

1992 No. 148

SOCIAL SECURITY

**The Family Credit (General) (Amendment)
Regulations (Northern Ireland) 1992**

Made 20th March 1992

Coming into operation 7th April 1992

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 21(6) and (12)(d)(i) and (k), 23(8) and (9)(a) and (b) 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) 1992 and shall come into operation on 7th April 1992 immediately after the coming into operation of regulation 2 of the Family Credit (General) (Amendment) Regulations (Northern Ireland) 1991(b).

(2) 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)—

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

“ “assessment period” means in the case of an employed earner, a period determined in accordance with regulation 14 and, in the case of a self-employed earner, a period determined in accordance with regulation 15;”;

(b) after the definition of “partner” there shall be inserted the following definition—

“ “pay period” has the meaning prescribed in regulation 14(7)(b)(d);”;

(a) S.I. 1986/1888 (N.I. 18); Article 21(6) was amended by Schedule 5 to the Social Security (Northern Ireland) Order 1988 (S.I. 1988/594 (N.I. 2)) and paragraph 14 of Schedule 8 to the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13)) and Article 21(12)(d) was substituted by Article 15(2) of the Social Security (Northern Ireland) Order 1989. 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. 1991 No. 326

(c) S.R. 1987 No. 463; relevant amending regulations are S.R. 1988 No. 131, S.R. 1990 Nos. 138 and 347 and S.R. 1991 Nos. 326 and 520

(d) Regulation 14 is substituted by regulation 4 of these regulations

(c) after the definition of "student" there shall be inserted the following definition—

“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by a government department or by or on behalf of the Department of Economic Development;
- (b) to a person for his maintenance or in respect of a member of his family; and
- (c) for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, a government department or approved by such department in relation to him or so provided or approved by or on behalf of the Department of Economic Development,

but it does not include an allowance paid by any government department to, or in respect of, a person by reason of the fact that he is following a course of full-time education, other than under provision or arrangements under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945(a) or section 1(1) of the Employment and Training Act (Northern Ireland) 1950(b) or is training as a teacher;”.

Substitution of regulations 4 and 5 of the principal regulations

3. For regulations 4 and 5 of the principal regulations (remunerative work and engagement in remunerative work and normal engagement) there shall be substituted the following regulation—

“Remunerative work

4.—(1) For the purposes of Part III of the Order as it applies to family credit, and subject to paragraph (3), a person shall be treated as engaged in remunerative work where—

- (a) the work he undertakes is for not less than 16 hours per week;
- (b) the work is done for payment or in expectation of payment; and
- (c) he is employed at the date of claim and satisfies the requirements of paragraph (5).

(2) A person who does not satisfy all the requirements of paragraph (1) shall not be treated as engaged in remunerative work.

(3) A person who otherwise satisfies all the requirements of paragraph (1) shall not be treated as engaged in remunerative work if he is engaged by a charitable or voluntary body or is a volunteer where the only payment received by him, or due to be paid to him, is a payment which is to be disregarded under regulation 24(2) and paragraph 2 of Schedule 2

(a) 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

(b) 1950 c. 29 (N.I.); section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

(calculation of income other than earnings and sums to be disregarded in the calculation of income other than earnings).

(4) In determining for the purposes of paragraph (1)(a) whether the work a person undertakes is for not less than 16 hours per week—

(a) there shall be included in the calculation any time allowed for meals or refreshment but only where the person is, or expects to be, paid earnings in respect of that time; and

(b) if he is a person to whom regulation 14(5) (normal weekly earnings of employed earners) applies, the hours worked shall be calculated by reference to the average number of hours which his employer expects him to work in a week; or

(c) where sub-paragraph (b) does not apply and—

(i) a recognised cycle of working has been established at the date of claim, the hours worked shall be calculated by reference to the average number of hours worked in a week over the period of one complete cycle (including, where the cycle involves periods in which the person does not normally work, those periods, but disregarding any other absences), or

(ii) no recognised cycle of working has been established at the date of claim, the hours worked shall be calculated by reference to—

(aa) the average number of hours worked over the 5 weeks immediately preceding the week of claim, or such other longer time preceding that week as may, in the particular case, enable the person's weekly average hours of work to be determined more accurately, or

(bb) where he is a self-employed earner and he has worked for less than 5 weeks at the date of claim, the average number of hours he expects to work in a week.

