

1993 No. 381

HOUSING; RATES

**The Housing Benefit (General) (Amendment No. 3)
Regulations (Northern Ireland) 1993**

Made 8th September 1993

Coming into operation 4th October 1993

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 122(1)(d), 131(1), 132(1), (3) and (4)(a), (b) and (d) and 133(2)(d)(i) and (1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and of all other powers enabling it in that behalf, with the consent of the Department of the Environment for Northern Ireland(b) so far as relates to matters with regard to which such consent is required, and after agreement by the Social Security Advisory Committee that proposals to make these regulations should not be referred to it(c), hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Housing Benefit (General) (Amendment No. 3) Regulations (Northern Ireland) 1993 and shall come into operation on 4th October 1993.

(2) In these regulations “the principal regulations” means the Housing Benefit (General) Regulations (Northern Ireland) 1987(d).

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

Amendment of regulation 2 of the principal regulations

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

(a) after the definition of “the Order” there shall be inserted the following definition—

“ “the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;”;

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

“ “date of claim” means the date on which the claim is made, or treated as made, for the purposes of regulation 72 (time and manner in which claims are to be made)”;;

(a) 1992 c. 7

(b) See Article 3(3) of the Social Security (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8))

(c) See section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)

(d) S.R. 1987 No. 461; relevant amending regulations are S.R. 1988 No. 424, S.R. 1989 No. 125, S.R. 1990 No. 297, S.R. 1991 Nos. 47, 337 and 520, S.R. 1992 No. 6 and S.R. 1993 Nos. 145 and 218

(e) 1954 c. 33 (N.I.)

(c) after the definition of “married couple” there shall be inserted the following definition—

“ “maternity leave” means a period during which a woman is absent from work because she is pregnant or has given birth to a child, and at the end of which she has a right to return to work either under the terms of her contract of employment or under Articles 15 and 28 to 30 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976(a);”.

Amendment of regulation 4 of the principal regulations

3. In regulation 4 of the principal regulations (remunerative work)—

(a) in paragraph (1) for “paragraphs (2) to (5)” there shall be substituted “paragraphs (2) to (6)”;

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

“(6) A person shall not be treated as engaged in remunerative work on any day on which the person is on maternity leave or is absent from work because he is ill.”.

Amendment of regulation 15 of the principal regulations

4. In regulation 15 of the principal regulations (circumstances in which a person is to be treated as being or not being a member of the household)—

(a) in paragraph (1) for “where any of them is absent from the dwelling occupied as his home” there shall be substituted “notwithstanding that any of them is temporarily living away from the other members of his family”;

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

“(2) Paragraph (1) shall not apply to a person who is living away from the other members of his family where—

(a) that person does not intend to resume living with the other members of his family, or

(b) his absence from the other members of his family is likely to exceed 52 weeks, unless there are exceptional circumstances (for example where the person is in hospital or otherwise has no control over the length of his absence) and the absence is unlikely to be substantially more than 52 weeks.”.

(a) S.I. 1976/2147 (N.I. 28); Article 15 was amended by paragraph 38 of Schedule 7 to the Nurses, Midwives and Health Visitors Act 1979 (c. 36), Article 13(1) and (2) of and Schedule 3 to the Industrial Relations (Northern Ireland) Order 1982 (S.I. 1982/528 (N.I. 8)) and paragraph 48 of Schedule 9 and Schedule 10 to the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18)); Article 28 was amended by paragraph 15 of Schedule 5 to the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13)); Article 29 was amended by Article 13(3) of the Industrial Relations (Northern Ireland) Order 1982 and Article 30 was amended by Schedule 2 to the Industrial Relations (Northern Ireland) Order 1982

Amendment of regulation 16 of the principal regulations

5. In regulation 16(b) of the principal regulations (applicable amounts) for “except where otherwise provided” there shall be substituted “except as provided in regulation 36(5)(a) (modifications in respect of child and young person)”.

