

**2007 No. 392**

**SOCIAL SECURITY; HOUSING; RATES**

**The Social Security (Miscellaneous Amendments No. 4)  
Regulations (Northern Ireland) 2007**

*Made* - - - - *3rd September 2007*

*Coming into operation* - *24th September 2007*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 1(1), 5(1)(a), (b), (j) and (r) and 165(1), (3), (4) and (6) of the Social Security Administration (Northern Ireland) Act 1992(a) and Articles 10(1)(a) and (4), 11(3) and (6) and 74(1), (3) and (6) of the Social Security (Northern Ireland) Order 1998(b), and now vested in it(c) and paragraphs 4(5) and 20(1)(b) of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(d).

**Citation and commencement**

1. These Regulations may be cited as the Social Security (Miscellaneous Amendments No. 4) Regulations (Northern Ireland) 2007 and shall come into operation on 24th September 2007.

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

2.—(1) The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(e) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 3 (claims not required for entitlement to benefit in certain cases)—

(a) after sub-paragraph (c) insert—

“(ca) in the case of a Category A retirement pension where the beneficiary—

(i) is entitled to any category of retirement pension other than a Category A retirement pension; and

(ii) becomes divorced or the beneficiary’s civil partnership is dissolved;

(cb) in the case of a Category B retirement pension where the beneficiary—

(i) is entitled to either a Category A retirement pension or to a graduated retirement benefit or to both; and

(ii) marries or enters into a civil partnership;”;

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(a) 1992 c. 8; section 165(1) was amended by paragraph 49(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and section 165(3) was amended by paragraph 10 of Schedule 4 to the Tax Credits Act 2002 (c. 21)

(b) S.I. 1998/1506 (N.I. 10); Article 74(1) was amended by paragraph 17(2) of Schedule 4 to the Tax Credits Act 2002

(c) See Article 8(b) of S.R. 1999 No. 481

(d) 2000 c. 4 (N.I.)

(e) S.R. 1987 No. 465; relevant amending Regulations are S.R. 1997 No. 156, S.R. 2000 Nos. 215 and 365, S.R. 2002 No.67, S.R. 2005 No. 139 and S.R. 2006 Nos. 168 and 365

(b) after sub-paragraph (d) insert—

“(da) in the case of a bereavement payment where the beneficiary is over pensionable age and satisfies the conditions of entitlement under section 36(1) of the Contributions and Benefits Act(a);”.

(3) In regulation 6 (date of claim)—

(a) after paragraph 15(b) insert—

“(15A) Paragraphs (16) to (34) shall not apply in any case where it would be advantageous to the claimant to apply the provisions of regulation 19.”;

(b) in paragraph (19)(c)—

- (i) after “been terminated” insert “or reduced or payment under that award ceases”, and
- (ii) in sub-paragraph (b) at the end add “or becomes payable again”;

(c) in paragraph (20)(d)—

- (i) omit “or” after sub-paragraph (a), and
- (ii) after sub-paragraph (b) add—

“or

(c) that the qualifying benefit has ceased to be payable in accordance with—

- (i) regulation 6(1) of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992(e) or regulation 8(1) of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(f) because the claimant is undergoing treatment as an in-patient in a hospital or similar institution, or
- (ii) regulation 7 of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992 or regulation 9 of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 because the claimant is resident in certain accommodation other than a hospital.”;

(d) in paragraph (21)(g)—

- (i) at the beginning insert “Subject to paragraph (21A),”;
- (ii) omit “and” after sub-paragraph (a), and
- (iii) for sub-paragraph (b) substitute—
  - “(b) the qualifying benefit is re-awarded following revision, supersession or appeal;
  - (c) the qualifying benefit is re-awarded on a renewal claim when an award for a fixed period expires; or
  - (d) the cessation of payment ends when the claimant leaves the hospital or similar institution or accommodation referred to in paragraph (20)(c); and

the further claim referred to in paragraph (19), is made within three months of the date on which the additional circumstances apply.”;

