

**2008 No. 417**

**SOCIAL SECURITY; HOUSING; RATES**

**The Social Security (Miscellaneous Amendments No. 4)  
Regulations (Northern Ireland) 2008**

*Made* - - - - - *9th October 2008*

*Coming into operation* - - - - - *30th October 2008*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 1(1), 5(1)(a), (b) and (j) and 165(1), (3), (4) and (6) of the Social Security Administration (Northern Ireland) Act 1992(a) and Articles 10(1), 11(3) and (6) and 74(1) and (3) of the Social Security (Northern Ireland) Order 1998(b), and now vested in it(c) and paragraphs 4(5), 12, 13(1), (2)(c) and (3)(c) 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) 2008 and shall come into operation on 30th October 2008.

**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) for paragraph (da)(f) substitute—

“(da) in the case of a bereavement payment where the beneficiary is in receipt of a retirement pension at the date of death of the beneficiary’s spouse or civil partner and satisfies the conditions of entitlement under section 36(1) of the Contributions and Benefits Act(g);”.

(3) In regulation 4 (making a claim for benefit)—

(a) in paragraph (1)(h) for “paragraphs (10) and (11)” substitute “paragraphs (10) to (11B)”;

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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. 1992 No. 83, S.R. 1997 No. 156, S.R. 2000 No. 215, S.R. 2001 No. 176, S.R. 2002 Nos. 67 and 297, S.R. 2005 Nos. 14 and 299, S.R. 2006 No. 168 and S.R. 2007 No. 392  
(f) Paragraph (da) was inserted by regulation 2(2)(b) of S.R. 2007 No. 392  
(g) Section 36(1) was substituted by Article 51(1) of the Welfare Reform and Pensions (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)  
(h) Paragraph (1) was amended by regulation 7(3) of S.R. 1992 No. 83, regulation 3(3)(a) of S.R. 1997 No. 156 and regulation 2(2)(a) of S.R. 2005 No. 14

- (b) in paragraph (1A)(a) at the beginning insert “Subject to paragraph (11A),”;
  - (c) after paragraph (11)(b) insert—
    - “(11A) A claim for income support or jobseeker’s allowance may be made by telephone call to the telephone number specified by the Department where such a claim falls within a category of case which the Department accepts for the purposes of making a telephone claim.
    - (11B) Paragraph (11A) shall apply unless in any particular case the Department directs that the claim must be made in writing.”; and
  - (d) in paragraph (12) for “paragraph (11)” substitute “paragraph (11) or (11A)”.
- (4) In regulation 6 (date of claim)—
- (a) in paragraph (1)(c)(c) for “regulation 4(11)” substitute “regulation 4(11) or (11A)”;
  - (b) in paragraph (21)(d)—
    - (i) after “the further claim” insert “for a relevant benefit”, and
    - (ii) for “on which the additional circumstances apply” substitute “of the decision to award, re-award, or recommence payment of the qualifying benefit on the grounds that sub-paragraph (a), (b), (c) or (d) was satisfied”;
  - (c) in paragraph (33)(e)—
    - (i) after “carer’s allowance” insert “or for an increase in carer’s allowance in respect of an adult or child dependant”, and
    - (ii) for “is the first day in respect of which that qualifying benefit is payable” substitute “shall be treated as the first day of the benefit week in which the award of the qualifying benefit became payable”; and
  - (d) for paragraph (34)(f) substitute—
    - “(34) 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, the date of claim for carer’s allowance shall be treated as the first day of the benefit week in which the renewal award of the qualifying benefit became payable.”.
- (5) In regulation 22(1)(g) (long term benefits) for “four weeks, or weekly in advance” substitute “four weeks in arrears, weekly in advance or, where the beneficiary agrees, at intervals not exceeding 13 weeks in arrears”.

