

## 1990 No. 138

## SOCIAL SECURITY

**The Family Credit (General) (Amendment) Regulations  
(Northern Ireland) 1990**

*Made* . . . . . 30th March 1990

*Coming into operation—*

*regulations 1, 2, 14(f) and 15(a)* . . . . . 3rd April 1990

*regulations 3 to 13, 14(a)  
to (e) and 15(b)* . . . . . 10th April 1990

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 21(5)(c) and (12)(c) and (d), 23(8) and (9) and 52(1)(h) of the Social Security (Northern Ireland) Order 1986(a) 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 Family Credit (General) (Amendment) Regulations (Northern Ireland) 1990 and shall, subject to paragraph (2), come into operation as follows—

(a) regulations 1, 2, 14(f) and 15(a) on 3rd April 1990;

(b) regulations 3 to 13, 14(a) to (e) and 15(b) on 10th April 1990.

(2) In any case in which these regulations and the Social Security Benefits Up-rating Order (Northern Ireland) 1990(b) come into operation on the same day, these regulations shall come into operation immediately after that order.

(3) In these regulations “the principal regulations” means the Family Credit (General) Regulations (Northern Ireland) 1987(c).

*Amendment of regulation 2 of the principal regulations*

2. In regulation 2(1) of the principal regulations (interpretation) after the definition of “close relative” there shall be inserted the following definition—

“ “community charge benefit” means community charge benefit under Part II of the Social Security Act 1986(d);”.

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(a) S.I. 1986/1888 (N.I.18); Article 21(12)(d) was substituted by Article 15(2) of the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I.13)). Article 81(1) provides for section 155(1) to (3A) of the Social Security (Northern Ireland) Act 1975 (c.15) (extent of powers) to apply to the regulation-making powers conferred by this Order; the said section 155(3A) was inserted by Article 63(1)

(b) S.R. 1990 No. 70

(c) S.R. 1987 No. 463; relevant amending regulations are S.R. 1988 Nos. 131, 303 and 423

(d) 1986 c. 50; relevant amending provision is Schedule 10 to the Local Government Finance Act 1988 (c. 41)

*Amendment of regulation 4 of the principal regulations*

3. In regulation 4 of the principal regulations (remunerative work) after paragraph (3) there shall be added the following paragraph—

“(4) For the purposes of this regulation, in determining the number of hours for which a person is engaged in work, that number shall include any time allowed to that person by his employer for a meal or for refreshment, but only where that person is, or expects to be, paid earnings in respect of that time.”.

*Amendment of regulation 5 of the principal regulations*

4. In regulation 5 of the principal regulations (engagement in remunerative work and normal engagement)—

(a) in paragraph (1) for “paragraph (3)” there shall be substituted “paragraphs (3) and (4)”;

(b) for paragraph (2) there shall be substituted the following paragraph—

“(2) Subject to paragraph (3), a person shall be treated, for the purposes of Article 21(5)(b) of the Order, as normally engaged in remunerative work if—

(a) the remunerative work in which he is engaged in the period specified in paragraph (1)(a) or (b) is work in which he is normally engaged; and

(b) he is likely to be engaged in that work over a period commencing in the week in which the date of claim falls and being a period of 5 weeks or more.”;

(c) after paragraph (3) there shall be added the following paragraph—

“(4) In determining the number of hours for which a person carries out activities in the course of his work, that number shall include any time allowed to that person by his employer for a meal or for refreshment, but only where that person is, or expects to be, paid earnings in respect of that time.”.

*Amendment of regulation 6 of the principal regulations*

5. In regulation 6 of the principal regulations (persons of a prescribed description) for paragraph (2) there shall be substituted the following paragraph—

“(2) Paragraph (1) shall not apply to a person—

(a) who is entitled to income support or would, but for Article 21(9) of the Order (provision against dual entitlement of members of family), be so entitled;

(b) who is receiving advanced education within the meaning of regulation 1(2) of the Child Benefit (General) Regulations (Northern Ireland) 1979(a) (interpretation); or

(c) who has ceased to receive full-time education but is to continue to be treated as a child by virtue of regulation 7 of those regulations.”.

