

1987 No. 466

SOCIAL SECURITY

The Social Security (Adjudication) (Amendment No. 2) Regulations (Northern Ireland) 1987

Made . . . . . 21st December 1987

Coming into operation—

for the purposes only of the determination of claims and questions relating to—

income support

21st December 1987

family credit

1st January 1988

for all other purposes

11th April 1988

The Department of Health and Social Services for Northern Ireland, in exercise of the powers set out in the Schedule and of all other powers enabling it in that behalf, hereby makes the following regulations:

*Citation, commencement and interpretation*

1.—(1) These regulations may be cited as the Social Security (Adjudication) (Amendment No. 2) Regulations (Northern Ireland) 1987 and shall come into operation—

(a) for the purposes only of the determination of claims and questions relating to—

(i) income support on 21st December 1987;

(ii) family credit on 1st January 1988;

(b) for all other purposes on 11th April 1988.

(2) In these regulations “the principal regulations” means the Social Security (Adjudication) Regulations (Northern Ireland) 1987(a).

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

*Amendment of regulation 1 of the principal regulations*

2. In regulation 1 of the principal regulations (interpretation)—

(a) in paragraph (2)—

(i) in the definition of “the Acts”, the references to the Family Income Supplements Act (Northern Ireland) 1971 and the Supplementary Benefits (Northern Ireland) Order 1977 shall be omitted;

(a) S.R. 1987 No. 82. to which there are amendments not relevant to these regulations  
(b) 1954 c. 33 (N.I.)

- (ii) in the definition of "claimant", after "a beneficiary under the award or" there shall be inserted "a person";
- (iii) after the definition of "full-time chairman" there shall be inserted the following definition—
  - ““income support” means, income support under Part III of the 1986 Order and includes personal expenses addition, special transitional addition and transitional addition as defined in the Income Support (Transitional) Regulations (Northern Ireland) 1987(a);”;
- (iv) in the definition of "party to the proceedings" in sub-paragraph (a) the words in parenthesis shall be omitted and for sub-paragraph (d) there shall be substituted the following sub-paragraph—
  - “(d) in any other proceedings, the adjudication officer and the Department except in proceedings in which the adjudication officer or the Department is the adjudicating authority;”;
- (b) for paragraph (3) there shall be substituted the following paragraph—
  - “(3) Where, by any provision of the Acts or of these regulations—
    - (a) any notice or other document is required to be given or sent to any office, that notice or document shall be treated as having been so given or sent on the day that it is received in that office; and
    - (b) any notice or other document is required to be given or sent to any person, that notice or document shall, if sent by post to that person's last known or notified address, be treated as having been given or sent on the day that it was posted.”.

*Amendment of regulation 19 of the principal regulations*

3. In regulation 19 of the principal regulations (other questions for determination by the Department)—

- (a) in paragraph (1)(c) the words from "section 80" to "Order 1975 or" shall be omitted;
- (b) after paragraph (1) there shall be inserted the following paragraph—
  - “(1A) The Department may review any determination given by it on any question referred to in paragraph (1) if—
    - (a) new facts have been brought to its notice; or
    - (b) it is satisfied that the determination—
      - (i) was given in ignorance of some material fact;
      - (ii) was based on a mistake as to some material fact; or
      - (iii) was erroneous in point of law.”.

*Amendment of regulation 20 of the principal regulations*

4. Paragraph (3) of regulation 20 of the principal regulations (notification of decisions) shall be omitted.

*Amendment of regulation 31 of the principal regulations*

5. In paragraph (4) of regulation 31 of the principal regulations (medical appeal tribunals), the words from “in such form” to “the Department” shall be omitted.

*Substitution of Part IV Section C of the principal regulations*

6. For Part IV Section C of the principal regulations there shall be substituted the following—

## “SECTION C — INCOME SUPPORT

*Notification of decisions in income support cases*

63.—(1) Subject to paragraphs (2), (3) and (4), the decision of an adjudication officer on any claim or question relating to income support shall be notified in writing to the claimant who shall at the same time be notified of his right to request a statement of the reasons for that decision and of his right to appeal to an appeal tribunal.

