
STATUTORY RULES OF NORTHERN IRELAND

1996 No. 520

The Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1996

Part I

General

Citation and commencement

1. These Regulations may be cited as the Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1996 and shall come into operation on 25th November 1996.

Interpretation

2.—(1) In these Regulations—

“the Administration Act” means the Social Security Administration (Northern Ireland) Act 1992;

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

“the Employment Rights Order” means the Employment Rights (Northern Ireland) Order 1996(1);

“the Taxes Act” means the Income and Corporation Taxes Act 1988(2);

“adjudicating authority” means any person or body with responsibility under the Administration Act and regulations made thereunder, for the determination of claims for benefit and questions arising in connection with claims for, or awards of, or disqualification for receiving benefit;

“benefit week” means—

(a) any period of 7 days corresponding to the week in respect of which the relevant benefit is due to be paid and, where appropriate, in respect of payments due to be paid before that week; or

(b) the period of 7 days ending on the day before the first day of the first such week following the date of claim or any one of the consecutive periods of 7 days prior to that period;

“board and lodging accommodation” means—

(a) accommodation provided to a person or, if he is a member of a family, to him or any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a

(1) S.I.1996/1919 (N.I. 16)

(2) 1988 c. 1

member of his family) and are consumed in that accommodation or associated premises;
or

- (b) accommodation provided to a person in a hotel, guest house, lodging house or some similar establishment,

except accommodation provided by a close relative of his or of any other member of his family, or other than on a commercial basis;

“claim” means a claim for benefit under Parts II to V of the Contributions and Benefits Act;

“claimant” means a person claiming benefit under Parts II to V of the Contributions and Benefits Act and includes a claimant’s spouse or partner and any adult in respect of whom a claim for an increase in benefit is made under Part IV of that Act;

“close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister or the spouse of any of the preceding persons or, if that person is one of an unmarried couple, the other member of that couple;

“couple” means a married or an unmarried couple;

“date of claim” means the date on which the claimant makes, or is treated as making, a claim for benefit for the purposes of regulation 6 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(3);

“dwelling occupied as the home” means the dwelling including any garage, garden and outbuildings normally occupied by the claimant as his home, together with—

- (a) any agricultural land adjoining that dwelling; and
(b) any land not adjoining that dwelling which it is impracticable or unreasonable to sell separately;

“earnings” has the meaning prescribed in regulation 9 or, as the case may be, 12 and, for the purposes only of sections 80, 82 to 86A and 89 of, and paragraphs 4, 6 and 7 of Schedule 7 to, the Contributions and Benefits Act(4), includes payments by way of occupational or personal pension within the meaning of section 121 of that Act;

“employed earner” means a person who is in gainful employment in Northern Ireland under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E and includes—

- (a) a person in any employment which would be such employment if it were in Northern Ireland; and
(b) a person in any such employment which, in accordance with the provisions of the Contributions and Benefits Act and of any regulations made thereunder, is to be disregarded in relation to liability for contributions;

“employment” includes any trade, business, profession, office or vocation;

“invalid carriage or other vehicle” means a vehicle propelled by a petrol engine or by electric power supplied for use on the road and to be controlled by the occupant;

“lone parent” means a person who has no partner and who is responsible for, and a member of the same household as, a child within the meaning of section 138 of the Contributions and Benefits Act;

(3) S.R. 1987 No. 465; relevant amending regulations are S.R. 1988 No. 141, S.R. 1989 No. 398, S.R. 1990 Nos. 137 and 398, S.R. 1991 No. 488, S.R. 1992 No. 7, S.R. 1993 No. 375, S.R. 1994 No. 345 and S.R. 1996 Nos. 354 and 449
(4) Section 80 was amended by Article 4(3) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and Article 8 of S.R. 1996 No. 73; section 82 was amended by paragraph 7 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)); section 84 was amended by paragraph 8 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995; section 85 was amended by paragraph 18(10) of Schedule 2 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)); section 86A was inserted by Article 4(4) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and section 89 was amended by paragraph 26 of Schedule 1 to that Order