(5) Subject to paragraph (6), the requirements of this paragraph are that the person—

(a) worked not less than 16 hours in—

(i) the week of claim, or

(ii) either of the 2 weeks immediately preceding the week of claim;

(b) is expected by his employer to work or, where he is a self-employed earner he expects to work, not less than 16 hours in the week next following the week of claim; or

(c) cannot satisfy the requirements of either sub-paragraph (a) or (b) and at the date of claim he is absent from work by reason of a recognised, customary or other holiday but he is expected by his employer to work or, where he is a self-employed earner he expects to work, not less than 16 hours in the week following his return to work from that holiday,

and for the purposes of calculating the number of hours worked,

paragraph (4)(a) shall apply to this paragraph as it applies to paragraph (1)(a).

(6) For the purposes of paragraph (5), work which a person does only qualifies if—

- (a) it is the work he normally does; and
- (b) it is likely to last for a period of 5 weeks or more beginning with the week of claim.

(7) Where a person is treated as engaged in remunerative work in accordance with paragraphs (1) to (6), he shall also be treated as normally engaged in remunerative work.”.

Substitution of regulation 14 of the principal regulations

4. For regulation 14 of the principal regulations (normal weekly earnings of employed earners) there shall be substituted the following regulation—

“14.—(1) Subject to paragraphs (3) to (6), where a claimant’s income consists of earnings from employment as an employed earner, his normal weekly earnings from that employment shall be determined by reference to his weekly earnings from that employment over the assessment period relevant to his case.

(2) Subject to paragraphs (3) to (6), a claimant’s assessment period shall be, in respect of a claimant whose pay period is—

- (a) a week or a fortnight, a period of 6 consecutive weeks or, as the case may be, 3 consecutive fortnights, in the 7 weeks immediately preceding the week of claim;
- (b) 4 weeks or a month, a period of 12 consecutive weeks or, as the case may be, 3 consecutive months, immediately preceding the week of claim;
- (c) any period of less than one month (a shorter period), other than one to which sub-paragraph (a) or (b) refers, 6 consecutive shorter periods immediately preceding the week of claim; or
- (d) any period of more than one month (a longer period), a period of one year ending immediately before the week of claim.

(3) Where during a claimant’s assessment period his earnings are reduced because of his involvement in a trade dispute at his place of employment, that assessment period shall be varied in that—

- (a) any pay period during which his earnings are so reduced shall be omitted from it;
- (b) subject to sub-paragraph (c), his assessment period shall commence one pay period earlier (the extra period) for each period so omitted; or
- (c) where any extra period under sub-paragraph (b) is one in which his earnings are reduced because of his involvement in a trade dispute at his place of employment, that extra period shall also be omitted from his assessment period and his assessment period shall commence one pay period earlier, for each extra period so omitted,

but so that his assessment period remains a period equal in length to the assessment period which would otherwise apply in his case under paragraph (2) but as if the words “consecutive” and “immediately” were omitted from that paragraph on each occasion where they appear.

(4) Where a claimant’s earnings, whether during his assessment period or not, include a bonus or commission which is paid within 52 weeks preceding the week of claim and that bonus or commission is paid separately from his other earnings or is paid in respect of a period longer than the pay period relating to the other earnings with which it is paid, his normal weekly earnings shall be treated as including an amount in respect of that bonus or commission calculated in accordance with regulation 20A(a) (calculation of bonus or commission).

(5) Where at the date of claim—

(a) the claimant—

(i) has been in his employment,

(ii) has resumed his employment after a continuous period of interruption exceeding 4 weeks, 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 assessment period in paragraph (2) appropriate in his case,

his normal weekly earnings shall be determined in accordance with paragraph (6).

(6) In a case to which this paragraph applies, the Department shall require the claimant’s employer to furnish it with an estimate of the claimant’s likely earnings for the pay period for which he is or will normally be paid and the claimant’s normal earnings shall be determined by reference to that estimate.

