

2001 No. 150

HOUSING; RATES; SOCIAL SECURITY

The Social Security (Capital Disregards and Recovery of Benefits Amendment) Regulations (Northern Ireland) 2001

Made 3rd April 2001

Coming into operation 12th April 2001

The Department for Social Development, in exercise of the powers conferred on it by sections 122(1)(a) and (d), 132(4)(b), 134(1)(a) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a), section 165(4) to (6) of the Social Security Administration (Northern Ireland) Act 1992(b), Article 14(4)(b) of the Jobseekers (Northern Ireland) Order 1995(c) and Article 28(1) of, and paragraph 4 of Schedule 1 to, the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997(d) and now vested in it(e), and of all other powers enabling it in that behalf, with the consent of the Department of Finance and Personnel(f) in so far as regulation 2(2) is concerned, and after agreement by the Social Security Advisory Committee that proposals in respect of that regulation should not be referred to it(g), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Capital Disregards and Recovery of Benefits Amendment) Regulations (Northern Ireland) 2001 and shall come into operation on 12th April 2001.

(2) 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 134(1) was substituted by Article 66(1) of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))

(b) 1992 c. 8; words in section 165(6) were repealed by Schedule 7 to the Social Security (Northern Ireland) Order 1998

(c) S.I. 1995 No. 2705 (N.I. 15)

(d) S.I. 1997/1183 (N.I. 12); section 165(4) to (6) of the Social Security Administration (Northern Ireland) Act 1992 is applied by Article 28(3) of this Order

(e) See Article 8(b) of, and Part II of Schedule 6 to, the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. 1999 No. 481)

(f) 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)); consent function transferred from the Department of the Environment for Northern Ireland to the Department of Finance and Personnel; see Article 6(b) of, and Part II of Schedule 4 to, the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999

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

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

Capital to be disregarded

2.—(1) There shall be added as paragraph 59 of Schedule 10 to the Income Support (General) Regulations (Northern Ireland) 1987(a) and paragraph 52 of Schedule 7 to the Jobseeker's Allowance Regulations (Northern Ireland) 1996(b) (capital to be disregarded) the following paragraph—

“(1) Subject to sub-paragraph (2), the amount of any trust payment made to a claimant or a member of a claimant's family who is—

- (a) a diagnosed person;
- (b) the diagnosed person's partner or the person who was the diagnosed person's partner at the date of the diagnosed person's death;
- (c) a parent of a diagnosed person, a person acting in the place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death, or
- (d) a member of the diagnosed person's family (other than his partner) or a person who was a member of the diagnosed person's family (other than his partner) at the date of the diagnosed person's death.

(2) Where a trust payment is made to—

- (a) a person referred to in sub-paragraph (1)(a) or (1)(b), that sub-paragraph shall apply for the period beginning on and including the date on which the trust payment is made and ending on the date on which that person dies;
- (b) a person referred to in sub-paragraph (1)(c), that sub-paragraph shall apply for the period beginning on and including the date on which the trust payment is made and ending two years after that date;
- (c) a person referred to in sub-paragraph (1)(d), that sub-paragraph shall apply for the period beginning on and including the date on which the trust payment is made and ending—

(i) two years after that date, or

(ii) on the day before the day on which that person—

(aa) ceases receiving full-time education, or

(bb) attains the age of 19,

whichever is the latest.

(3) Subject to sub-paragraph (4), the amount of any payment by a person to whom a trust payment has been made or of any payment out of the estate of a person to whom a trust payment had been made, which is made to a claimant or a member of a claimant's family who is—

- (a) the diagnosed person's partner or the person who was the diagnosed person's partner at the date of the diagnosed person's death;

(a) S.R. 1987 No. 459; paragraph 58 was added by regulation 10 of S.R. 2001 No. 78

(b) S.R. 1996 No. 198; paragraph 51 was added by regulation 2(c) of S.R. 2001 No. 4

(b) a parent of a diagnosed person, a person acting in the place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death, or
(c) a member of the diagnosed person's family (other than his partner) or a person who was a member of the diagnosed person's family (other than his partner) at the date of the diagnosed person's death,
but only to the extent that such payments do not exceed the total amount of any trust payments made to that person.