“lower rate”, where it relates to rates of income tax, has the same meaning as in section 832(1) of the Taxes Act⁽⁵⁾;

“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 Part IX of the Employment Rights Order;

“net earnings” means such earnings as are calculated in accordance with regulation 10(4);

“net profit” means such profit as is calculated in accordance with regulation 13(4);

“occupational pension scheme” has the same meaning as in section 1 of the Pension Schemes (Northern Ireland) Act 1993⁽⁶⁾;

“partner” means where a claimant—

(a) is a member of a couple, the other member of that couple;

(b) is married polygamously to 2 or more members of his household, any such member;

“payment” includes a part of a payment;

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

“personal pension scheme” has the same meaning as in section 1 of the Pension Schemes (Northern Ireland) Act 1993 and, in the case of a self-employed earner, includes a scheme approved under Chapter IV of Part XIV of the Taxes Act;

“polygamous marriage” means any marriage during the subsistence of which a party to it is married to more than one person and the ceremony of marriage took place under the law of a country which permits polygamy;

“relevant earnings limit” means the amount of a claimant’s earnings in excess of which the benefit or increase in question is not payable;

“retirement annuity contract” means a contract or trust scheme approved under Chapter III of Part XIV of the Taxes Act;

“self-employed earner” means a person who is in gainful employment in Northern Ireland otherwise than as an employed earner and includes—

(a) a person in any employment which would be such employment if it were in Northern Ireland; and

(b) a person in any such employment which, in accordance with the provisions of the Contribution and Benefits Act and of any regulations made thereunder, is to be disregarded in relation to liability for contributions;

“voluntary organisation” means any association carrying on or proposing to carry on any activities otherwise than for the purpose of gain by the association or by individual members of the association;

“week” means a period of 7 days and, for the purposes of section 80 of, and paragraph 4(6) of Schedule 7 to, the Contributions and Benefits Act, a period of 7 days being the relevant benefit week;

“year of assessment” has the same meaning as in section 832(1) of the Taxes Act.

(2) The Interpretation Act (Northern Ireland) 1954⁽⁷⁾ shall apply to these Regulations as it applies to a Measure of the Assembly.

⁽⁵⁾ The definition of “lower rate” was inserted by section 9(9) of the Finance Act 1992 (c. 20)

⁽⁶⁾ 1993 c. 49

⁽⁷⁾ 1954 c. 33 (N.I.)

Calculation of earnings

3.—(1) For the purposes of Parts II to V of the Contributions and Benefits Act (other than those of Schedule 8) and of any regulations made thereunder which relate to benefit under those Parts of that Act or regulations, the earnings of a claimant shall be calculated by determining in accordance with these Regulations the weekly amount of his earnings.

(2) The amount of a claimant's earnings for any period shall be the whole of his earnings (including any earnings which he is treated as possessing under regulation 4 (notional earnings)) except in so far as regulations 10 and 13 provide that certain sums shall be disregarded or deducted as appropriate.

Notional earnings

4.—(1) Where a claimant's earnings are not ascertainable at the date of the determination of the claim or of any subsequent review, the adjudicating authority shall treat the claimant as possessing such earnings as is reasonable in the circumstances of the case having regard to the number of hours worked and the earnings paid for comparable employment in the area.

(2) Where—

- (a) a claimant performs a service for another person; and
- (b) that other person makes no payment of earnings or pays less than that paid for a comparable employment in the area,

the adjudicating authority shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies the adjudicating authority that the means of that person are insufficient for him to pay or to pay more for the service; but this paragraph shall not apply to a claimant who is engaged by a charitable or voluntary organisation or is a volunteer where the adjudicating authority is satisfied in any of those cases that it is reasonable for him to provide his services free of charge.

