

1994 No. 335

HOUSING: RATES

**The Housing Benefit (Miscellaneous Amendments)
Regulations (Northern Ireland) 1994**

Made 31st August 1994

Coming into operation 3rd October 1994

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 122(1)(d), 131(1) and (6) and 132(3) and (4)(a) and (b) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and sections 5(1)(g), 61 and 120(1) and (2) 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) so far as relates to matters with regard to which such consent is required, and after agreement by the Social Security Advisory Committee that proposals in respect of 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 Housing Benefit (Miscellaneous Amendments) Regulations (Northern Ireland) 1994 and shall come into operation on 3rd October 1994.

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

(3) The Interpretation Act (Northern Ireland) 1954(f) 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)—

(a) at the end of the definition of “employed earner” there shall be added “and also includes a person who is in receipt of a payment which is payable under any statute of the Parliament of the United Kingdom

(a) 1992 c. 7

(b) 1992 c. 8

(c) See section 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 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

(e) S.R. 1987 No. 461; relevant amending regulations are S.R. 1988 No. 424, S.R. 1990 Nos. 136 and 345, S.R. 1991 Nos. 176 and 337, S.R. 1992 Nos. 6, 141 and 404 and S.R. 1993 Nos. 145 and 218

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

extending solely to Great Britain and which corresponds to statutory sick pay or statutory maternity pay”;

- (b) in the definition of “person affected” for “any person (including the appropriate authority) whose rights,” there shall be substituted—
“a person who is—
(a) a claimant;
(b) the appropriate authority;
(c) the landlord, in the case of a determination made under regulation 93 or 94, or
(d) a person from whom the appropriate authority determines that an overpayment is recoverable in accordance with Part XIII (overpayments),
and whose rights,”.

Amendment of regulation 29 of the principal regulations

3. In regulation 29 of the principal regulations (calculation of net earnings of employed earners)—

- (a) in paragraph (3) for sub-paragraph (b) there shall be substituted the following sub-paragraphs—
“(b) one half of any sum paid by the claimant by way of a contribution towards an occupational pension scheme;
(c) one half of the amount calculated in accordance with paragraph (3B) in respect of any qualifying contribution payable by the claimant, and
(d) where those earnings include a payment which is payable under any statute of the Parliament of the United Kingdom extending solely to Great Britain and which corresponds to statutory sick pay or statutory maternity pay, any amount deducted from those earnings by way of any contributions which are payable under any statute of the Parliament of the United Kingdom extending solely to Great Britain and which correspond to primary Class 1 contributions under the Contributions and Benefits Act.”;
- (b) after paragraph (3) there shall be inserted the following paragraphs—
“(3A) In this regulation “qualifying contribution” means any sum which is payable periodically as a contribution towards a personal pension scheme.
(3B) The amount in respect of any qualifying contribution shall be calculated by multiplying the daily amount of the qualifying contribution by the number equal to the number of days in the assessment period; and for the purposes of this regulation the daily amount of the qualifying contribution shall be determined—
(a) where the qualifying contribution is payable monthly, by multiplying the amount of the qualifying contribution by 12 and dividing the product by 365;

- (b) in any other case, by dividing the amount of the qualifying contribution by the number equal to the number of days in the period to which the qualifying contribution relates.”;
- (c) in paragraph (4)(a)—
- (i) for “regulation 22(2)” there shall be substituted “regulation 22(2)(b)”;
 - (ii) in sub-paragraph (a) “and, if appropriate, the basic rate” shall be omitted;
 - (iii) for sub-paragraph (c) there shall be substituted the following sub-paragraph—

“(c) one half of any sum which would be payable by the claimant by way of a contribution towards an occupational or personal pension scheme, if the earnings so estimated were actual earnings.”.

Amendment of regulation 30 of the principal regulations

4. In regulation 30 of the principal regulations (earnings of self-employed earners)(b) for paragraph (2) there shall be substituted the following paragraph—

“(2) “Earnings” shall not include any payment to which paragraph 26 or 27 of Schedule 4 (sums to be disregarded in the calculation of income other than earnings) refers.”.

