
STATUTORY RULES OF NORTHERN IRELAND

1996 No. 355

SOCIAL SECURITY

**The Social Security (Adjudication) (Amendment)
Regulations (Northern Ireland) 1996**

Made - - - - *1st August 1996*

Coming into operation *7th October 1996*

The Department of Health and Social Services, in exercise of the powers conferred on it by sections 25(1), 57(1), (2) and (5) and 59(1) and (2) of, and Schedule 3 to, the Social Security Administration (Northern Ireland) Act 1992⁽¹⁾ and Article 32 of, and paragraph (4) of Schedule 1 to, the Jobseekers (Northern Ireland) Order 1995⁽²⁾ and of all other powers enabling it in that behalf, by this statutory rule which contains only regulations consequential upon the Jobseekers (Northern Ireland) Order 1995, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Adjudication) (Amendment) Regulations (Northern Ireland) 1996 and shall come into operation on 7th October 1996.

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

Amendment of the Social Security (Adjudication) Regulations

2.—(1) The Social Security (Adjudication) Regulations (Northern Ireland) 1995⁽⁴⁾ shall be amended in accordance with paragraphs (2) to (7).

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

(a) for the definition of “the Acts” there shall be substituted the following definition—

““the Acts” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽⁵⁾, the Social Security Administration (Northern Ireland) Act 1992 and the Jobseekers (Northern Ireland) Order 1995;”;

(b) after the definition of “the Contributions and Benefits Act” there shall be inserted the following definition—

(1) 1992 c. 8
(2) S.I.1995/2705 (N.I. 15)
(3) 1954 c. 33 (N.I.)
(4) S.R. 1995 No. 293; relevant amending regulations are S.R. 1995 No. 434 and S.R. 1996 No. 57
(5) 1992 c. 7

““the Jobseekers Order” means the Jobseekers (Northern Ireland) Order 1995;”;
and

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

““the Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(6);”.

(3) For Section B of Part IV there shall be substituted the following Section—
“SECTION B—

INCOME SUPPORT AND JOBSEEKER’S ALLOWANCE

Notification of decisions in income support and jobseeker’s allowance cases

55.—(1) Subject to paragraphs (2) to (4), where an adjudication officer has given a decision on any claim or question relating to income support or jobseeker’s allowance, the claimant shall be notified in writing of the effect of that decision and he shall at the same time be notified of his right to request a statement of the reasons for the decision and of his right of appeal to an appeal tribunal.

(2) Where, under arrangements made by the Department, income support is payable together with another benefit under the Contributions and Benefits Act, notice of the aggregate amount so payable shall be notice for the purpose of paragraph (1).

(3) Written notice shall not be required of a determination awarding income support or jobseeker’s allowance which is implemented by a cash payment where in all the circumstances it would be impracticable to do so.

(4) Written notice shall not be required of a determination terminating entitlement to income support or jobseeker’s allowance if the reason for the termination is already known to the claimant or it is otherwise reasonable in the circumstances not to give such notice.

(5) In so far as may be practicable, and subject to paragraph (6), where a claimant is notified of a decision under paragraph (1) or (2) the Department shall also give or send him a written notice of assessment showing—

- (a) the total amounts of the personal allowances, family premium, other premiums and housing costs determined under Part IV of the Income Support Regulations or, as the case may be, Part VII of the Jobseeker’s Allowance Regulations as are appropriate in his case;
- (b) the income taken into account; and
- (c) any personal expenses addition, special transitional addition and transitional addition payable under the Income Support (Transitional) Regulations, any transitional supplement payable under regulation 87 of the Jobseeker’s Allowance Regulations and any transitional allowance payable by virtue of regulations made under Article 39(2) of the Jobseekers Order.

(6) Paragraph (5) shall not apply to any determination—

- (a) that income support or income-based jobseeker’s allowance is not payable for any reason other than that the claimant’s income exceeds the applicable amount;
- (b) made on review under regulation 63(3) or 63A(4)(7) or, where the Department considers a written notice of assessment unnecessary, under any other provision of those regulations;

(6) S.R. 1996 No. 198

(7) Regulation 63A is inserted by regulation 2(6) of these regulations

(c) in respect of a claimant to whom section 126 of the Contributions and Benefits Act applies.

(7) If, within the time limited by regulation 3 and Schedule 2 for the bringing of an appeal against an adjudication officer's decision, the claimant requests a statement of the reasons for that decision, he shall be given such a statement in writing and shall again be informed of his right of appeal.