(7) For the purposes of this regulation—

(a) the claimant’s earnings shall be calculated in accordance with Chapter III of this Part;

(b) “pay period” means the period in respect of which a claimant is, or expects to be regularly paid by his employer, being a week, a fortnight, 4 weeks, a month, or other shorter or longer period, as the case may be.”.

Substitution of regulation 17 of the principal regulations

5. For regulation 17 of the principal regulations (periods to be disregarded) there shall be substituted the following regulation—

“17. Where a claimant is a self-employed earner—

(a) there shall be disregarded any week or period of weeks in his assessment period during which no activities have been carried out for the purposes of the business; and

(b) his normal weekly earnings shall be determined by reference to his weekly earnings in the remainder of that period (the reduced period),

and in such a case, any reference in these regulations to an assessment period shall be construed as a reference to that reduced period.”.

Amendment of regulation 19 of the principal regulations

6. In regulation 19(1) of the principal regulations (earnings of employed earners)—

(a) for sub-paragraph (g) there shall be substituted the following sub-paragraph—

“(g) any statutory sick pay under Part II of the Social Security (Northern Ireland) Order 1982(a);”;

(b) in sub-paragraph (h) for “sub-paragraphs (e) to (g)” there shall be substituted “sub-paragraphs (e) to (g) and (i)”;

(c) for sub-paragraph (i) there shall be substituted the following sub-paragraph—

“(i) any statutory sick pay under Part I of the Social Security and Housing Benefits Act 1982(b).”.

Amendment of regulation 20 of the principal regulations

7. In regulation 20 of the principal regulations (calculation of net earnings of employed earners)—

(a) for paragraph (1) there shall be substituted the following paragraph—

“(1) For the purposes of regulation 14 (normal weekly earnings of employed earners) the earnings of a claimant to be taken into account shall be his average weekly net earnings derived from, or likely to be derived from, his employment as an employed earner either during the assessment period relevant to his case or, where an estimate of earnings has been made in his case, as estimated, and those weekly net earnings shall be determined in accordance with paragraphs (2) to (7).”;

(b) in paragraph (3)—

(i) for the words from the beginning to “from that employment” there shall be substituted “A claimant’s net earnings shall, except where paragraph (4) applies, be calculated by taking into account his gross earnings from that employment”;

(ii) in sub-paragraph (a) at the end “and” shall be omitted,

(iii) after sub-paragraph (b) there shall be added the following sub-paragraph—

“and

(c) the net amount of bonus or commission (if any) which is paid separately from his other earnings or is paid in respect of a period longer than the pay period relating to the other earnings

(a) S.I. 1982/1084 (N.I. 16)

(b) 1982 c. 24

with which it is paid and that net amount shall be the gross amount of that bonus or commission after deducting from it sums calculated in accordance with paragraphs (a) to (c) of regulation 20A (calculation of bonus or commission).”;

(c) in paragraph (4)—

- (i) for “estimated under regulation 14(2A)” there shall be substituted “estimated under regulation 14(6)”,
- (ii) for “the assessment period” there shall be substituted “the period in respect of which the estimate is made”;

(d) after paragraph (5) there shall be added the following paragraphs—

“(6) When a claimant’s net earnings have been calculated in accordance with paragraph (3), his average net earnings in respect of his pay period shall be calculated as follows—

- (a) the net earnings in each of the pay periods in his assessment period shall be aggregated, that total shall then be divided by the number of pay periods in his assessment period and the resulting amount shall be the average net earnings for his pay period;
 - (b) where in respect of any pay period, a claimant’s net earnings are 20 per cent. or more higher, or 20 per cent. or more lower, than his average net earnings, those net earnings and that pay period shall be omitted, his assessment period shall be reduced accordingly and his average net earnings shall, subject to sub-paragraph (c), be re-calculated in accordance with sub-paragraph (a);
 - (c) where the operation of sub-paragraph (b) results in no pay period remaining in a claimant’s assessment period there shall be omitted from the assessment period any pay period in which no earnings are received or in which the net earnings received are for a period longer than his normal pay period and his average net earnings shall be re-calculated in accordance with sub-paragraph (a);
 - (d) where the operation of sub-paragraph (c) results in no pay periods remaining, paragraph (4) and regulation 14(6) (normal weekly earnings of employed earners) shall apply in his case.
- (7) Where a claimant’s average net earnings for his pay period have been calculated in accordance with paragraph (6) and his pay period is—
- (a) a week, a fortnight or 4 weeks, his average net earnings for his pay period shall be divided by the number of weeks in that period;
 - (b) a month, his average net earnings shall be multiplied by 12, the resulting product divided by 52;
 - (c) any shorter or longer period than those referred to in sub-paragraphs (a) and (b), his average net earnings for his pay period shall be multiplied by 7 and the product divided by