Amendment of regulations 32 and 35 of the principal regulations

5. In regulations 32(1)(c) and 35(7)(a)(d) of the principal regulations (deduction of tax and contributions for self-employed earners and notional income) “and, if appropriate, the basic rate” shall be omitted.

Amendment of regulation 77 of the principal regulations

6. In regulation 77 of the principal regulations (notification of determinations)(e)—

- (a) in paragraph (4)—
- (i) after “A person” there shall be inserted “affected”;
 - (ii) for “request in writing” there shall be substituted “, by notice in writing signed by him, request”;
- (b) after paragraph (4) there shall be inserted the following paragraph—
- “(4A) For the purposes of paragraph (4), where a person affected who requests a written statement is not an individual, the notice in writing referred to in that paragraph shall be signed by a person over the age of 18 who is authorised to act on that person’s behalf.”.

(a) Paragraph (4)(a) was amended by regulation 5 of S.R. 1992 No. 404
 (b) Regulation 30(2) was added by regulation 5(b) of S.R. 1993 No. 145
 (c) Regulation 32(1) was amended by regulation 6 of S.R. 1992 No. 404
 (d) Regulation 35(7) was amended by regulation 7 of S.R. 1992 No. 404
 (e) Regulation 77(4) was inserted by regulation 9 of S.R. 1992 No. 141

Amendment of regulation 79 of the principal regulations

7. In regulation 79 of the principal regulations (review of determinations)(a)—

- (a) in paragraph (2) for “if a person makes written representations” there shall be substituted “if a person affected makes written representations signed by him”;
- (b) after paragraph (2) there shall be inserted the following paragraph—

“(2A) For the purposes of paragraph (2), where the person affected who makes such representations is not an individual, those representations shall be signed by a person over the age of 18 who is authorised to act on that person’s behalf.”.

Amendment of regulation 81 of the principal regulations

8. In regulation 81 of the principal regulations (further review of determinations)—

- (a) in paragraph (1)—
 - (i) after “A person” there shall be inserted “affected”;
 - (ii) after “written notice” there shall be inserted “signed by him”;
- (b) after paragraph (1) there shall be inserted the following paragraph—

“(1A) For the purposes of paragraph (1), where a person affected who requests a further review is not an individual, the written notice referred to in that paragraph shall be signed by a person over the age of 18 who is authorised to act on that person’s behalf.”.

Amendment of regulation 86 of the principal regulations

9. In regulation 86 of the principal regulations (setting aside of determinations and decisions on certain grounds)—

- (a) in paragraph (2) after “shall be made in writing” there shall be inserted “signed in accordance with paragraph (2A)”;
- (b) after paragraph (2) there shall be inserted the following paragraph—

“(2A) For the purposes of paragraph (2) the application shall be signed by the person affected who makes the application or, where that person is not an individual, a person over the age of 18 who is authorised to act on that person’s behalf.”.

Amendment of regulation 94 of the principal regulations

10. In regulation 94 of the principal regulations (circumstances in which payment may be made to a landlord or the Department of the Environment) after paragraph (2) there shall be added the following paragraph—

- “(3) In this regulation “landlord” has the same meaning as in regulation 93.”.

(a) Regulation 79(2) was amended by regulation 11(a) of S.R. 1992 No. 141 and regulation 2(2)(c) of S.R. 1993 No. 218

Amendment of Schedule 2 to the principal regulations

11. In Schedule 2 to the principal regulations (applicable amounts)—

(a) in paragraph 12(a)—

- (i) in sub-paragraph (1)(a)(i) for the words from “section 15” to “of that Act” there shall be substituted “Part II of the Contributions and Benefits Act (contributory benefits) or severe disablement allowance under Part III of that Act (non-contributory benefits)”;
- (ii) in sub-paragraph (1)(a)(ii) for “section 15 of the principal Act” there shall be substituted “Part II of the Contributions and Benefits Act”, and for “retirement pension under the principal Act” there shall be substituted “retirement pension under that Act”;

(b) in paragraph 13 after sub-paragraph (3) there shall be added the following sub-paragraph—

“(4) For the purposes of sub-paragraph (2)(a)(iii) and (b), no account shall be taken of an award of invalid care allowance to the extent that payment of such an award is backdated for a period before the date on which the award is made.”.