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(a) S.R. 1979 No. 5; relevant amending regulations are S.R. 1980 No. 261, S.R. 1982 No. 114, S.R. 1987 No. 130 and S.R. 1988 No. 273

*Amendment of regulation 14 of the principal regulations*

6. In regulation 14 of the principal regulations (normal weekly earnings of employed earners)—

(a) in paragraph (1)—

- (i) after “Subject to” there shall be inserted “paragraph (1A) and”,
- (ii) for sub-paragraph (a) there shall be substituted the following sub-paragraphs—

“(a) if he is paid weekly—

- (i) except where head (ii) applies, over a period of 5 consecutive weeks in the period of 6 weeks immediately preceding the week in which the date of claim falls, or
- (ii) if, at the date of claim, there is a trade dispute or a period of short-time working at his place of employment, over a period immediately preceding the date of the start of that dispute or period of short-time working and being a period of 5 weeks;

(aa) if he is paid monthly—

- (i) except where head (ii) applies, over a period of 2 months immediately preceding the week in which the date of claim falls, or
- (ii) if, at the date of claim, there is a trade dispute or a period of short-time working at his place of employment, over a period immediately preceding the date of the start of that dispute or period of short-time working, and being a period of 2 months; or”;

(iii) in sub-paragraph (b) for “sub-paragraph (a)(i) or (ii)” there shall be substituted “sub-paragraph (a) or (aa)”;

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

“(1A) Where a claimant’s earnings include a bonus or commission which is paid within 52 weeks preceding the week in which the date of claim falls, and the bonus or commission is paid separately or relates to a period longer than the period relating to the other earnings with which it is paid, his normal weekly earnings shall be treated as including an amount calculated in accordance with regulation 20A(a) (calculation of bonus or commission).”;

(c) for paragraph (2) there shall be substituted the following paragraphs—

“(2) Where—

(a) the claimant—

- (i) has been in his employment,
- (ii) after a continuous period of interruption exceeding 13 weeks, has resumed his employment, or
- (iii) has changed the number of hours for which he is contracted to work; and

- (b) the period of his employment or the period since he resumed his employment or the period since the change in the number of hours took place, as the case may be, is less than the period specified in paragraph (1)(a) or (aa),

his normal weekly earnings shall be determined, if he has received any earnings for the period that he has been in that employment or for the period after his resumption or for the period after his change in hours and those earnings are likely to represent his weekly earnings from that employment, by reference to those earnings and in any other case in accordance with paragraph (2A).

(2A) In a case to which this paragraph applies, the Department shall require the claimant's employer to furnish an estimate of the claimant's likely earnings over a period of—

- (a) 5 weeks, if he is paid weekly;
- (b) 2 months, if he is paid monthly; or
- (c) whether or not sub-paragraph (a) or (b) applies, such other period as may, in any particular case, enable his normal weekly earnings to be determined more accurately,

and the claimant's normal weekly earnings shall be determined by reference to that estimate.”

*Amendment of regulation 17 of the principal regulations*

7. In regulation 17 of the principal regulations (periods to be disregarded) for paragraph (a) there shall be substituted the following paragraph—

- “(a) for the purposes of regulation 14(1) (normal weekly earnings of employed earners), in the case of an employed earner—
- (i) any period in the assessment period where the earnings of the claimant are irregular or unusual,
  - (ii) any period in the assessment period in which a bonus or commission to which regulation 14(1A) applies is paid where that bonus or commission is in respect of a period longer than the period relating to the other earnings with which it is paid;”

*Amendment of regulation 20 of the principal regulations*

8. In regulation 20(4) of the principal regulations (calculation of net earnings of employed earners) for “paragraph (2)(b) of regulation 14” there shall be substituted “regulation 14(2A)”.

*Insertion of regulation 20A in the principal regulations*

9. After regulation 20 of the principal regulations (calculation of net earnings of employed earners) there shall be inserted the following regulation—

*“Calculation of bonus or commission*

**20A.** Where a claimant's earnings include a bonus or commission to which regulation 14(1A) (normal weekly earnings of employed earners)

applies, that part of his earnings shall be calculated by aggregating any payments of bonus or commission and dividing that sum by 52, less —

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to that part of the earnings the basic rate of tax in the year of assessment in which the claim is made;
- (b) an amount in respect of primary Class 1 contributions equivalent to an amount calculated by applying to that part of the earnings the appropriate primary percentage applicable at the date of claim; and
- (c) one half of any sum payable by the claimant in respect of that part of the earnings by way of a contribution towards an occupational pension scheme.”.

