

## 1992 No. 404

## HOUSING; RATES

**The Housing Benefit (General) (Amendment No. 2) Regulations (Northern Ireland) 1992**

*Made* . . . . . 17th September 1992

*Coming into operation* . . . . . 5th October 1992

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 122(1)(d), 129(2) and (4) and 132(3) and (4)(a) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and section 5(1)(h), (j), (p) and (r) of the Social Security Administration (Northern Ireland) Act 1992(b) 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 should not be referred to it(c), hereby makes the following regulations:

*Citation, commencement and interpretation*

**1.**—(1) These regulations may be cited as the Housing Benefit (General) (Amendment No. 2) Regulations (Northern Ireland) 1992 and shall come into operation on 5th October 1992.

(2) In these regulations “the principal regulations” means the Housing Benefit (General) Regulations (Northern Ireland) 1987(d).

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

*Amendment of regulation 2 of the principal regulations*

**2.** In regulation 2(1) of the principal regulations (interpretation) after the definition of “lone parent” there shall be inserted the following definition—

“ “lower rate” where it relates to rates of tax has the same meaning as in the Income and Corporation Taxes Act 1988(f) by virtue of section 832(1) of that Act;”.

*Amendment of regulation 8 of the principal regulations*

**3.** In regulation 8(2)(b)(i) and (ii) of the principal regulations (eligible housing costs) for “board is available to the claimant” there shall be

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(a) 1992 c. 7

(b) 1992 c. 8

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

(d) S.R. 1987 No. 461; relevant amending regulations are S.R. 1988 No. 424, S.R. 1989 No. 408, S.R. 1990 No. 345, S.R. 1991 Nos. 47 and 337 and S.R. 1992 Nos. 85, 141 and 201

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

(f) 1988 c. 1: the definition of “lower rate” was inserted by section 9(9) of the Finance Act 1992 (c. 20)

substituted “any cooked or prepared food is made available to the claimant in consequence solely of his paying the charge for the accommodation or any other charge which he is required to pay as a condition of occupying the accommodation, or both of those charges, and is made available for his consumption without any further charge to him”.

*Amendment of regulation 26 of the principal regulations*

4. In regulation 26(c) of the principal regulations (disregard of changes in tax, contributions etc.) for the words from “principal Act” to the end there shall be substituted “Social Security Contributions and Benefits (Northern Ireland) Act 1992 or in the lower earnings limit or upper earnings limit for Class 1 contributions under that Act, the lower or upper limits applicable to Class 4 contributions under that Act or the amount specified in section 11(4) of that Act (small earnings exception in relation to Class 2 contributions);”.

*Amendment of regulation 29 of the principal regulations*

5. In regulation 29(4)(a) of the principal regulations (calculation of net earnings of employed earners) for “the basic rate of tax” there shall be substituted “the lower rate or, as the case may be, the lower rate and the basic rate of tax”; and after “less than a year,” there shall be inserted “the earnings to which the lower rate and, if appropriate, the basic rate of tax is to be applied and”.

*Amendment of regulation 32 of the principal regulations*

6. In regulation 32(1) of the principal regulations (deduction of tax and contributions for self-employed earners) for “the basic rate of tax” there shall be substituted “the lower rate or, as the case may be, the lower rate and the basic rate of tax”; and after “less than a year,” there shall be inserted “the earnings to which the lower rate and, if appropriate, the basic rate of tax is to be applied and”.

*Amendment of regulation 35 of the principal regulations*

7. In regulation 35(7)(a) of the principal regulations (notional income) for “the basic rate of tax” there shall be substituted “the lower rate or, as the case may be, the lower rate and the basic rate of tax”; and after “less than a year” there shall be inserted “, the earnings to which the lower rate and, if appropriate, the basic rate of tax is to be applied and”.

*Amendment of regulation 43A of the principal regulations*

8. In regulation 43A of the principal regulations (diminishing notional capital rule)—

(a) in paragraph (3)—

- (i) at the end of sub-paragraph (b) “and” shall be omitted;
- (ii) in sub-paragraph (c) for “(notional capital).” there shall be substituted “(notional capital); and”;
- (iii) after sub-paragraph (c) there shall be added the following sub-paragraph—

“(d) where the claimant has also claimed disability working allowance, the amount of disability working allowance or any additional amount of that benefit to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 37(1) of the Disability Working Allowance (General) Regulations (Northern Ireland) 1992 (notional capital)(a).”;

(b) in paragraph (4)—

- (i) at the end of sub-paragraph (b) “and” shall be omitted;
- (ii) in sub-paragraph (c) for “obtained by 7.” there shall be substituted “obtained by 7; and”;
- (iii) after sub-paragraph (c) there shall be added the following sub-paragraph—

“(d) if the claimant would, but for regulation 37(1) of the Disability Working Allowance (General) Regulations (Northern Ireland) 1992, have been entitled to disability working allowance or to an additional amount of that benefit in respect of the benefit week within the meaning of regulation 38(8)(a) of those regulations (diminishing notional capital rule), which includes the last day of the relevant week, an amount equal to—

- (i) in a case where no disability working allowance is payable, the amount to which he would have been so entitled, or
- (ii) in any other case, the additional amount of disability working allowance to which he would have been so entitled.”.