(3) Where a claimant is treated as possessing any earnings under paragraph (1) or (2), these Regulations shall apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess except that regulation 10(4) (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account the earnings which he is treated as possessing, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the lower rate or, as the case may be, the lower rate and the basic rate of tax in the year of assessment less only the personal relief to which the claimant is entitled under sections 257(1), 257A(1) and 259 of the Taxes Act(8) as is appropriate to his circumstances; but, if the period over which those earnings are to be taken into account is less than a year, the earnings to which the lower rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro rata basis;
- (b) where the weekly amount of those earnings equals or exceeds the lower earnings limit, an amount representing primary Class 1 contributions under the Contributions and Benefits Act, calculated by applying to those earnings the initial and main primary percentages in accordance with section 8(1)(a) and (b) of that Act(9); and
- (c) one half of any sum payable by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

(8) Sections 257 to 257F were substituted for section 257 by section 33 of the Finance Act 1988 (c. 39); section 257A(1) was amended by section 77(2) of the Finance Act 1994 (c. 9); section 259 was amended by section 30 of, and paragraph 5 of Schedule 3, to the Finance Act 1988, paragraph 5 of Schedule 5 to the Finance (No. 2) Act 1992 (c. 48) and section 77(3) of, and paragraph 6 of Schedule 8 to, the Finance Act 1994

(9) Section 8(1) was amended by paragraph 28 of Schedule 7 to the Pension Schemes (Northern Ireland) Act 1993

(4) Where the claimant is an employed earner in the Republic of Ireland the amounts to be deducted for income tax and primary Class 1 contributions under this regulation shall be such amounts as, in the opinion of the adjudicating authority, would have been deducted had the claimant been employed in Northern Ireland.

Rounding of fractions

5. Where any calculation under these Regulations results in a fraction of a penny, that fraction shall, if it would be to the claimant's advantage, be treated as a penny, otherwise it shall be disregarded.

Part II

Employed Earners

Calculation of earnings of employed earners

6.—(1) Earnings derived from employment as an employed earner shall be calculated or estimated over a period determined in accordance with the following paragraphs and at a weekly amount determined in accordance with regulation 8 (calculation of weekly amount of earnings).

(2) Subject to paragraphs (3) and (5) to (8), the period over which earnings are to be taken into account shall be—

- (a) in a case where they are payable in respect of a period, a period equal to a benefit week or such number of benefit weeks as comprise the period commencing on the date on which earnings are treated as paid under regulation 7 (date on which earnings are treated as paid) and ending on the day before the date on which earnings of the same kind (excluding earnings of the kind mentioned in regulation 9(1)(a) to (j)) and from the same source would, or would if the employment was continuing, next be treated as paid under that regulation;
- (b) in any other case, a period equal to such number of weeks as is equal to the number (less any fraction of a whole number) calculated in accordance with the formula—

$$\frac{P}{Q + R}$$

where—

P is the net earnings;

Q is the amount of the relevant earnings limit plus one penny; and

R is the total of the sums which would fall to be disregarded or deducted as appropriate under regulation 10(2) or (3) (calculation of net earnings of employed earners),

and that period shall begin on the date on which the earnings are treated as paid under regulation 7.

(3) Where earnings not of the same kind are derived from the same source and the periods in respect of which those earnings would, but for this paragraph, fall to be taken into account overlap, wholly or partly, those earnings shall be taken into account over a period—

- (a) equal to the aggregate length of those periods; and
- (b) beginning with the earliest date on which any part of those earnings would otherwise be treated as paid under regulation 7.

(4) In a case to which paragraph (3) applies, earnings under regulation 9 (earnings of employed earners) shall be taken into account in the following order of priority—

- (a) earnings normally derived from the employment;
- (b) any payment to which paragraph (1)(b) or (c) of that regulation applies;
- (c) any payment to which paragraph (1)(i) of that regulation applies;
- (d) any payment to which paragraph (1)(d) of that regulation applies.