Income support and social fund questions not immediately determinable

56.—(1) Where, on consideration of a claim or question relating to income support or to payment of maternity expenses from the social fund under Part VIII of the Contributions and Benefits Act, it appears to an adjudication officer that the claimant's entitlement to, or the rate or amount of, such benefit depends on the determination of—

- (a) the question as to what housing costs are to be included in the claimant's applicable amount by virtue of regulation 17(1)(e) or 18(1)(f) of, and Schedule 3 to, the Income Support Regulations⁽⁸⁾ (applicable amounts) and the adjudication officer is satisfied that not all of those housing costs can be immediately determined, he shall proceed to determine the claim or question on the assumption that the housing costs to be included in the claimant's applicable amount are those that can be immediately determined;
- (b) any of the questions mentioned in paragraph (3), and the adjudication officer is satisfied that the question cannot be immediately determined, he shall proceed to determine the claim or question on the assumption that the determination of the question so mentioned will be adverse to the claimant.

(2) Without prejudice to the power of an adjudication officer to refer any claim or question to an appeal tribunal under section 19(2) of the Administration Act, and notwithstanding the provisions of section 20 of that Act, on an appeal to an appeal tribunal in any case where the adjudication officer has applied the provisions of paragraph (1) in relation to any of the questions mentioned or referred to in that paragraph, the tribunal shall not determine any such question until it has been determined by an adjudication officer.

(3) The questions referred to in paragraph (1)(b) are—

- (a) whether in relation to any person the applicable amount falls to be reduced or disregarded to any extent by virtue of section 125(3) of the Contributions and Benefits Act;
- (b) whether for the purposes of regulation 12 of the Income Support Regulations⁽⁹⁾ a person is by virtue of that regulation to be treated as receiving relevant education; and
- (c) whether in relation to any claimant the applicable amount includes severe disability premium by virtue of regulation 17(1)(d) or 18(1)(e) of, and paragraph 13 of Schedule 2 to, the Income Support Regulations⁽¹⁰⁾.

Jobseeker's allowance questions not immediately determinable

56A.—(1) Where, on consideration of a claim or question relating to jobseeker's allowance, it appears to an adjudication officer that the claimant's entitlement to, or the rate or amount of, that allowance depends on the determination of any of the questions mentioned in

⁽⁸⁾ S.R. 1987 No. 459; relevant amending provisions are S.R. 1988 Nos. 193, 274 and 318, S.R. 1989 Nos. 139 and 249, S.R. 1993 Nos. 149 and 373, S.R. 1995 Nos. 301, 350 and 434 and S.R. 1996 Nos. 73 and 120

⁽⁹⁾ Relevant amending regulations are S.R. 1990 No. 131, S.R. 1992 No. 403 and S.R. 1993 No. 373

⁽¹⁰⁾ Paragraph 13 of Schedule 2 was amended by regulation 30(d) of S.R. 1988 No. 146, regulation 6(f) of S.R. 1989 No. 395, regulation 10(4)(c) of S.R. 1992 No. 6, regulation 3(2) of S.R. 1993 No. 218, regulation 2(9)(b) of S.R. 1994 No. 327 and regulation 2(3) of S.R. 1994 No. 474

paragraph (2), and the adjudication officer is satisfied that the question cannot be immediately determined, he shall proceed to determine the claim or question on the assumption that the determination of the question so mentioned will be adverse to the claimant.

- (2) The questions referred to in paragraph (1) are—
- (a) whether in relation to any person the applicable amount falls to be reduced or disregarded to any extent by virtue of Article 17 of the Jobseekers Order; and
 - (b) whether for the purposes of regulation 54(2) to (4) of the Jobseeker's Allowance Regulations a person is by virtue of that regulation to be treated as receiving relevant education.
- (3) Where—
- (a) a person has made a claim for a jobseeker's allowance; and
 - (b) the adjudication officer is satisfied that the claimant satisfies the requirements for entitlement to a jobseeker's allowance specified in Articles 3(2) and 4 or 5 of the Jobseekers Order; but
 - (c) the adjudication officer is unable to determine for the time being a question arising under Article 21 of that Order,

then the adjudication officer shall, pending the determination of that question, determine the claim on the assumption that Article 21 does not restrict payment of benefit.

(4) Without prejudice to the power of an adjudication officer to refer any claim or question to an appeal tribunal under section 19(2) of the Administration Act, and notwithstanding the provisions of section 20 of that Act, on an appeal to an appeal tribunal in any case where the adjudication officer has applied the provisions of paragraph (1) or (3) in relation to any of the questions mentioned or referred to in those paragraphs, the tribunal shall not determine any such question until it has been determined by an adjudication officer.