(2) Where, under arrangements made by the Department, income support is payable together with a benefit under the 1975 Act(a), 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 which is implemented by a cash payment if in all the circumstances it would be impracticable to give such a notice.

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

(5) 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 (General) Regulations (Northern Ireland) 1987(b) 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 (Northern Ireland) 1987.

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

(a) that income support is not payable for any reason other than that the claimant's income exceeds the applicable amount;

(a) See also Article 2(3) of the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15))

(b) S.R. 1987 No. 459

- (b) made on review under regulation 69, either under paragraph (3) of that regulation or where in other cases under that regulation the Department considers a written notice of assessment unnecessary;
- (c) in respect of a claimant to whom Article 24(8) of the 1986 Order (return to work after trade dispute) 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*

64.—(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 IV of the 1986 Order 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 any of the questions mentioned in paragraph (3), and he 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 99(2) of the 1975 Act(a), and notwithstanding the provisions of section 100 of that Act(a), on an appeal to an appeal tribunal in any case where the adjudication officer has applied the provisions of paragraph (1) in respect of any of the questions mentioned in paragraph (3), the tribunal shall not determine the last mentioned question until it has been determined by an adjudication officer.

- (3) The questions referred to in paragraphs (1) and (2) are—
  - (a) whether in relation to any person the applicable amount falls to be reduced or disregarded to any extent by virtue of Article 24(3) of the 1986 Order (persons affected by trade disputes);
  - (b) whether regulation 22 of the Income Support (General) Regulations (Northern Ireland) 1987 (reductions in applicable amounts in certain cases of actual or notional unemployment benefit disqualification) applies to a person by virtue of paragraph (4)(c)(iii) of that regulation and, if so, the period of its application by virtue of paragraph (6)(c) of that regulation;
  - (c) whether by virtue of regulation 9(1) of the Income Support (General) Regulations (Northern Ireland) 1987 (persons treated as available for employment) a person is to be treated as available for employment and whether by virtue of regulation 10(1)(b), (d) or (g) of those regulations he is not to be so treated;

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(a) 1975 c. 15; section 99(2) was substituted by paragraph 4 of Schedule 5 to the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18)) and section 100 was amended by paragraph 5 of Schedule 5 to that Order

- (d) whether for the purposes of regulation 12 of the Income Support (General) Regulations (Northern Ireland) 1987 (relevant education) a person is by virtue of that regulation to be treated as receiving relevant education;
- (e) whether for the purposes of regulation 43 of the Income Support (General) Regulations (Northern Ireland) 1987 (notional earnings of seasonal workers) a person is a seasonal worker and, if he is, the duration of—
- (i) his last period of normal employment,
  - (ii) his off-season,
- except that this sub-paragraph shall not apply in respect of a person who was, during his last period of employment, a self-employed earner (other than a share fisherman);
- (f) whether for the purposes of regulation 10(1)(a) of the Income Support (General) Regulations (Northern Ireland) 1987 (circumstances in which claimants are not to be treated as available for employment) after a situation in any suitable employment has been properly notified to a claimant as vacant or about to become vacant he has without good cause refused or failed to apply for that situation or refused to accept that situation when offered to him.”.

*Amendment of regulation 65 of the principal regulations*

7. In regulation 65 of the principal regulations (review of decisions involving payment or increase of benefit other than industrial injuries benefit, mobility allowance, supplementary benefit or family income supplement)—

- (a) in paragraph (1), 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, mobility allowance, income support or family credit*

**65.**—(1) Where on a review a decision relating to benefit other than industrial injuries benefit, mobility allowance, income support or family credit”;

- (b) in paragraph (3), for the words from the beginning to “any person” there shall be substituted “Subject to regulation 72, no sum on account of benefit shall, in a case to which paragraph (2) applies, be paid to any person”.