the number equal to the number of days in his pay period, and the resulting amount shall be his average weekly net earnings.”.

Amendment of regulation 20A of the principal regulations

8. In regulation 20A of the principal regulations (calculation of bonus or commission) for “regulation 14(1A)” there shall be substituted “regulation 14(4)”.

Amendment of regulation 37 of the principal regulations

9. In regulation 37 of the principal regulations (interpretation) in the definition of “student” for the words from the beginning to “course of study” there shall be substituted the following—

“ “student” means a person, other than a person in receipt of a training allowance, who is aged less than 19 and attending a full-time course of advanced education or, as the case may be, who is aged 19 or over and attending a full-time course of study”.

Amendment of regulation 38 of the principal regulations

10. In regulation 38 of the principal regulations (calculation of grant income)—

(a) in paragraph (1) for “paragraph (2)” there shall be substituted “paragraphs (2) and (2A)”;

(b) after paragraph (2) there shall be inserted the following paragraph—

“(2A) Where in pursuance of an award a student is in receipt of a grant in respect of maintenance under regulation 12(1)(b) (payments by boards) of the Students Awards Regulations (Northern Ireland) 1991(a), there shall be excluded from his grant income a sum equal to the amount specified in paragraph 7(4) of Schedule 7 to those regulations (requirements), being the amount to be disregarded in respect of travel costs in the particular circumstances of his case.”; and

(c) in paragraph (3) for “Part III of Schedule 7 to the Students Awards Regulations (Northern Ireland) 1987” there shall be substituted “Part III of Schedule 7 to the Students Awards Regulations (Northern Ireland) 1991”.

Amendment of regulation 39 of the principal regulations

11. In regulation 39(3) of the principal regulations (calculation of covenant income where a contribution is assessed) for the words from “regulation 38(2)(g)” to the end there shall be substituted “regulation 38(2)(g) (calculation of grant income) falls short of the amount specified in paragraph 7(4)(i) of Schedule 7 to the Students Awards Regulations (Northern Ireland) 1991.”.

Amendment of regulation 40 of the principal regulations

12. In regulation 40(1)(b) and (2)(b) of the principal regulations (calculation of covenant income where no grant income or no contribution is assessed) for “regulation 38(2)(f) and (g)” there shall be substituted “regulation 38(2)(f) and (g) and (2A)”.

Amendment of Schedule 2 to the principal regulations

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

- (a) for paragraph 27 there shall be substituted the following paragraph—
“27. Any maternity allowance under section 22 of the Act(a) or statutory maternity pay under Part VI of the Order.”;
- (b) in paragraph 30 for “to which the preceding paragraphs relate” there shall be substituted “to which this Schedule relates”;
- (c) for paragraph 32 there shall be substituted the following paragraph—
“32. Any maternity allowance under section 22 of the Social Security Act 1975(b) or statutory maternity pay under Part V of the Social Security Act 1986(c).”;
- (d) after paragraph 48 there shall be added the following paragraph—
“49. Any payment (other than a training allowance) made, whether by the Department of Economic Development or any other person under the Disabled Persons (Employment) Act (Northern Ireland) 1945 or in accordance with arrangements under section 1(1) of the Employment and Training Act (Northern Ireland) 1950 to assist disabled persons to obtain or retain employment despite their disability.”.