(5) A determination made pursuant to paragraph (3) shall be reviewed by an adjudication officer or, on a reference by him, by an appeal tribunal, where it is necessary to give effect to a determination given on a question arising under Article 21 of the Jobseekers Order.

(6) A determination on review undertaken in consequence of a decision on a question arising under Article 21 of the Jobseekers Order shall have effect—

- (a) except where sub-paragraph (b) applies, from the day immediately following the end of the benefit week in which the determination was made; or
- (b) where in accordance with regulation 26A(1) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987⁽¹¹⁾ a jobseeker's allowance is paid otherwise than fortnightly in arrears, and notwithstanding the provisions of regulation 69 of the Jobseeker's Allowance Regulations, from the day immediately following the end of the last benefit week in respect of which a jobseeker's allowance was paid.

(7) Where, in consequence of the determination of any question arising under Article 21 of the Jobseekers Order, a jobseeker's allowance is not payable, the period in respect of which it is not payable shall begin on the date the revised determination takes effect.

(8) In this regulation "benefit week" has the same meaning as in regulation 1(2) of the Jobseeker's Allowance Regulations.

(11) S.R. 1987 No. 465; regulation 26A is inserted by regulation 2(14) of S.R. 1996 No. 354

Termination of awards of income support or jobseeker's allowance where alternative benefit is claimed

56B.—(1) This regulation applies in a case where an award of income support or jobseeker's allowance ("the existing benefit") exists in favour of a person and, if that award did not exist and a claim was made by that person or his partner for jobseeker's allowance or, as the case may be, income support ("the alternative benefit"), an award of the alternative benefit would be made on that claim.

(2) In a case to which this regulation applies, if, but only if, a claim for the alternative benefit is made, an adjudication officer may bring to an end the award of the existing benefit if he is satisfied that an award of the alternative benefit will be made on that claim.

(3) Where, under paragraph (2), an adjudication officer brings an award of the existing benefit to an end he shall do so with effect from the day immediately preceding the first day on which the award of the alternative benefit has effect.

(4) Where an award of jobseeker's allowance is made in accordance with the provisions of this regulation, paragraph 4 of Schedule 1 to the Jobseekers Order (waiting days) shall not apply."

(4) In regulation 59(1)(12) (review of decisions involving payment or increase of benefit other than industrial injuries benefit, except reduced earnings allowance, income support, family credit or disability working allowance) for the words preceding "is revised so as to make benefit payable" there shall be substituted—

"Review of decisions involving payment or increase of benefit other than industrial injuries benefit (except reduced earnings allowance), income support, jobseeker's allowance, family credit or disability working allowance

59.—(1) Where on a review a decision relating to benefit other than industrial injuries benefit (except reduced earnings allowance), income support, jobseeker's allowance, family credit or disability working allowance"

(5) In regulation 63(4) (review in income support cases) sub-paragraph (a) shall be omitted.

(6) After regulation 63 there shall be inserted the following regulation—

"Review in jobseeker's allowance cases

63A.—(1) Except in a case to which regulation 57(2), (3) or (4) or regulation 58 applies, and subject to paragraph (2), a determination on a claim or question relating to jobseeker's allowance shall not be revised on review under section 23 of the Administration Act so as to make jobseeker's allowance payable or to increase the amount of jobseeker's allowance payable in respect of—

(a) in a case where the award which is being reviewed—

(i) was made solely on the basis that the claimant satisfied the conditions for a contribution-based jobseeker's allowance, and

(ii) the application for review is made on the basis that he now satisfies the conditions for an income-based jobseeker's allowance,

any period which falls before the date on which the review was applied for or, where no application is made, the date of the review;

- (b) in a case not falling within sub-paragraph (a), any period which falls more than 12 months before the date on which the review was requested or, where no request is made, the date of the review; or
- (c) in any case, any past period which falls within the period of 12 months mentioned in sub-paragraph (b) and which has been followed by termination or interruption of entitlement to jobseeker's allowance and—
 - (i) the total amount of the increase would be £5 or less, or
 - (ii) the grounds for review are a material fact or relevant change of circumstances of which the claimant was aware but of which he previously failed to furnish information to the Department.

