

## 1993 No. 234

**HEALTH AND PERSONAL SOCIAL SERVICES****The Health and Personal Social Services (Assessment of Resources) (Amendment) Regulations (Northern Ireland) 1993**

*Made* . . . . . 17th May 1993

*Coming into operation* . . . . . 15th June 1993

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 36(6) and 99(5) of the Health and Personal Social Services (Northern Ireland) Order 1972(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 Health and Personal Social Services (Assessment of Resources) (Amendment) Regulations (Northern Ireland) 1993 and shall come into operation on 15th June 1993.

(2) In these regulations, “the principal regulations” means the Health and Personal Social Services (Assessment of Resources) Regulations (Northern Ireland) 1993(b).

*Amendment of regulation 2 of the principal regulations*

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

(a) after the definition of “attendance allowance” there shall be inserted:

“ “child support maintenance” shall be construed in accordance with Article 4(6) of the Child Support (Northern Ireland) Order 1991(c);”;

(b) for the definition of “the Independent Living Fund” there shall be substituted:

“ “the Independent Living Funds” has the same meaning as in the Income Support Regulations(d);”;

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(a) S.I. 1972/1265 (N.I. 14); Article 36 was substituted by Article 25 of S.I. 1991/194 (N.I. 1), and then amended by paragraph 2(4) and (5) of Schedule 1 to S.I. 1992/3204 (N.I. 20); and Article 99 was substituted by Article 27 of S.I. 1991/194 (N.I. 1)

(b) S.R. 1993 No. 127

(c) S.I. 1991/2628 (N.I. 23)

(d) See regulation 2(1) of S.R. 1987 No. 459; the relevant amending instruments are S.R. 1988 No. 205 and S.R. 1993 No. 195

- (c) before the definition of "invalidity pension" there shall be inserted:  
 " "invalid care allowance" means an invalid care allowance under section 70 of the Contributions and Benefits Act;"

*Amendment in relation to child support maintenance*

3. After regulation 6 of the principal regulations (liable relatives) there shall be inserted the following regulation—

*"Child support maintenance*

6A.—(1) Except in circumstances where paragraph (2) applies, any payment of child support maintenance to a resident shall not be treated as part of a resident's income or capital for the purposes of these regulations.

(2) Where a resident is accompanied by a child and accommodation is provided for that child under Article 15 or 36 of the Order, any payment of child support maintenance made in respect of that child to the resident shall be treated as part of the income of the resident and Part IV of these regulations (liable relatives) shall not apply to any such payment."

*Amendment in relation to the calculation of income*

4. In regulation 14(2) of the principal regulations (calculation of net earnings of employed earners) for the words "from the calculation of" there shall be substituted the words "in the calculation of".

*Amendments in relation to payments by third parties*

5.—(1) After paragraph (3) of regulation 16 of the principal regulations (capital treated as income) there shall be inserted the following paragraph—

"(4) Any payment of capital made or due to be made to a Board by a third party pursuant to an agreement between the Board and the third party in connection with the liability of the resident to pay the Board for his accommodation shall be treated as part of the income of the resident, unless it is a voluntary payment made for the purpose of discharging any arrears of payments required by the Board from the resident for his accommodation."

(2) At the beginning of paragraph (4) of regulation 17 of the principal regulations (notional income) there shall be inserted the words "Subject to paragraph (5),".

(3) After paragraph (4) of regulation 17 of the principal regulations there shall be inserted the following paragraph—

"(5) A resident shall not be treated as possessing any voluntary payment of income made by a third party to a Board for the purpose of discharging any arrears of the payments required by the Board from the resident for his accommodation."

(4) After paragraph (7) of regulation 22 of the principal regulations (income treated as capital) there shall be inserted the following paragraph—

"(8) Any voluntary payment of income made by a third party to a resident for the purpose of helping the resident to discharge any arrears of the payments required by the Board from the resident for his accommodation shall be treated as capital of the resident."

(5) In regulation 25 of the principal regulations (notional capital), paragraph (4) is omitted.

(6) In paragraph (5) of regulation 25, for the words “any of paragraphs (1), (2) or (4)” there shall be substituted the words “paragraph (1) or (2)”.

(7) In paragraph 8(3)(b) of Schedule 1 to the principal regulations (transitional provisions), for the words “in regulation 25(4)” there shall be substituted the words “in regulation 16(4)”.