Amendment of regulation 17 of the principal regulations

6. In regulation 17(c) of the principal regulations (polygamous marriages) for “except where otherwise provided” there shall be substituted “, except as provided in regulation 36(5) (modifications in respect of child and young person)”.

Amendment of regulation 23 of the principal regulations

7. In regulation 23(1) of the principal regulations (average weekly earnings of self-employed earners) for “52 weeks” there shall be substituted “a year”.

Amendment of regulation 28 of the principal regulations

8. In regulation 28(1) of the principal regulations (earnings of employed earners)—

(a) for sub-paragraphs (h) and (i) there shall be substituted the following sub-paragraphs—

“(h) any such sum as is referred to in section 112 of the Contributions and Benefits Act (certain sums to be earnings);

(i) any statutory sick pay or statutory maternity pay, or a corresponding payment under any statute of the Parliament of the United Kingdom extending solely to Great Britain;”;

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

“(k) any remuneration paid by or on behalf of an employer to the claimant who for the time being is on maternity leave or is absent from work because he is ill.”.

Amendment of regulation 32 of the principal regulations

9. In regulation 32(2) of the principal regulations (deduction of tax and contributions for self-employed earners) for sub-paragraphs (a) and (b) there shall be substituted the following sub-paragraphs—

“(a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, 11(3) of the Contributions and Benefits Act at the rate applicable at the date of claim except where the claimant’s chargeable income is less than the amount specified in section 11(4) of that Act (small earnings exception) for the tax year in which the date of claim falls; but if the assessment period is less than a year, the amount specified for that tax year shall be reduced pro rata; and

(a) Added by reg. 11(c) of these regulations

- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of that Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date of claim on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of claim falls; but, if the assessment period is less than a year, those limits shall be reduced pro rata.”.

Amendment of regulation 33 of the principal regulations

10. In regulation 33(1) of the principal regulations (calculation of income other than earnings) for “regulation 34 (capital treated as income)” there shall be substituted “regulation 34 (capital treated as income) or 36 (modifications in respect of child and young person)”.

Amendment of regulation 36 of the principal regulations

11. In regulation 36 of the principal regulations (modifications in respect of child and young person)—

- (a) in paragraph (1) for “the foregoing provisions” there shall be substituted “Chapters I to V”;
- (b) in paragraph (2) for “except where otherwise provided” there shall be substituted “except as provided in paragraph (5)”;
- (c) after paragraph (4) there shall be added the following paragraph—
- “(5) There shall be treated as income any capital of a child or young person payable to him by instalments, one or more of which is outstanding at the date of claim or, in the case of a review, at the date of any subsequent review, where the instalment or aggregate of all the instalments outstanding at that date, taken together with the amount of that child’s or young person’s other capital calculated in accordance with Chapter VI in like manner as for the claimant, would exceed £3,000.”.

Amendment of Schedule 2 to the principal regulations

12. In Schedule 2 to the principal regulations (applicable amounts)—

- (a) paragraph 13(3)(b) (severe disability premium) shall be omitted;
- (b) in paragraph 14(a) (disabled child premium)—
- (i) for “Part VI” there shall be substituted “Chapter VI of Part VI (income and capital)”;
- (ii) for “except where otherwise provided” there shall be substituted “, except as provided in regulation 36(5) (modifications in respect of child and young person)”.

Amendment of Schedule 3 to the principal regulations

13. In Schedule 3 to the principal regulations (sums to be disregarded in the calculation of earnings)—

- (a) in paragraph 1 for sub-paragraphs (a) and (b) there shall be substituted the following sub-paragraphs—