*Amendment of regulation 21 of the principal regulations*

**10.** In regulation 21(2) of the principal regulations (earnings of self-employed earners) at the end there shall be added “other than under paragraph 41(a) of that Schedule”.

*Amendment of regulation 24 of the principal regulations*

**11.** In regulation 24 of the principal regulations (calculation of income other than earnings) paragraph (3) shall be omitted.

*Amendment of regulation 37 of the principal regulations*

**12.** In regulation 37 of the principal regulations (interpretation) in the definition of “a course of advanced education” in paragraph (b) after “Technician Education Council or” there shall be inserted “a national certificate of”.

*Amendment of regulation 41 of the principal regulations*

**13.** In regulation 41 of the principal regulations (relationship with amounts to be disregarded under Schedule 2)—

- (a) for the words from “other income shall be disregarded” to “to the extent that,” there shall be substituted “other income to which sub-paragraph (1) of that paragraph applies shall be disregarded thereunder only to the extent that”;
- (b) for “£5” there shall be substituted “£10”.

*Amendment of Schedule 2 to the principal regulations*

**14.** In Schedule 2 to the principal regulations (sums to be disregarded in the calculation of income other than earnings)—

- (a) for paragraph 13 there shall be substituted the following paragraph—  
 “13.—(1) Except where sub-paragraph (2) applies and subject to sub-paragraph (3) and paragraphs 29 and 35, £10 of any charitable payment or of any voluntary payment made or due to be made at regular intervals.

(2) Subject to sub-paragraph (3) and paragraph 35, any charitable payment or voluntary payment made or due to be made at regular intervals which is intended and used for an item other than food, ordinary clothing or footwear, household fuel, or housing costs of a claimant or any member of his family.

(3) Sub-paragraphs (1) and (2) shall not apply to a payment which is made by a person for the maintenance of any member of his family or of his former partner or of his children.

(4) For the purposes of sub-paragraph (1), where a number of charitable or voluntary payments fall to be taken into account they shall be treated as though they were one such payment.

(5) For the purposes of sub-paragraph (2), "ordinary clothing or footwear" means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities."

(b) in paragraph 14 for "£5" there shall be substituted "£10";

(c) in paragraph 18 for the words from "paragraph 19" to the end there shall be substituted "paragraph 19 or 41 or regulation 21(2) (earnings of self-employed earners) applies.";

(d) in paragraph 29—

(i) for "13" there shall be substituted "13(1)",

(ii) for "£5" there shall be substituted "£10";

(e) after paragraph 40 there shall be added the following paragraph—

"41. Where the claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation—

(a) £20 of any payment for that accommodation made by the person to whom it is provided; and

(b) where any such payment exceeds £20, 50 per cent. of the excess.";

(f) after paragraph 41 there shall be added the following paragraphs—

"42. Any community charge benefit.

43. Any payment in consequence of a reduction of a personal community charge pursuant to regulations under section 13A of the Local Government Finance Act 1988(a) or section 9A of the Abolition of Domestic Rates Etc. (Scotland) Act 1987(b) (reduced liability for personal community charge).

44. Any special war widows payment made under—

(a) the Naval and Marine Pay and Pensions (Special War Widows Payment) Order 1990 made under section 3 of the Naval and Marine Pay and Pensions Act 1865(c);

(a) 1988 c. 41; section 13A was inserted by paragraph 5 of Schedule 5 to the Local Government and Housing Act 1989 (c. 42)

(b) 1987 c. 47; section 9A was inserted by section 143 of the Local Government and Housing Act 1989

(c) 1865 c. 73. Copies of the order are available from Ministry of Defence, NPC2, Room 317, Archway Block South, Old Admiralty Building, Spring Gardens, London SW1A 2BE

- (b) the Royal Warrant dated 19th February 1990 amending the Schedule to the Army Pensions Warrant 1977(a);
- (c) the Queen's Order dated 26th February 1990 made under section 2 of the Air Force (Constitution) Act 1917(b);
- (d) the Home Guard War Widows Special Payments Regulations 1990 made under section 151 of the Reserve Forces Act 1980(c);
- (e) the Orders dated 19th February 1990 amending Orders made on 12th December 1980 concerning the Ulster Defence Regiment made in each case under section 140 of the Reserve Forces Act 1980(d),

and any analogous payment made by the Secretary of State for Defence to any person who is not a person entitled under the provisions mentioned in sub-paragraphs (a) to (e).”.