Amendment of Schedule 3 to the principal regulations

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

- (a) for paragraph 19 there shall be substituted the following paragraph—
“19. Any social fund payment under Part IV of the Order.”;
- (b) after paragraph 43 there shall be added the following paragraph—
“44. Any payment (other than a training allowance or a training bonus paid under section 3(3) of the Employment and Training Act (Northern Ireland) 1950) made, whether by the Department of Economic Development or any other person, under the Disabled Persons (Employment) (Northern Ireland) Act 1945 or in accordance with arrangements under section 1(1) of the Employment and Training (Northern Ireland) Act 1950 to assist disabled persons to obtain or retain employment despite their disability.”.

Extension of award period

15.—(1) In the case of an award of family credit on any claim to which regulation 13(4) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(d) (advance claims and awards) applies, for the

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- (a) Section 22 was substituted by paragraph 13 of Schedule 4 to the Social Security (Northern Ireland) Order 1986 and amended by paragraph 2 of Schedule 4 to the Social Security (Northern Ireland) Order 1988
 - (b) 1975 c. 14; section 22 was substituted by paragraph 13 of Schedule 4 to the Social Security Act 1986 (c. 50) and amended by paragraph 5 of Schedule 4 to the Social Security Act 1988 (c. 7)
 - (c) 1986 c. 50
 - (d) S.R. 1987 No 465; relevant amending regulations are S.R. 1991 No. 488

purposes of Article 21(6) of the Order (period of award of family credit) the prescribed period shall be determined in accordance with paragraph (2).

(2) For the purposes of determining the prescribed period the Department shall assign a number to the claim in question (the claim number), and where that claim number—

- (a) is exactly divisible by 13, the prescribed period shall be 27 weeks; or
- (b) is not exactly divisible by 13, the remainder shall be multiplied by 13 and the prescribed period shall be the number of weeks equal to the sum of the resulting product plus 27.

Revocations

16. The following regulations are hereby revoked—

- (a) regulation 5 of the Family Credit (General) (Amendment) Regulations (Northern Ireland) 1988(a);
- (b) regulations 2 and 3 of the Family Credit (General) (Amendment No. 3) Regulations (Northern Ireland) 1988(b);
- (c) regulation 3 of the Family Credit (General) (Amendment No. 4) Regulations (Northern Ireland) 1988(c);
- (d) regulations 3, 4, 6, 7 and 8 of the Family Credit (General) (Amendment) Regulations (Northern Ireland) 1990(d); and
- (e) regulation 2 of the Family Credit (General) (Amendment) Regulations (Northern Ireland) 1991(e).

Sealed with the Official Seal of the Department of Health and Social Services on 20th March 1992.

(L.S.)

A. N. Burns

Assistant Secretary

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- (a) S.R. 1988 No. 131
 - (b) S.R. 1988 No. 303
 - (c) S.R. 1988 No. 423
 - (d) S.R. 1990 No. 138
 - (e) S.R. 1991 No. 326

(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 re-state the circumstances which constitute engagement and normal engagement in remunerative work, and provide for absence from work by way of holiday not preventing a claim for family credit during that time (regulation 3);
- (b) they provide a revised method for calculating the average weekly income of employed earners (regulations 2(a) and (b), 4, 5, 7 and 8);
- (c) they provide for statutory sick pay to be treated as earnings in all cases, for maternity allowance and statutory maternity pay to be disregarded as income in all cases, for certain payments to disabled workers to be disregarded as income, capital or both and they re-state the circumstances in which payments from the Social Fund are to be disregarded as capital (regulations 6(a) and (c), 13(a), (c) and (d) and 14);
- (d) they amend the definition of “student” to exclude a person in receipt of a training allowance, they insert a definition of “training allowance” and further define the amount in respect of travel costs which is to be disregarded when calculating a student’s income (regulations 2(c) and 9 to 12);
- (e) they provide that where claims for family credit by those working between 16 and 24 hours a week are made in the period of 4 weeks prior to 7th April 1992, the award period for any such claim will be at least 27 weeks and not more than 39 weeks (regulation 15);
- (f) they make minor technical amendments (regulations 6(b) and 13(b)).

They also contain revocations (regulation 16).

The regulations 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 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.