*Substitution of regulation 69 of the principal regulations*

8. For regulation 69 of the principal regulations there shall be substituted the following regulation—

*“Review in income support cases*

**69.**—(1) Subject to regulation 72, a determination on a claim or question relating to income support shall not be revised on review under

section 104 of the 1975 Act(a) so as to make income support payable or to increase the amount of income support payable in respect of—

- (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
- (b) any past period which falls within the period of 12 months mentioned in sub-paragraph (a) and has been followed by termination or interruption of entitlement to income support 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) A change mentioned in paragraph 7(8) of Schedule 3 to the Income Support (General) Regulations (Northern Ireland) 1987 (reduction in interest rates and of outstanding loan capital) shall be deemed not to be a change of circumstances if the amount of the instalments payable to the lender remains constant but, in such a case, where a determination is subsequently reviewed under section 104(1)(b) of the 1975 Act, that review shall also take account of any such change.

(3) A determination relating to income support made by an adjudicating authority or a Commissioner 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 in—

- (a) any amount specified in Schedules 2 to 7 of the Income Support (General) Regulations (Northern Ireland) 1987;
- (b) the prescribed rate of any payment—
  - (i) under the Child Benefit (Northern Ireland) Order 1975(b), the 1975 Act or Part III of the 1986 Order as it applies to family credit;
  - (ii) made by virtue of any scheme made under the Industrial Injuries and Diseases (Old Cases) Act 1975(c);
  - (iii) made by virtue of any regulations made under section 2 of the Industrial Injuries and Diseases (Northern Ireland Old Cases) Act 1975(d); or
  - (iv) of a war disablement pension or war widow's pension as defined in Article 2(2) of the 1986 Order,

but any such change shall be deemed not to be a change of circumstances for the purposes of section 104 of the 1975 Act.

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(a) 1975 c. 15; section 104 was amended by paragraph 2 of Schedule 1 to the Social Security Adjudications (Northern Ireland) Order 1983 (S.I. 1983/524 (N.I. 17)) and by paragraph 9 of Schedule 5 to the Social Security (Northern Ireland) Order 1986

(b) S.I. 1975/1504 (N.I. 16)

(c) 1975 c. 16

(d) 1975 c. 17

(4) A determination relating to income support 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) regulation 22 of the Income Support (General) Regulations (Northern Ireland) 1987 (reductions in applicable amounts in certain cases of actual or notional unemployment benefit disqualification);
- (b) a determination given on a question to which regulation 64 applies; or
- (c) a change of circumstances to which regulation 14 (reduction and termination of transitional and personal expenses addition) and regulation 15 (special transitional addition) of the Income Support (Transitional) Regulations (Northern Ireland) 1987 applies, and paragraph (3) shall not apply in any such case.”.

*Substitution of regulation 70 of the principal regulations*

9. For regulation 70 of the principal regulations there shall be substituted the following regulation—

*“Review in family credit cases*

70. Where a review under section 104(1)(a) of the 1975 Act of a decision relating to family credit arises from a disclosure of a material fact of which the person who claimed family credit was, or could reasonably have been expected to be, aware but of which he previously failed to furnish information to the Department, then if that review would result in either a new award of family credit or an increase in the amount of family credit payable, such new award or increase shall not be payable in respect of any period earlier than 12 months before the date on which that person first furnished that information.”.

*Savings*

10. The principal regulations shall continue to apply to the determination of claims and questions under the Supplementary Benefits (Northern Ireland) Order 1977(a) or the Family Income Supplements Act (Northern Ireland) 1971(b) as if these regulations had not been made.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 21st December 1987.

(L.S.)