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(a) Section 36(1) was substituted by Article 51(1) of the Welfare Reform and Pension (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and amended by paragraph 70(2) of Schedule 24 to the Civil Partnership Act 2004 (c. 33)

(b) Paragraphs (15) and (19) to (21) were added by regulation 3(4)(e) of S.R. 1997 No.156

(c) Paragraph(19) was substituted by regulation 3(2)(a) of S.R. 2000 No. 215 and amended by regulation 2(2)(d) of S.R. 2002 No. 67 and regulation 2(3)(a) of S.R. 2006 No. 365

(d) Paragraph(20) was substituted by regulation 2(3)(b) of S.R. 2006 No. 365

(e) S.R.1992 No. 20; regulation 6(1) was substituted by regulation 2(2)(a) of S.R. 1992 No. 481 and regulation 7 was amended by regulation 5(3) of S.R. 1993 No. 149, regulation 2(2)(a) of S.R. 1993 No. 165, regulation 2 of S.R. 2002 No. 31, regulation 4(2)(a) of S.R. 2002 No. 132, regulation 2(2) of S.R. 2003 No. 397 and regulation 7 of S.R. 2005 No. 458

(f) S.R. 1992 No. 32; regulation 8(1) was substituted by regulation 3(2)(a) of S.R. 1992 No. 481 and regulation 9 was amended by regulation 3(3)(b) of S.R. 1992 No. 481, regulation 4(2) of S.R. 1993 No. 149, regulation 3(2) of S.R. 1993 No. 165, paragraph 1(b) of Schedule 17 to S.R. 1994 No. 65, regulation 3(2) of S.R. 1994 No. 263, regulation 5(2)(a) of S.R. 2002 No. 132, regulation 3(2) of S.R. 2003 No. 397 and regulation 8 of S.R. 2005 No. 458

(g) Paragraph (21) was substituted by regulation 3(2)(a) of S.R. 2000 No. 215 and amended by regulation 2(2)(e) of S.R. 2002 No. 67 and regulation 2(3)(c) of S.R. 2006 No. 365

- (e) after paragraph (21) insert—
    - “(21A) Paragraph (21) applies whether the benefit is re-awarded when the further claim is decided or following a revision of, or an appeal against, such a decision.”;
  - (f) in paragraph (30)(b)(a) omit “not later than ten working days after the termination.”;
  - (g) in paragraph (33)(b) at the beginning insert “Subject to paragraph (34),”; and
  - (h) after paragraph (33) add—
    - “(34) Paragraph (33) shall not apply where the decision awarding a qualifying benefit is made in respect of a renewal claim where a fixed period award of that benefit has expired, or is due to expire.”.
- (4) In regulation 19(c) (time for claiming benefit) after paragraph (3B) insert—
- “(3C) In any case where the application of regulation 6(16) to (34) would be advantageous to the claimant, this regulation shall apply subject to those provisions.”.
- (5) In regulation 30 (payments on death)—
- (a) in paragraph (4) at the beginning insert “Subject to paragraph (4B),”.
  - (b) after paragraph (4A)(d) insert—
    - “(4B) A written application is not required where—
    - (a) an executor or administrator has not been appointed;
    - (b) the deceased was in receipt of a retirement pension of any category or state pension credit including where any other benefit was combined for payment purposes with either of those benefits at the time of death;
    - (c) the sum payable by way of benefit to the deceased is payable to a person who was the spouse or civil partner of the deceased at the time of death; and
    - (d) either—
      - (i) the spouse or civil partner and the deceased were living together at the time of death; or
      - (ii) they would have been living together at the time of death but for the fact that either or both of them were in a residential care or nursing home or in a hospital.”.

### **Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations**

3.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(e) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 1(2) (interpretation) in the definition of “incapacity benefit decision”(f) at the end add “or an award of long term incapacity benefit under regulation 17(1) of the Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995(g)”.