Amendment of Schedule 4 to the principal regulations

12. In Schedule 4 to the principal regulations (sums to be disregarded in the calculation of income other than earnings)—

(a) in paragraph 18 for head (i) there shall be substituted the following head—

“(i) where, or in so far as, section 369 of the Income and Corporation Taxes Act 1988 (mortgage interest payable under deduction of tax)(b) applies to the payments of interest on the loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the applicable percentage of income tax within the meaning of section 369(1A) of that Act;”;

(b) after paragraph 55(c) there shall be added the following paragraphs—

“56. Any supplementary pension under Article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows)(d).

57. In the case of a pension awarded at the supplementary rate under Article 27(3) of the Personal Injuries (Civilians) Scheme 1983 (pensions to widows)(e), the sum specified in paragraph 1(c) of Schedule 4 to that Scheme.

(a) Paragraph 12(1) was amended by regulation 17(a)(i) of S.R. 1988 No. 424 and regulation 11(4)(b) of S.R. 1992 No. 6

(b) 1988 c. 1; section 369(1A) was inserted by section 81(3) of the Finance Act 1994 (c. 9)

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

(d) S.I. 1983/883; Article 29(1A) was inserted by S.I. 1994/1906

(e) S.I. 1983/686; Article 27(3) and paragraph 1(c) of Schedule 4 were added by S.I. 1994/2021

58.—(1) Any payment which is—

(a) made under any of the Dispensing Instruments to a widow of a person—

(i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown, and

(ii) whose service in such capacity terminated before 31st March 1973, and

(b) equal to the amount specified in Article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows).

(2) In this paragraph “the Dispensing Instruments” means the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 14th January 1922 (exceptional grants of pay, non-effective pay and allowances)(a).”.

Amendment of Schedule 5 to the principal regulations

13. In Schedule 5 to the principal regulations (capital to be disregarded)—

(a) in paragraph 38(b) after “income other than earnings)” there shall be inserted “or of any amount which is disregarded under paragraph 56, 57 or 58 of that Schedule”;

(b) after paragraph 44(c) there shall be added the following paragraph—

“45. Any sum of capital administered on behalf of a person under the age of 18 by the High Court under the provisions of Order 80 or 109 of the Rules of the Supreme Court (Northern Ireland) 1980(d), the County Court under Order 44 of the County Court Rules (Northern Ireland) 1981(e), or Article 21 of the County Courts (Northern Ireland) Order 1980(f), where such sum derives from—

(a) an award of damages for a personal injury to that person, or

(b) compensation for the death of one or both parents.”.

(a) Copies of the Dispensing Instruments are available from the Department of Health and Social Services, Social Security Policy and Legislation Division, B4, Castle Buildings, Stormont, Belfast BT4 3SQ

(b) Paragraph 38 was added by regulation 12(d) of S.R. 1990 No. 345

(c) Paragraph 44 was added by regulation 13(c) of S.R. 1993 No. 145

(d) S.R. 1980 No. 346; Order 109 was added by S.R. 1986 No. 184

(e) S.R. 1981 No. 225

(f) S.I. 1980/397 (N.I. 3)

Amendment of the Housing Benefit (Supply of Information) Regulations (Northern Ireland) 1988

14.—(1) The Housing Benefit (Supply of Information) Regulations (Northern Ireland) 1988(a) shall be amended in accordance with paragraphs (2) to (4).

(2) In regulation 1(2) (interpretation) for the definition of “claimant” there shall be substituted the following definition—

“ “ claimant” means a person by whom or in respect of whom a claim for housing benefit has been made;”;

(3) In regulation 2 (information to be supplied by the Department to the Executive)—

(a) in sub-paragraph (k) for “any further information” there shall be substituted “any information not referred to in sub-paragraphs (a) to (j), (l) or (m)””; and in head (iii) for “housing benefit.” there shall be substituted “housing benefit;”;

(b) after sub-paragraph (k) there shall be added the following sub-paragraphs—

“(l) that payment of income support to a claimant has been withheld in whole or in part;

(m) where payment of income support to a claimant has been withheld in whole or in part—

(i) the date from which it was withheld;

(ii) the reason why it was withheld;

(iii) whether payment of any withheld payment has been or is to be made.”.