### **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(h) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 3 (revision of decisions) after paragraph (8A)(i) insert—

“(8B) A decision made under Article 9 or 11 (“the original decision”) may be revised at any time—

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- (a) Paragraph (1A) was inserted by regulation 3(3)(b) of S.R. 1997 No. 156
  - (b) Paragraphs (11) and (12) were added by regulation 2(2)(b) of S.R. 2005 No. 14 and paragraph (11) was amended by regulation 2(4)(b) of S.R. 2005 No. 299
  - (c) Paragraph (1) was amended by regulation 3(4)(a) of S.R. 1997 No. 156, paragraph 3 of Schedule 3 to S.R. 2001 No. 176 and regulation 2(4) of S.R. 2005 No. 14
  - (d) 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)(d) of S.R. 2007 No. 392
  - (e) Paragraph (33) was added by regulation 2(7)(f) of S.R. 2006 No. 168 and amended by regulation 2(3)(g) of S.R. 2007 No. 392
  - (f) Paragraph (34) was added by regulation 2(3)(h) of S.R. 2007 No. 392
  - (g) Regulation 22(1) was substituted by regulation 2(3) of S.R. 2002 No. 297
  - (h) S.R. 1999 No. 162; relevant amending Rules are S.R. 1999 Nos. 267, 408 and 472 (C. 36), S.R. 2000 Nos. 3, 215 and 365, S.R. 2002 No. 80, S.R. 2003 Nos. 191 and 224, S.R. 2005 No. 46, S.R. 2006 Nos. 168 and 365 and S.R. 2008 Nos. 179 and 286
  - (i) Paragraph (8A) was inserted by regulation 7(3) of S.R. 2002 No. 80

- (a) where on or after the date of the original decision—
    - (i) a late paid contribution is treated as paid under regulation 5 of the Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations (Northern Ireland) 2001(a) on a date which falls on or before the date on which the original decision was made,
    - (ii) a direction is given under regulation 6 of those Regulations(b) that a late contribution shall be treated as paid on a date which falls on or before the date on which the original decision was made, or
    - (iii) an unpaid contribution is treated as paid under regulation 60 of the Social Security (Contributions) Regulations 2001(c) on a date which falls on or before the date on which the original decision was made; and
  - (b) where any of heads (i), (ii) or (iii) of sub-paragraph (a) apply, either an award of benefit would have been made or the amount of benefit awarded would have been different.”.
- (3) In regulation 6(2) (supersession of decisions)—
- (a) in sub-paragraph (g)(d) for “doctor” substitute “health care professional”; and
  - (b) after sub-paragraph (q)(e) add—
    - “(r) is a decision where on or after the date on which the decision was made, a late or unpaid contribution is treated as paid under—
      - (i) regulation 5 of the Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations (Northern Ireland) 2001 on a date which falls on or before the date on which the original decision was made,
      - (ii) regulation 6 of those Regulations on a date which falls on or before the date on which the original decision was made, or
      - (iii) regulation 60 of the Social Security (Contributions) Regulations 2001 on a date which falls on or before the date on which the original decision was made.”.
- (4) In regulation 7 (date from which a decision superseded under Article 11 takes effect)—
- (a) in paragraph (1)(a)(f) after “(2)(b)” insert “, (bb)”;
  - (b) in paragraph (2)(g) for sub-paragraphs (bb) and (bc) substitute—
    - “(bb) where the decision is advantageous to the claimant and is made on the Department’s own initiative—
      - (i) except where head (ii) applies, from the beginning of the benefit week in which the Department commenced action with a view to supersession, or
      - (ii) in the case of a claimant who is in receipt of income support, jobseeker’s allowance or state pension credit where benefit is paid in advance and the Department commenced action with a view to supersession on a day which was not the first day of the benefit week, from the beginning of the benefit week following the week in which the Department commenced such action;

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(a) S.R. 2001 No. 102; regulation 5 was amended by regulation 20(2) of S.I. 2002/2366 and is amended by regulation 28(4) of S.R. 2008 No. 286