(3) In regulation 3 (revision of decisions)—

- (a) in paragraph (5)(h)—
  - (i) in sub-paragraph (b) after “sub-paragraph (c)” insert “or (d),”;
  - (ii) in sub-paragraph (c) at the beginning insert “subject to sub-paragraph (d),” and

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(a) Paragraph (30) was added by regulation 2(2)(g) of S.R. 2002 No. 67  
 (b) Paragraph (33) was added by regulation 2(7)(f) of S.R. 2006 No. 168  
 (c) Regulation 19 was substituted by regulation 3(7) of S.R. 1997 No. 156 and paragraph (3B) was inserted by regulation 2(2)(c) of S.R. 2005 No. 139  
 (d) Paragraph (4A) was inserted by regulation 2(7)(b) of S.R. 2000 No. 365  
 (e) S.R. 1999 No. 162; relevant amending Regulations are S.R. 1999 No. 267, S.R. 2000 No. 215, S.R. 2002 No. 189, S.R. 2003 No.191 and S.R. 2006 No. 365  
 (f) The definition of “incapacity benefit decision” was inserted by regulation 2(2)(b) of S.R. 1999 No. 267 and amended by regulation 6(2)(b) of S.R. 2000 No. 215  
 (g) S.R. 1995 No. 35  
 (h) Paragraph (5) was amended by regulation 2(3) of S.R. 1999 No. 267

- (iii) after sub-paragraph (c) add—
  - “or
  - (d) where the decision is a disability benefit decision, or is an incapacity benefit decision, which was made in ignorance of, or was based upon a mistake as to, some material fact not in relation to the incapacity or disability determination embodied in or necessary to the incapacity benefit decision or disability benefit decision, and as a result of that ignorance of, or mistake as to, that fact, the decision was more advantageous to the claimant than it would otherwise have been but for the ignorance or mistake;” and
- (b) after paragraph (5A)(a) insert—
  - “(5B) A decision by the Department under Article 9 or 11 awarding incapacity benefit may be revised at any time if—
    - (a) it incorporates a determination that the condition in regulation 28(2)(b) of the Incapacity for Work Regulations(b) is satisfied;
    - (b) the condition referred to in sub-paragraph (a) was not satisfied at the time when the further claim was first determined; and
    - (c) there is a period before the award which falls to be decided.”
- (4) In regulation 7(2) (date from which a decision superseded under Article 11 takes effect)—
  - (a) in sub-paragraph (bc)(c) at the beginning insert “subject to sub-paragraph (bd),”; and
  - (b) after sub-paragraph (bc) insert—
    - “(bd) sub-paragraph (bc) shall only apply to the disabled person whose benefit is affected by the cessation of payment of carer’s allowance;”.
- (5) In paragraph 6 of Schedule 2B(d) (date on which change of circumstances takes effect where a claimant is entitled to state pension credit) for “1975” substitute “2005”.

#### **Amendment of the Housing Benefit Regulations**

- 4. In regulation 77 of the Housing Benefit Regulations (Northern Ireland) 2006(e) (date on which change of circumstances is to take effect)—
  - (a) in paragraph (1) for “or regulation 8(3) of the Decisions and Appeals Regulations applies and subject to” substitute “applies, and subject to regulation 8(3) of the Decisions and Appeals Regulations and”; and
  - (b) in paragraph (2) for “, except in a case where regulation 8(3) of the Decisions and Appeals Regulations applies” substitute “and regulation 8(3) of the Decisions and Appeals Regulations”.

