefit (General) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 461) (“the Housing Benefit Regulations”).

The Housing Benefit Regulations were modified by the Housing Benefit (State Pension Credit) Regulations (Northern Ireland) 2003 for persons who attained the qualifying age for state pension credit (except where regulation 2(2) of those Regulations applies). These Regulations apply to the Housing Benefit Regulations as so modified and as not so modified, as set out in regulation 2(1) and (2).

Regulation 2(3) amends regulation 5 of the Housing Benefit Regulations by replacing paragraph (8A) with a new provision which deals with the treatment of prisoners on temporary release and by making other minor, technical amendments.

Regulation 2(4) amends regulation 36 of the Housing Benefit Regulations (which applies to persons who attained the qualifying age for state pension credit) to provide that certain specified categories of retirement pension income will not be treated as notional income under paragraph 36(1)(a).

Regulation 2(5) makes transitional provision in respect of the provisions amended by regulation 2(4).

Regulation 2(6) amends Schedule 2 to the Housing Benefit Regulations to remove a provision excluding the award of an Enhanced Disability Premium in respect of a child whose capital exceeds a specified amount.

Regulation 2(7) amends Schedule 4A to the Housing Benefit Regulations (which applies to persons who attained the qualifying age for state pension credit) to provide for certain income from capital to be disregarded when calculating a claimant’s income.

These Regulations do not impose any charge on business.

© Crown Copyright 2005

Published and printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print the Acts of the Northern Ireland Assembly

Dd. N2022. C2. 4/05. Gp. 130. 14567.

£3.00

ISBN 0-337-95942-0



9 780337 959424