(b) Regulation 6 was amended by regulation 20(3) of S.I. 2002/2366

(c) S.I. 2001/1004; regulation 60 was amended by regulation 11 of S.I. 2002/2366

(d) Sub-paragraph (g) was added by regulation 2(4) of S.R. 1999 No. 267

(e) Sub-paragraph (q) was added by regulation 22(4)(a)(ii) of S.R. 2008 No. 286

(f) Paragraph (1) was substituted by Article 17(a) of S.R. 1999 No. 472 (C. 36) and amended by regulation 18(a) of S.R. 2003 No. 191, regulation 3(6)(a) of S.R. 2003 No. 224 and regulation 22(5)(a) of S.R. 2008 No. 286

(g) Paragraph (2) was amended by regulation 2(5) of S.R. 1999 No. 267, Article 17(b) of S.R. 1999 No. 472 (C. 36), regulation 6(5)(b) of S.R. 2000 No. 215, regulation 18(b) of S.R. 2003 No. 191, regulation 3(6)(b) of S.R. 2003 No. 224 and regulation 7(5)(a) of S.R. 2005 No. 46, regulation 4(4)(a) of S.R. 2006 No. 168, regulation 3(2) of S.R. 2006 No. 365, regulation 2(a) of S.R. 2008 No. 179 and regulation 22(5)(b) of S.R. 2008 No. 286

- (bc) where—
  - (i) the claimant is a disabled person or a disabled person’s partner;
  - (ii) the decision is advantageous to the claimant; and
  - (iii) the decision is made in connection with the cessation of payment of a carer’s allowance relating to that disabled person,
    - the day after the last day for which carer’s allowance was paid to a person other than the claimant or the claimant’s partner;”;
- (c) omit paragraph (2A)(a);
- (d) after paragraph (8)(b) insert—
  - “(8A) Where a decision is superseded in accordance with regulation 6(2)(r), the superseding decision shall take effect from the date on which the late or unpaid contribution is treated as paid.”;
- (e) in paragraph (9)(b) and (c)(c) for “first pay day (as specified in Schedule 6 to the Claims and Payments Regulations) after” substitute “date on which”; and
- (f) in paragraph (30)(d) omit “immediately following the day”.

#### **Amendment of the Housing Benefit (Decisions and Appeals) Regulations**

4.—(1) The Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001(e) are amended in accordance with paragraphs (2) and (3).

- (2) In regulation 11 (cases where a relevant authority may suspend) after paragraph (2) insert—
  - “(2A) For the purposes of paragraph 13(3)(c) of Schedule 7 to the Act the prescribed circumstances are that a decision of an appeal tribunal, a Commissioner or a court has been made and the relevant authority—
    - (a) is waiting to receive that decision or, in the case of an appeal tribunal decision, is considering whether to apply for a statement of reasons for it, or has applied for such a statement and is waiting to receive it; or
    - (b) has received that decision or, in the case of an appeal tribunal decision, the statement of reasons for it, and is considering whether to apply for leave to appeal, or where leave to appeal has been granted, is considering whether to appeal,
 and the relevant authority shall as soon as reasonably practicable give written notice of its intention to apply for a statement of the reasons for a tribunal decision, to apply for leave to appeal, or to appeal.”.
- (3) In regulation 21(death of a party to an appeal) after paragraph (3) add—
  - “(4) For the purposes of this regulation “appeal” means an appeal to an appeal tribunal, a Commissioner or a court.”.

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

5. In regulation 77(11) of the Housing Benefit Regulations (Northern Ireland) 2006(f) (date on which change of circumstances is to take effect) for “liable to make payments in respect of” substitute “occupying”.