*Amendment in relation to the Independent Living Funds*

6. In paragraph (7) of regulation 22 of the principal regulations (income treated as capital), for the words “the Independent Living Fund” there shall be substituted the words “the Independent Living Funds”.

*Amendment in relation to capital jointly held*

7. In paragraph (2) of regulation 27 of the principal regulations (capital jointly held), for sub-paragraph (a) there shall be substituted the following sub-paragraph—

“(a) the resident’s share shall be valued at an amount equal to the price which his interest in possession would realise if it were sold to a willing buyer (taking into account the likely effect on that price of any incumbrance secured on the whole beneficial interest), less 10 per cent and the amount of any incumbrance secured solely on the resident’s share of the whole beneficial interest; and”.

*Amendment of Schedule 2 to the principal regulations*

8.—(1) In paragraph 3(2)(a) of Schedule 2 to the principal regulations (sums to be disregarded in the calculation of earnings), after the words “by way of” there shall be inserted the words “a carer premium or a”.

(2) In paragraph 3(2)(b)(i) of Schedule 2 to the principal regulations, after the words “an invalidity pension,” there shall be added the words “an invalid care allowance”.

*Amendment of Schedule 4 to the principal regulations*

9. In Schedule 4 to the principal regulations (capital to be disregarded), for paragraph 2 there shall be substituted the following paragraph—

“2.—(1) Subject to sub-paragraph (2), the value of any premises which would be disregarded under paragraph 2 or 4 of Schedule 10 to the Income Support Regulations(a) (premises acquired for occupation, and premises occupied by a partner, a former partner or a relative).

(2) For the purposes of sub-paragraph (1), paragraph 4 of Schedule 10 to the Income Support Regulations shall apply as if for the words “that person is aged 60 or over or is incapacitated” there were substituted the

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(a) Paragraph 2 of Schedule 10 was substituted by regulation 37(a) of S.R. 1988 No. 146; paragraph 4 of Schedule 10 was amended by regulation 37(c) of S.R. 1988 No. 146; regulation 3(a) of S.R. 1988 No. 193; and regulation 9(a) of S.R. 1990 No. 346

words "that partner or relative is aged 60 or over, is incapacitated or is a child whom the resident is liable to maintain by virtue of Article 100(1) of the Order (liability to maintain spouse and children)".

Sealed with the Official Seal of the Department of Health and Social Services on 17th May 1993.

(L.S.)

*John McGrath*

Assistant Secretary

## EXPLANATORY NOTE

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

These regulations make amendments to the Health and Personal Social Services (Assessment of Resources) Regulations (Northern Ireland) 1993 (“the principal regulations”).

Regulation 3 inserts a new regulation 6A into the principal regulations to take account of the implementation of the Child Support (Northern Ireland) Order 1991. Child support maintenance payments which are made to a resident in respect of a child living with the resident are to be treated as income other than earnings.

Regulation 4 amends regulation 14 of the principal regulations to correct a minor drafting inconsistency which occurs in that regulation.

Regulation 5 makes amendments to regulations 16, 17, 22 and 25 of and paragraph 8 of Schedule 1 to the principal regulations in relation to the treatment of payments by a third party towards the cost of a resident’s accommodation. These provide that voluntary payments in respect of any arrears due to a Health and Social Services Board which are made over directly to the Board are not to be taken into account, payments of income in respect of such arrears which are made over initially to the resident are to be treated as capital, and payments of capital in connection with the liability of the resident to pay for accommodation are otherwise to be treated as income.

Two new trust funds, the Independent Living (Extension) Fund and the Independent Living (1993) Fund, have been established, and regulation 6 makes an amendment to regulation 22 of the principal regulations which is consequential upon the establishment of those funds.

Regulation 7 amends regulation 27 of the principal regulations relating to the treatment of jointly held beneficial interests in land. This is to correct a drafting error in that provision, and the relevant provision has also been redrafted to make clear that any incumbrance secured on the whole beneficial interest should not be disregarded when valuing the resident’s share.

Regulation 8 amends Schedule 2 to the principal regulations to enable residents in receipt of a carer premium under the income support scheme or of an invalid care allowance to qualify for the higher earnings disregard.

Regulation 9 substitutes a new paragraph 2 of Schedule 4 to the principal regulations to require Health and Social Services Boards to disregard the value of any premises occupied in whole or in part by a child whom the resident is liable to maintain by virtue of Article 100(1) of the Health and Personal Social Services (Northern Ireland) Order 1972, in addition to the amounts previously disregarded under the original paragraph.