(5) Where earnings to which regulation 9(1)(b) to (d) applies are paid in respect of part of a day, those earnings shall be taken into account over a period equal to a week.

(6) Where earnings to which regulation 9(1)(i) applies are paid in respect of, or on the termination of, any employment which is not part-time employment, the period over which they are to be taken into account shall be—

- (a) a period equal to such number of weeks as is equal to the number (less any fraction of a whole number) obtained by dividing the net earnings by the maximum weekly amount which, on the date on which the payment of earnings is made, is specified in Article 23(1) of the Employment Rights Order; or
- (b) a period equal to the length of the specified period,

whichever is the shorter, and that period shall begin on the date on which the earnings are treated as paid under regulation 7.

(7) Any earnings to which regulation 9(1)(i) applies which are paid in respect of, or on the termination of, part-time employment shall be taken into account over a period equal to a week.

(8) In this regulation—

“part-time employment” means—

- (a) subject to paragraphs (b) to (d), employment in which a person is engaged or, where his hours of work fluctuate, he is engaged on average, for less than 16 hours a week being work for which payment is made or which is done in expectation of payment;
- (b) subject to paragraph (c), the number of hours for which a person is engaged in work shall be determined—
 - (i) where no recognisable cycle has been established in respect of his work, by reference to the number of hours or, where those hours are likely to fluctuate, the average of the hours, which he is expected to work in a week,
 - (ii) where the number of hours for which he is engaged fluctuate, by reference to the average of hours worked over—
 - (aa) where there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which he does not work, those periods but disregarding any other absences),
 - (bb) in any other case, the period of 5 weeks immediately before the date of claim or the date of review, or such other period as may, in the particular case, enable his average hours of work to be determined more accurately;
- (c) where, for the purpose of paragraph (b)(ii)(aa), a person’s recognisable cycle of work at a school, other educational establishment or other place of employment is one year and includes periods of school holidays or similar vacations during which he does not work, those periods and any other periods not forming part of such holidays or vacations during which he is not required to work shall be disregarded in establishing the average hours for which he is engaged in work;
- (d) for the purposes of paragraphs (a) and (b), in determining the number of hours for which a person is engaged in work, that number shall include any time allowed to him by his

employer for meals or refreshment, but only where that person is, or expects to be, paid earnings in respect of that time;

“specified period” means a period equal to—

- (a) a week or such number of weeks (less any fraction of a whole number) as comprise the period of notice which is applicable to a person, or would have been applicable if it had not been waived; less
- (b) any part of that period during which he has continued to work in the employment in question or in respect of which he has received a payment to which regulation 9(1)(c) applies,

and for the purposes of this definition “period of notice” means the period of notice of termination of employment to which a person is entitled by statute or by contract, whichever is the longer, or, if he is not entitled to such notice, the period of notice which is customary in the employment in question.

Date on which earnings are treated as paid

7. Earnings to which regulation 6 (calculation of earnings of employed earners) or 11(2) (calculation of earnings of self-employed earners) applies shall be treated as paid—

- (a) (i) in the case of a payment in respect of an adult dependant of an increase of maternity allowance payable under section 82(2) of the Contributions and Benefits Act or an increase of invalid care allowance payable under paragraph 7 of Schedule 2 to the Social Security Benefit (Dependency) Regulations (Northern Ireland) 1977(10), or
- (ii) in the case of a payment in respect of an adult dependant who is not residing with the claimant of an increase of Category A or Category C retirement pension payable under section 83(2)(b) or 84(1) and (2)(b) of the Contributions and Benefits Act or a disablement pension where the claimant is entitled to an unemployability supplement payable under paragraph 6(1)(a)(ii) of Schedule 7 to that Act,

on the first day of the benefit week following the benefit week in which the payment is due to be made;

- (b) in any other case, on the first day of the benefit week in which the payment is due to be made.