- “(a) where—
- (i) the employment has been terminated because of retirement, and
 - (ii) on retirement he is entitled to a retirement pension under the Contributions and Benefits Act, or is not so entitled solely because of his failure to satisfy the contribution conditions, any earnings in respect of that employment, but only for a period commencing on the day immediately after the date on which the employment was terminated;”;
- (aa) where before the date of claim the employment has been terminated otherwise than because of retirement, any earnings in respect of that employment except earnings to which regulation 28(1)(b) to (e), (g) and (h) and sub-paragraph (j) in so far as it relates to regulation 28(1)(g) and (h) (earnings of employed earners) applies;
- (b) where at the date of claim—
- (i) the employment has not been terminated, but
 - (ii) the claimant is not engaged in remunerative work, any earnings in respect of that employment except earnings to which regulation 28(1)(d), (e), (i) and (k)(a) and sub-paragraph (j) in so far as it relates to regulation 28(1)(i) applies.”;
- (b) for paragraph 2 there shall be substituted the following paragraph—
- “2. In the case of a claimant who, before the date of claim—
- (a) has been engaged in part-time employment as an employed earner or, where the employment has been outside Northern Ireland, would have been so engaged had the employment been in Northern Ireland, and
 - (b) has ceased to be engaged in that employment, whether or not that employment has been terminated,
- any earnings in respect of that employment except—
- (i) where that employment has been terminated, earnings to which regulation 28(1)(e) applies,
 - (ii) where that employment has not been terminated, earnings to which regulation 28(1)(e), (i) and (k) and sub-paragraph (j) in so far as it relates to regulation 28(1)(i) applies.”;
- (c) in paragraph 3(1) after “In a case to which this paragraph applies” there shall be inserted “and paragraph 4 does not apply”;
- (d) in paragraph 5 for “paragraphs 3, 4A and 4B” there shall be substituted “paragraphs 3, 4A, 4B and 6”;
- (e) in paragraph 14—
- (i) after “earnings of a” there shall be inserted “child or”;

(a) Added by regulation 8(b) of these regulations

- (ii) for "Article 4 of the Child Benefit (Northern Ireland) Order 1975" there shall be substituted "section 138 of the Contributions and Benefits Act".

Amendment of Schedule 5 to the principal regulations

14. In Schedule 5 to the principal regulations (capital to be disregarded)—

- (a) in paragraph 21 for "regulation 34 or 57A (capital treated as income or treatment of student loans)" there shall be substituted "regulation 34, 36(5) or 57A (capital treated as income, modifications in respect of child and young person or treatment of student loans)";
- (b) in paragraph 33 for "Any payment not exceeding £200" there shall be substituted "£200 of any payment, or if the payment is less than £200, the whole of any payment".

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 8th September 1993.

(L.S.)

W. G. Purdy

Assistant Secretary

The Department of the Environment for Northern Ireland hereby consents to the foregoing Regulations.

Sealed with the Official Seal of the Department of the Environment for Northern Ireland on 8th September 1993.

(L.S.)

R. E. Aiken

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations make further amendments to the Housing Benefit (General) Regulations (Northern Ireland) 1987 in the following respects—

- (a) they insert definitions of “the Contributions and Benefits Act”, “date of claim” and “maternity leave” (regulation 2);
- (b) they provide that a person absent from work owing to illness or maternity leave is not to be treated as engaged in remunerative work (regulation 3);
- (c) they amend the provisions specifying the circumstances in which a person is to be treated as being or not being a member of the household (regulation 4);
- (d) they provide for certain capital of a child or young person to be treated as income and make consequential amendments (regulations 5, 6, 10, 11, 12(b) and 14(a));
- (e) they alter from 52 weeks to a year the period by reference to which the earnings of self-employed earners are to be estimated (regulation 7);
- (f) with respect to the calculation of earnings of employed earners, they further specify the amounts which are to be included as earnings; they amend the provisions relating to the disregard of certain earnings where the employment has been terminated or the claimant has ceased to be engaged in remunerative work; they provide that certain disregards do not apply when certain other disregards apply, and that a specified amount only shall be disregarded in respect of earnings of children in certain circumstances (regulations 8 and 13);
- (g) with respect to the calculation of earnings of self-employed earners, they amend the provisions specifying the amount to be deducted in respect of social security contributions (regulation 9);
- (h) they amend, in relation to the calculation of a person’s applicable amount, the conditions relating to severe disability premium (regulation 12(a));
- (i) with respect to the calculation of capital, they specify that £200 of certain payments made as a training bonus are to be disregarded (regulation 14(b)).