(2) Paragraph (1)(a) shall not apply so as to prevent the payment of a jobseeker's allowance or an increase in the amount of that allowance in respect of any period not more than 12 months before the date on which the review was requested or, as the case may be, made, if the claimant proves that throughout that period he had good cause for failing to apply for a review.

(3) Section 139A of the Administration Act(13) (effect of alteration of rates of a jobseeker's allowance) shall not apply to any award of jobseeker's allowance in force in favour of a person where there is applicable to that person any amount determined in accordance with regulation 87 of the Jobseeker's Allowance Regulations.

(4) Where section 139A of the Administration Act does not apply to an award of jobseeker's allowance by virtue of paragraph (3), that award may be reviewed by an adjudication officer or, on a reference by him, by an appeal tribunal for the sole purpose of giving effect to any change made by an order under section 132 of that Act.

(5) A determination relating to jobseeker's allowance made by an adjudicating authority or a Commissioner shall be reviewed by an adjudication officer or, on a reference by him, by an appeal tribunal where this is necessary to give effect to—

- (a) a determination given on a question to which regulation 56A (jobseeker's allowance questions not immediately determinable) applies; or
- (b) a change of circumstances to which regulations 14 and 15 of the Income Support (Transitional) Regulations(14) apply by virtue of regulation 87(1) of the Jobseeker's Allowance Regulations.

(6) Where a claimant in receipt of a jobseeker's allowance lives in a nursing home or residential care home and is absent from that home for a period of less than one week, that absence shall not be treated as a relevant change of circumstances for the purposes of section 23(1)(b) and (c) of the Administration Act.

(7) In paragraph (6) "nursing home" and "residential care home" have the same meanings as in regulation 1(2) of the Jobseeker's Allowance Regulations.

(8) Where—

- (a) it has been determined that the amount of a jobseeker's allowance payable to a young person is to be reduced under regulation 63 of the Jobseeker's Allowance Regulations (reduced payments under Article 19 of the Order) because paragraph (1) (b)(iii), (c), (d), (e) or (f) of that regulation applied in his case; and
- (b) that determination falls to be reviewed because the Department has subsequently issued a certificate under Article 19(4) of the Jobseekers Order with respect to the failure in question,

(13) Section 139A is inserted by Article 26 of the Jobseekers (Northern Ireland) Order 1995

(14) S.R. 1987 No. 460; relevant amending regulations are S.R. 1988 Nos. 132 and 153, S.R. 1989 Nos. 371 and 485, S.R. 1991 No. 341 and S.R. 1992 No. 284

the determination given on review shall have effect from the same date as the determination under review had effect.”.

(7) In regulation 64 (repayment of student loan not a change of circumstances) for “or regulation 42A of the Family Credit (General) Regulations (Northern Ireland) 1987” there shall be substituted “, regulation 42A of the Family Credit (General) Regulations (Northern Ireland) 1987 or regulation 136 of the Jobseeker’s Allowance Regulations”.

Revocation

3. Regulation 6(2) and (3)(a) of the Social Security (Industrial Injuries and Diseases) (Miscellaneous Amendments) Regulations (Northern Ireland) 1996(15) is hereby revoked.

Sealed with the Official Seal of the Department of Health and Social Services on 1st August 1996.

D. A. Baker
Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations, which are consequential upon the coming into operation of the Jobseekers (Northern Ireland) Order 1995 (“the Jobseekers Order”) which, *inter alia*, replaces unemployment benefit and income support for the unemployed with a new benefit called jobseeker’s allowance, amend the Social Security (Adjudication) Regulations (Northern Ireland) 1995 to make provision in relation to jobseeker’s allowance which is comparable to that in relation to income support. Also a new regulation 56B is inserted which provides that where a person is in receipt of a jobseeker’s allowance and he or his partner wishes to claim income support instead, or vice versa, the adjudication officer may bring to an end the award of the claimant’s current benefit where he is satisfied that the claimant or his partner will be entitled to the other benefit. The regulation also provides that where a person claims jobseeker’s allowance under this procedure he will not have to serve the normal three “waiting days” before he becomes entitled to the allowance.

The Regulations are made before the end of the period of 6 months beginning with the commencement of the Jobseekers Order and accordingly, by virtue of section 150(5) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8), are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.

Article 32 of the Jobseekers Order is an enabling provision under which these Regulations are made. It was brought into operation, for the purpose only of authorising the making of regulations, on 5th February 1996 by virtue of Article 2(b) of the Jobseekers (1995 Order) (Commencement No. 1) Order (Northern Ireland) 1996 (S.R. 1996 No. 26 (C. 3)).