A. N. Burns

Assistant Secretary

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(a) S.I. 1977/2156 (N.I. 27); provisions of the Supplementary Benefits (Northern Ireland) Order 1977, as amended by Article 7 of, and Part I of Schedule 2 to, the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)), are set out in Part II of that Schedule  
(b) 1971 c. 8 (N.I.)

## Provisions Conferring Powers Exercised in Making these Regulations

<i>Column (1) Provision</i>		<i>Column (2) Relevant amendments</i>
Social Security (Northern Ireland) Act 1975(a)	section 100(2)	The Social Security (Northern Ireland) Order 1986, paragraph 5 of Schedule 5(b).
	section 114	The Social Security (Northern Ireland) Order 1986, paragraph 14 of Schedule 5. See the Industrial Relations (Northern Ireland) Order 1976, Article 72(3)(c).
	section 115	The Social Security Adjudications (Northern Ireland) Order 1983, paragraph 3 of Schedule 1 and paragraph 5 of Schedule 2(d).
	section 119 (3) and (4)	The Child Benefit (Northern Ireland) Order 1975, paragraph 34 of Schedule 4(e); the Social Security (Northern Ireland) Order 1979, paragraph 8 of Schedule 3(f); the Social Security (Northern Ireland) Order 1980, paragraph 12 of Schedule 1(g) and the Social Security (Northern Ireland) Order 1986, Schedule 10 with a saving by Article 4 of the Social Security (1986 Order) (Commencement No. 3) Order (Northern Ireland) 1987(h).
	Schedule 13	The Social Security Adjudications (Northern Ireland) Order 1983, paragraph 9 of Schedule 1 and the Social Security (Northern Ireland) Order 1986, paragraph 16 of Schedule 5.
Social Security (Northern Ireland) Order 1986	Article 53(4)	None.
	Article 84(1)	None.

(a) 1975 c. 15; sections 114, 115(1) and (2) and (4) to (6) and 119 and Schedule 13 were applied to income support and family credit by virtue of Article 53(3) of the Social Security (Northern Ireland) Order 1986

(b) S.I. 1986/1888 (N.I. 18)

(c) S.I. 1976/1043 (N.I. 16)

(d) S.I. 1983/1524 (N.I. 17)

(e) S.I. 1975/1504 (N.I. 16)

(f) S.I. 1979/396 (N.I. 5)

(g) S.I. 1980/870 (N.I. 8)

(h) S.R. 1987 No. 21 (C. 3)



## EXPLANATORY NOTE

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

These regulations amend the Social Security (Adjudication) Regulations (Northern Ireland) 1987 ("the principal regulations"). They correspond to provision contained in regulations made by the Secretary of State for Social Services in relation to Great Britain and accordingly, by virtue of section 10(2) of, and paragraph 21 of Schedule 3 to, the Social Security Act 1980 (c.30), are not subject to the requirement of section 10(1) of that Act for prior reference to the Social Security Advisory Committee.

Regulations 2(a)(i) and (iii), 4, 6, 7, 8 and 9 are consequential on the coming into operation of Articles 21 to 28 of the Social Security (Northern Ireland) Order 1986 so far as they relate to income support and family credit and on the application to those benefits of Article 53 of, and Schedule 5 to, that Order. The said Articles 21 to 28 are brought into operation so far as they relate to income-related benefits from 1<sup>st</sup> April 1988 by the Social Security (1986 Order) (Commencement No. 7) Order (Northern Ireland) 1987 (S.R. 1987 No. 449 (C.14)).

Regulation 3(b) inserts a new paragraph (1A) in regulation 19 of the principal regulations so as to enable the Department to review the determinations of the Department referred to in paragraph (1) of that regulation.

Regulation 5 amends regulation 31 of the principal regulations so as to provide that medical appeal tribunals are no longer required to record their decisions in such form as may from time to time be approved by the Department.

Regulation 10 provides savings for existing claimants to both supplementary benefit and family income supplement.

Regulations 2(a)(ii) and (iv), 2(b) and 3(a) make minor amendments to the principal regulations.