*Amendment of Schedule 3 to the principal regulations*

**15.** In Schedule 3 to the principal regulations (capital to be disregarded)—

(a) after paragraph 37 there shall be added the following paragraph—

“38. Any payment in consequence of a reduction of a personal community charge pursuant to regulations under section 13A of the Local Government Finance Act 1988 or section 9A of the Abolition of Domestic Rates Etc. (Scotland) Act 1987 (reduced liability for personal community charge) but only for a period of 52 weeks from the date of receipt of the payment.”;

(b) after paragraph 38 there shall be added the following paragraph—

“39. Any grant made in Great Britain to the claimant in accordance with a scheme made under section 129 of the Housing Act 1988(e) or section 66 of the Housing (Scotland) Act 1988(f) (schemes for payments to assist local housing authority and local authority tenants to obtain other accommodation) which is to be used—

(a) to purchase premises intended for occupation as his home; or

(b) to carry out repairs or alterations which are required to render premises fit for occupation as his home,

for a period of 26 weeks from the date on which he received such a grant or such longer period as is reasonable in the circumstances to enable the purchase, repairs or alterations to be completed and the claimant to commence occupation of those premises as his home.”.

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(a) Army Code no 13045 published by HMSO

(b) 1917 c. 51. Queen's Regulations for the Royal Air Force are available from HMSO

(c) 1980 c. 9. Copies of the regulations are available from Ministry of Defence, NPC2, Room 317, Archway Block South, Old Admiralty Building, Spring Gardens, London SW1A 2BE

(d) Army Code no 60589 published by HMSO

(e) 1988 c. 50

(f) 1988 c. 43

Sealed with the Official Seal of the Department of Health and Social Services on 30th March 1990.

(L.S.)

*A. N. Burns*

Assistant Secretary

## EXPLANATORY NOTE

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

These regulations further amend the Family Credit (General) Regulations (Northern Ireland) 1987 in the following respects—

- (a) they provide that a person is to be treated as engaged in work or carrying out activities during meal or refreshment breaks for which he is, or expects to be, paid (regulations 3 and 4(c)) and for a person to be treated as normally engaged in remunerative work if that work will last 5 weeks or more from the date of claim (regulation 4(b));
- (b) they exclude from the category of persons of a prescribed description persons receiving advanced education and any person who has ceased full-time education but is still treated as a child for the purposes of child benefit (regulation 5) and amend the definition of a course of advanced education (regulation 12);
- (c) they provide for normal weekly earnings of an employed earner to be assessed over 5 consecutive weeks in the 6 weeks immediately preceding the week of claim and for bonus or commission payments to be calculated separately before inclusion as part of normal weekly earnings, make provision for determining a person's normal weekly earnings where he has recently changed the number of hours worked and make certain other minor amendments (regulations 6 and 8);
- (d) they provide for certain periods in which a bonus or commission is paid to be disregarded in determining the assessment period (regulation 7) and for calculating the amount of any bonus or commission where separate calculation is appropriate (regulation 9);
- (e) they amend the provision for determining whether income derived from the provision of board and lodging accommodation is to be calculated as earnings and, where it is not earnings, provide for a disregard of £20 and 50 per cent. of any excess (regulations 10, 11 and 14(e));
- (f) they increase from £5 to £10 the disregard in respect of charitable or voluntary payments, a student's income and war pensions and provide for certain payments made to war widows, community charge benefit, payments consequent on a reduction in the personal community charge, and grants made in Great Britain to assist local authority tenants to purchase or repair their home to be disregarded (regulations 13, 14(a) to (d) and (f) and 15).

The regulations correspond 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 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.