(4) Where a payment as referred to in sub-paragraph (3) is made to—

(a) a person referred to in sub-paragraph (3)(a), that sub-paragraph shall apply for the period beginning on and including the date on which that payment is made and ending on the date on which that person dies;

(b) a person referred to in sub-paragraph (3)(b), that sub-paragraph shall apply for the period beginning on and including the date on which that payment is made and ending two years after that date;

(c) a person referred to in sub-paragraph (3)(c), that sub-paragraph shall apply for the period beginning on and including the date on which that payment is made and ending—

(i) two years after that date, or

(ii) on the day before the day on which that person—

(aa) ceases receiving full-time education, or

(bb) attains the age of 19,

whichever is the latest.

(5) In this paragraph, a reference to a person—

(a) being the diagnosed person's partner;

(b) being a member of the diagnosed person's family, or

(c) acting in the place of the diagnosed person's parents,

at the date of the diagnosed person's death shall include a person who would have been such a person or a person who would have been so acting, but for the diagnosed person being in residential accommodation, a residential care home or a nursing home on that date.

(6) In this paragraph—

“diagnosed person” means a person who has been diagnosed as suffering from, or who, after his death, has been diagnosed as having suffered from, variant Creutzfeldt-Jakob disease;

“relevant trust” means a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions;

“trust payment” means a payment under a relevant trust.”.

(2) There shall be added as paragraph 61 of Schedule 5 to the Housing Benefit (General) Regulations (Northern Ireland) 1987^(a) (capital to be disregarded) the following paragraph—

“(1) Subject to sub-paragraph (2), the amount of any trust payment made to a claimant or a member of the claimant’s family who is—

- (a) a diagnosed person;
- (b) the diagnosed person’s partner or the person who was the diagnosed person’s partner at the date of the diagnosed person’s death;
- (c) a parent of a diagnosed person, a person acting in the place of the diagnosed person’s parents or a person who was so acting at the date of the diagnosed person’s death, or
- (d) a member of the diagnosed person’s family (other than his partner) or a person who was a member of the diagnosed person’s family (other than his partner) at the date of the diagnosed person’s death.

(2) Where a trust payment is made to—

- (a) a person referred to in sub-paragraph (1)(a) or (1)(b), that sub-paragraph shall apply for the period beginning on and including the date on which the trust payment is made and ending on the date on which that person dies;
- (b) a person referred to in sub-paragraph (1)(c), that sub-paragraph shall apply for the period beginning on and including the date on which the trust payment is made and ending two years after that date;
- (c) a person referred to in sub-paragraph (1)(d), that sub-paragraph shall apply for the period beginning on and including the date on which the trust payment is made and ending—
 - (i) two years after that date, or
 - (ii) on the day before the day on which that person—
 - (aa) ceases receiving full-time education, or
 - (bb) attains the age of 19,whichever is the latest.

(3) Subject to sub-paragraph (4), the amount of any payment by a person to whom a trust payment has been made or of any payment out of the estate of a person to whom a trust payment has been made, which is made to a claimant or a member of a claimant’s family who is—

- (a) the diagnosed person’s partner or the person who was the diagnosed person’s partner at the date of the diagnosed person’s death;
- (b) a parent of a diagnosed person, a person acting in the place of the diagnosed person’s parents or a person who was so acting at the date of the diagnosed person’s death, or

(a) S.R. 1987 No. 461; paragraph 60 was added by regulation 2(4) of S.R. 2001 No. 134

(c) a member of the diagnosed person's family (other than his partner) or a person who was a member of the diagnosed person's family (other than his partner) at the date of the diagnosed person's death, but only to the extent that such payments do not exceed the total amount of any trust payments made to that person.

(4) Where a payment as referred to in sub-paragraph (3) is made to—

(a) a person referred to in sub-paragraph (3)(a), that sub-paragraph shall apply for the period beginning on and including the date on which that payment is made and ending on the date on which that person dies;

(b) a person referred to in sub-paragraph (3)(b), that sub-paragraph shall apply for the period beginning on and including the date on which that payment is made and ending two years after that date;

(c) a person referred to in sub-paragraph (3)(c), that sub-paragraph shall apply for the period beginning on and including the date on which that payment is made and ending—

(i) two years after that date, or

(ii) on the day before the day on which that person—

(aa) ceases receiving full-time education, or

(bb) attains the age of 19,

whichever is the latest.