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(a) Paragraph (2A) was inserted by regulation 2(b) of S.R. 2008 No. 179  
 (b) Paragraph (8) was substituted by regulation 3(4) of S.R. 1999 No. 408 and amended by regulation 4(c) of S.R. 2000 No. 365  
 (c) Paragraph (9) was substituted by regulation 2(2) of S.R. 2000 No. 3 and amended by regulation 3(6)(d) of S.R. 2003 No. 224  
 (d) Paragraph (30) was added by regulation 3(6)(e) of S.R. 2003 No. 224  
 (e) S.R. 2001 No. 213, to which there are amendments not relevant to these Regulations  
 (f) S.R. 2006 No. 405

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

6. In regulation 57(11) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(a) (date on which change of circumstances is to take effect) for “liable to make payments in respect of” substitute “occupying”.

### **Revocations**

7. The Regulations specified in column (1) of the Schedule are revoked to the extent specified in column (3).

Sealed with the Official Seal of the Department for Social Development on 9th October 2008

(L.S.)

*John O'Neill*

A senior officer of the Department for Social Development

## **SCHEDULE**

Regulation 7

### **Revocations**

<i>Column (1) Citation</i>	<i>Column (2) Reference</i>	<i>Column (3) Extent of revocation</i>
The Social Security and Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 2000	S.R. 2000 No. 215	Regulation 6(5)(b)
The Social Security (Miscellaneous Amendments No. 3) Regulations (Northern Ireland) 2006	S.R. 2006 No. 365	Regulation 3(2)
The Social Security (Miscellaneous Amendments No. 4) Regulations (Northern Ireland) 2007	S.R. 2007 No. 392	Regulation 2(2)(b) and (3)(h)
The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2008	S.R. 2008 No. 179	Regulation 2(a)(i) and (b)

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(a) S.R. 2006 No. 406

## 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 (Decisions and Appeals) Regulations (Northern Ireland) 2001 (“the Housing Benefit 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 State Pension Credit Regulations”).

Regulation 2 amends the Claims and Payments Regulations to—

- clarify the circumstances in which there is no requirement to make a claim in relation to an award of a bereavement payment (paragraph (2));
- provide the Department for Social Development (“the Department”) with a discretion to accept claims for income support or jobseeker’s allowance by telephone (paragraph (3));
- clarify the date on which a claim for a relevant benefit can be treated as made (paragraph (4)(a) and (b));
- align the rules on backdating claims for adult or child dependency increases of carer’s allowance with those on claims for carer’s allowance and treat the date of claim for carer’s allowance as the first pay day in the first benefit week that the qualifying benefit is awarded (paragraph (4)(c) and (d));
- clarify that long term benefits may be paid at intervals not exceeding 13 weeks in arrears (paragraph (5)).

Regulation 3 amends the Decisions and Appeals Regulations to—

- allow for a revision or supersession where, after the original decision is made, a late or unpaid contribution is treated as paid at an earlier date (paragraphs (2) and (3));
- clarify the date from which a supersession is effective and permit a supersession to be made from the day after the last day that carer’s allowance was paid to a person other than the claimant or the claimant’s partner where the claimant is a disabled person’s partner (paragraph (4)(a) to (c));
- set out the date from which a decision which is superseded under regulation 6(2)(r) is to take effect, remove the requirement to identify the pay day before making a superseding decision and clarify the effective supersession date where the claimant is no longer subject to the own occupation test as he has passed the personal capability assessment (paragraph (4)(d) to (f)).

Regulation 4 amends the Housing Benefit Decisions and Appeals Regulations to—

- clarify the circumstances when, while an appeal is pending, housing benefit can be suspended (paragraph (2));
- permit a relevant authority to appoint a person to act for a deceased person in proceedings beyond the appeal tribunal stage (paragraph (3)).

Regulation 5 amends regulation 77(11) of the Housing Benefit Regulations to use terminology consistent with regulation 7(7) and 7(10) of those Regulations and regulation 6 makes an equivalent amendment to regulation 57(11) of the Housing Benefit State Pension Credit Regulations.

Regulation 7 makes consequential revocations.

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.

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