#### *Amendment of regulation 63 of the principal regulations*

9. In regulation 63(9) of the principal regulations (non-dependant deductions) for “any attendance allowance or disability living allowance received by him.” there shall be substituted—

- “(a) any attendance allowance or disability living allowance received by him;
- (b) any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund or the Independent Living Fund which had his income fallen to be calculated under regulation 33 (calculation of income other than earnings) would have been disregarded under paragraph 23 of Schedule 4 (sums to be disregarded in the calculation of income other than earnings); and
- (c) any payment which had his income fallen to be calculated under regulation 33 would have been disregarded under paragraph 37 of Schedule 4.”.

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(a) S.R. 1992 No. 78. to which there are amendments not relevant to these regulations

*Amendment of regulation 73 of the principal regulations*

**10.** In regulation 73(3) of the principal regulations (evidence and information)—

- (a) in sub-paragraph (b) for “Independent Living Fund.” there shall be substituted “Independent Living Fund;”;
- (b) after sub-paragraph (b) there shall be added the following sub-paragraph—
  - “(c) a payment which is disregarded under regulation 63(9)(b) or (c) (non-dependant deductions) other than a payment under the Independent Living Fund.”.

*Amendment of regulation 95 of the principal regulations*

**11.** In regulation 95(3) of the principal regulations (withholding of benefit) at the beginning there shall be inserted “Except where regulation 96 (payment or death of the person entitled) applies,”.

*Amendment of regulation 96 of the principal regulations*

**12.** In regulation 96 of the principal regulations (payment on death of the person entitled)—

- (a) in paragraph (1) at the beginning there shall be inserted “Subject to paragraphs (3) and (5),”; and after “entitled to housing benefit” there shall be inserted “, including any payment withheld under regulation 95(1) or (2) (withholding of benefit),”;
- (b) in paragraph (3) for “A payment under paragraph (1) may not be made unless” there shall be substituted “A payment under paragraph (1) or (5) shall not be made unless the landlord,”;
- (c) after paragraph (4) there shall be added the following paragraph—
  - “(5) Subject to paragraph (3), where the appropriate authority determines, before the death of the person first mentioned in paragraph (1), that a rent allowance or rate rebate was payable to his landlord in accordance with regulation 93 (circumstances in which payment is to be made to a landlord or the Department of the Environment) or 94 (circumstances in which payment may be made to a landlord or the Department of the Environment), that authority shall pay to that landlord so much of that allowance or rebate as does not exceed the amount of rent or rates outstanding at the date of the person’s death.”.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 17th September 1992.

(L.S.)

A. N. Burns

Assistant Secretary

## EXPLANATORY NOTE

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

These regulations make further amendments to the Housing Benefit (General) Regulations (Northern Ireland) 1987 in the following respects—

- (a) they provide for the calculation of the amount to be deducted in respect of income tax in relation to a claimant's earnings to take account of the lower rate of income tax and define the expression "lower rate" (regulations 2, 5, 6 and 7);
- (b) they specify a further legislative change which relates to social security contributions and which the Department of Health and Social Services may temporarily disregard when calculating a claimant's income (regulation 4);
- (c) they amend the provisions which specify how notional capital attributed to a claimant is to be reduced, by providing that such notional capital shall be further reduced to take account of the amount of any disability working allowance to which he would have been entitled but for the effect of his notional capital on his entitlement to disability working allowance (regulation 8);
- (d) they further define the circumstances in which payments in respect of certain types of accommodation are excluded from housing benefit (regulation 3);
- (e) they amend the provisions for calculating the income of a non-dependant by providing a disregard of certain payments (regulation 9);
- (f) they further define the evidence and information which may be required in respect of a claim (regulation 10);
- (g) they make provision for the payment of withheld rent allowance or rate rebate on the death of the person entitled to that allowance or rebate (regulation 11);
- (h) they provide that where a person was, prior to his death, entitled to a payment of rent allowance or rate rebate, which was to be paid to his landlord, any payment outstanding at the date of death is to be paid to that landlord on his written application therefor, up to the amount of rent or rates outstanding (regulation 12).

The enabling provisions under which these regulations are made were brought into operation on 1st July 1992 by section 173(4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and section 168(4) of the Social Security Administration (Northern Ireland) Act 1992.