(5) In this paragraph, a reference to a person—

(a) being the diagnosed person's partner;

(b) being a member of the diagnosed person's family, or

(c) acting in the place of the diagnosed person's parents,

at the date of the diagnosed person's death shall include a person who would have been such a person or a person who would have been so acting, but for the diagnosed person being in residential accommodation, a residential care home or a nursing home on that date.

(6) In this paragraph—

“diagnosed person” means a person who has been diagnosed as suffering from, or who, after his death, has been diagnosed as having suffered from, variant Creutzfeldt-Jakob disease;

“relevant trust” means a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions;

“residential accommodation”(a), “residential care home”(b) and “nursing home” shall have the same meanings as for the purposes

(a) Definition was substituted by regulation 2(c) of S.R. 1988 No. 318 and amended by paragraph 1 of Schedule 1 to S.R. 1989 No. 139

(b) Definition was inserted by regulation 2(2)(d) of S.R. 1993 No. 149

of the Income Support (General) Regulations (Northern Ireland) 1987;

“trust payment” means a payment under a relevant trust.”.

Amendment of the Social Fund (Maternity and Funeral Expenses) Regulations

3. In regulation 7(2) of the Social Fund (Maternity and Funeral Expenses) (General) Regulations (Northern Ireland) 1987(**a**) (deductions from an award of a funeral payment), after “the Eileen Trust”, in the first place where those words appear, there shall be inserted “or under a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions”.

Amendment of the Social Security (Recovery of Benefits) Regulations

4. In regulation 2(1) of the Social Security (Recovery of Benefits) Regulations (Northern Ireland) 1997(**b**) (exempted trusts and payments), after sub-paragraph (*d*) there shall be added the following sub-paragraphs—

- “(e) a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease for the benefit of persons eligible for interim payments in accordance with its provisions;
- (f) a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease for the benefit of persons eligible for payments, other than interim payments, in accordance with its provisions.”.

Sealed with the Official Seal of the Department for Social Development on 3rd April 2001.

(L.S.)

John O'Neill
Senior Officer of the Department for
Social Development

The Department of Finance and Personnel hereby consents to regulation 2(2) of the foregoing Regulations.

Sealed with the Official Seal of the Department of Finance and Personnel on 3rd April 2001.

(L.S.)

Brian Delaney
Senior Officer of the Department of
Finance and Personnel

(a) S.R. 1987 No. 150; paragraph (2) was added by regulation 2(6)(c) of S.R. 1997 No. 155
(b) S.R. 1997 No. 429; to which there are amendments not relevant to these regulations

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations further amend the Housing Benefit (General) Regulations (Northern Ireland) 1987, the Income Support (General) Regulations (Northern Ireland) 1987, the Jobseeker's Allowance Regulations (Northern Ireland) 1996, the Social Fund (Maternity and Funeral Expenses) (General) Regulations (Northern Ireland) 1987 and the Social Security (Recovery of Benefits) Regulations (Northern Ireland) 1997.

In particular, regulation 2 provides that payments under a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease which are made to certain persons and payments made by, or out of the estate of, persons receiving such payments which are made to certain persons, shall be disregarded in housing benefit, income support and jobseeker's allowance. That regulation also prescribes the extent of the disregard and the period in respect of which the disregard is to apply.

Regulation 3 provides that any payment from such a trust shall be disregarded for the purpose of any deduction to be made from a social fund funeral payment.

Regulation 4 amends regulation 2 of the Social Security (Recovery of Benefits) Regulations (Northern Ireland) 1997 by adding to the list of trusts exempted from the scope of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997, a trust established out of funds provided by the Secretary of State for the relief of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease.

In so far as these Regulations are required, for the purposes of regulation 2(2), to be referred to the Social Security Advisory Committee under section 149(2) of the Social Security Administration (Northern Ireland) Act 1992, ("the 1992 Act"), after agreement by the Social Security Advisory Committee, they have not been so referred by virtue of section 150(1)(b) of that Act. Otherwise they make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Social Security in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, the 1992 Act, are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.

These Regulations do not impose any charge on business.

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