(4) In regulation 3 (information to be supplied by the Executive to the Department)—

(a) the existing provision shall be numbered as paragraph (1);

(b) after paragraph (1) there shall be added the following paragraph—

“(2) Where it appears to the Executive that—

(a) a claimant or any partner of his is to be treated, in accordance with regulation 4 of the Housing Benefit (General) Regulations (Northern Ireland) 1987 (remunerative work)(b), as engaged in remunerative work for the purposes of those regulations;

(b) the claimant or any partner of his is responsible for a member of the same household who is either a child or a person referred to in the Housing Benefit (General) Regulations (Northern Ireland) 1987 as a young person;

(c) neither the claimant nor any partner of his is in receipt of disability working allowance, and

(a) S.R. 1988 No. 118

(b) S.R. 1987 No. 461; relevant amending regulations are S.R. 1991 No. 337 and S.R. 1993 No. 381

(d) a claim for family credit has not been made by or in respect of the claimant or any partner of his,
the Executive shall inform the Department that it appears that a claim for family credit has not been made by or in respect of the claimant.”.

Revocation

15. Regulation 5(b) of the Housing Benefit (General) (Amendment) Regulations (Northern Ireland) 1993(a) is hereby revoked.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 31st August 1994.

(L.S.)

W. G. Purdy

Assistant Secretary

The Department of the Environment for Northern Ireland hereby consents to the foregoing Regulations.

Sealed with the Official Seal of the Department of the Environment for Northern Ireland on 31st August 1994.

(L.S.)

R. E. Aiken

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations further amend the Housing Benefit (General) Regulations (Northern Ireland) 1987 and the Housing Benefit (Supply of Information) Regulations (Northern Ireland) 1988.

With respect to housing benefit—

- (a) they amend the definition of “employed earner” to include a person in receipt of certain payments under Great Britain legislation and provide for the deduction of certain contributions under that legislation for the purpose of calculating net earnings (regulations 2 and 3);
- (b) they further specify the amount of income tax to be deducted in calculating certain income (regulation 5); the amount to be deducted in respect of contributions towards a pension scheme in calculating earnings of employed earners (regulation 3); and the calculation of earnings of persons who have been in employment for a short period (regulation 3);
- (c) they exclude payments made to a claimant by certain organisations for providing temporary accommodation and care to a person not normally a member of his household from being treated as earnings of self-employed earners (regulation 4);
- (d) with respect to determinations and reviews concerning benefit, they amend the definition of “person affected”, and specify that certain requests and written representations are to be made and signed by such a person (regulations 2 and 6 to 9);
- (e) with respect to the calculation of a person’s applicable amount, they amend references to statutory provisions concerning invalidity pension and retirement pension; and they amend conditions for the award of a severe disability premium where the person caring for the disabled person receives a backdated payment of invalid care allowance (regulation 11);
- (f) with respect to the calculation of sums to be disregarded from income other than earnings, they make amendments in respect of the rates of income tax to be deducted from interest due on a loan secured on a person’s dwelling which is used for the purchase of an annuity; and they provide a disregard for certain payments to widows under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983, the Personal Injuries (Civilians) Scheme 1983 and specified Dispensing Instruments (regulation 12);
- (g) with respect to the calculation of capital, they provide a disregard of capital administered by the High Court or the County Court on behalf of a person under the age of 18, which derives from an award of damages for personal injury to that person or for the death of one or both of such a person’s parents (regulation 13); and they provide a disregard of arrears of payments under the instruments referred to in paragraph (f) above;

- (h) they further specify the information which the Department of Health and Social Services ("the Department") may supply to the Northern Ireland Housing Executive ("the Executive"), so as to include information in relation to a payment of income support which has been withheld (regulation 14);
- (i) they provide that the Executive shall notify the Department in certain circumstances where a person claiming housing benefit, or that person's partner, may be eligible for family credit but it appears that a claim for family credit has not been made (regulation 14);
- (j) they substitute the definition of "claimant" (regulation 14);
- (k) they further define the term "landlord" in respect of certain payments of benefit that may be made to a landlord (regulation 10);
- (l) they contain a consequential revocation (regulation 15).