#### **Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations**

- 5. In regulation 57 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(f) (date on which change of circumstances is to take effect)—
  - (a) in paragraph (1) for “or regulation 8(3) of the Decisions and Appeals Regulations applies and subject to” substitute “applies, and subject to regulation 8(3) of the Decisions and Appeals Regulations and”; and

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(a) Paragraph (5A) was inserted by regulation 2(3)(c) S.R. 2002 No. 189  
 (b) Regulation 28 was amended by regulation 4(10) of S.R. 1995 No. 149, regulation 4(9) of S.R. 1996 No. 601 and regulation 2(14) of S.R. 2000 No. 4  
 (c) Sub-paragraph (bc) was inserted by regulation 3(2) of S.R. 2006 No. 365  
 (d) Schedule 2B was inserted by regulation 22 of S.R. 2003 No. 191  
 (e) S.R. 2006 No. 405  
 (f) S.R. 2006 No. 406

- (b) in paragraph (2) for “, except in a case where regulation 8(3) of the Decisions and Appeals Regulations applies” substitute “and regulation 8(3) of the Decisions and Appeals Regulations”.

## **Revocation**

6. Regulation 2(3)(c) of the Social Security (Miscellaneous Amendments No. 3) Regulations (Northern Ireland) 2006<sup>(a)</sup> is revoked.

Sealed with the Official Seal of the Department for Social Development on 3rd September 2007

(L.S.)

*John O'Neill*

A senior officer of the Department for Social Development

## **EXPLANATORY NOTE**

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

These Regulations amend the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 (“the Claims and Payments Regulations”), the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 (“the Decisions and Appeals Regulations”), the Housing Benefit Regulations (Northern Ireland) 2006 (“the Housing Benefit Regulations”) and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 (“the Housing Benefit (SPC) Regulations”).

Regulation 2 amends the Claims and Payments Regulations to—

extend the list of exceptions to the general rule of the necessity to make a claim to be entitled to benefit (paragraph (2));

enable a claimant to benefit from either the linking rules in the circumstances described in regulation 6 of the Claims and Payments Regulations or the rules relating to the prescribed time for claiming benefit in regulation 19 of those Regulations and not both at the same time (paragraphs (3)(a) and (4));

provide that the transitional protection which applies for payment of child dependency increases is not lost where a disabled person goes into hospital or certain other accommodation (paragraph (3)(b) to (e));

enable a further claim for income support to be treated as made on the first day of an award of a linked benefit (paragraph (3)(f));

enable carer’s allowance to be paid from the date that entitlement first arises in the circumstances described in regulation 6(33) of the Claims and Payments Regulations (paragraph (3)(g) and (h)); and

enable arrears of benefit to be paid to a spouse or civil partner of a deceased claimant without the need for a written application to be made for such payment (paragraph (5)).

Regulation 3 amends the Decisions and Appeals Regulations to—

extend the definition of an “incapacity benefit decision” to cover an award of long term incapacity benefit under regulation 17(1) of the Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995 (paragraph (2));

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<sup>(a)</sup> S.R. 2006 No. 365

enable the Department for Social Development (“the Department”) to revise a decision at any time where there is a non-medical change of circumstances relating to a disability or incapacity benefit decision (paragraph (3)(a));

enable the Department to revise a decision which awarded incapacity benefit from a date later than the first day of claim because of the rule contained in regulation 28(2)(b) of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995, when the claimant subsequently passes the personal capability assessment (paragraph (3)(b));

enable the existing provision in regulation 7(2) of the Decisions and Appeals Regulations to apply only to the person being cared for and not the carer (paragraph (4)); and

amend the definition of “patient” in paragraph 6 of Schedule 2B to the Decisions and Appeals Regulations to refer to the Social Security (Hospital In-Patient) Regulations (Northern Ireland) 2005 (paragraph (5)).

Regulations 4 and 5 amend regulation 77(1) and (2) of the Housing Benefit Regulations and regulation 57(1) and (2) of the Housing Benefit (SPC) Regulations respectively to provide that those provisions are subject to regulation 8(3) of the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001.

Regulation 6 makes a consequential revocation.

These Regulations make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992, are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.