Calculation of weekly amount of earnings

8.—(1) For the purposes of regulation 6 (calculation of earnings of employed earners), subject to paragraphs (2) to (4), where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount shall be the amount of that payment;
- (b) exceeds a week, the weekly amount shall be determined—
 - (i) in a case where that period is a month, by multiplying the amount of that payment by 12 and dividing the product by 52,
 - (ii) in a case where that period is 3 months, by multiplying the amount of the payment by 4 and dividing the product by 52,
 - (iii) in a case where that period is a year, by dividing the amount of the payment by 52,
 - (iv) in any other case, by multiplying the amount of the payment by 7 and dividing the product by the number equal to the number of days in the period in respect of which it is made.

(10) S.R. 1977 No. 74; paragraph 7 of Schedule 2 was amended by Article 38(2) of the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18)), regulation 4(3) of S.R. 1987 No. 129 and regulation 5 of S.R. 1988 No. 138

(2) Where a payment from a particular source is or has been made regularly and that payment falls to be taken into account in the same benefit week as a payment of the same kind and from the same source, the amount of those earnings to be taken into account in any one benefit week shall not exceed the weekly amount determined under paragraph (1)(a) or (b), as the case may be, of the payment which under regulation 7 (date on which earnings are treated as paid) is treated as paid first.

(3) Where the amount of the claimant's net earnings fluctuates and has changed more than once, or his regular pattern of work is such that he does not work every week, the application of the foregoing paragraphs may be modified so that the weekly amount of his earnings is determined by reference to his average weekly earnings over—

- (a) where there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which he does not work, those periods but disregarding any other absences);
- (b) in any other case, a period of 5 weeks or such other period as may, in the particular case, enable his average weekly earnings to be determined more accurately.

(4) Where any payment of earnings is taken into account under paragraph (7) of regulation 6 over the period specified in that paragraph, the amount to be taken into account shall be equal to the amount of the payment.

Earnings of employed earners

9.—(1) Subject to paragraphs (2) and (3), “earnings”, in the case of employment as an employed earner, means any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to a claimant on account of the termination of his employment by reason of redundancy;
- (c) any payment in lieu of notice;
- (d) any holiday pay except any payable more than 4 weeks after the termination or interruption of employment;
- (e) any payment by way of a retainer;
- (f) any payment made by the claimant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant's employer in respect of—
 - (i) travelling expenses incurred by the claimant between his home and place of employment,
 - (ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant's absence from home;
- (g) any award of compensation made under Article 146(4) or 151(3)(a) of the Employment Rights Order;
- (h) any such sum as is referred to in section 112(3) of the Contributions and Benefits Act;
- (i) where a payment of compensation is made in respect of employment which—
 - (i) is not part-time employment and that payment is not less than the maximum weekly amount, the amount of the compensation less the deductible remainder, where that is applicable,
 - (ii) is part-time employment, the amount of the compensation;
- (j) any remuneration paid by or on behalf of an employer to the claimant in respect of a period throughout which the claimant is on maternity leave or is absent from work because he is ill;

- (k) any payment made under the legislation of, or under any scheme operating in, the Republic of Ireland which is analogous to any income to which sub-paragraphs (a) to (j) relate.
- (2) For the purposes of paragraph (1)(i)(i) the “deductible remainder”—
 - (a) applies in cases where dividing the amount of the compensation by the maximum weekly amount produces a whole number plus a fraction; and
 - (b) is equal to the difference between—
 - (i) the amount of the compensation, and
 - (ii) the product of the maximum weekly amount multiplied by the whole number.
- (3) “Earnings” shall not include any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment.
- (4) In this regulation—
 - “compensation” means any payment made in respect of, or on the termination of, employment in a case where a person has not received, or has received only part of, a payment in lieu of notice due or which would have been due to him had he not waived his right to receive it, other than—
 - (a) any payment specified in paragraph (1)(a) to (h);
 - (b) any payment specified in paragraph (3);
 - (c) any redundancy payment within the meaning of Article 170 of the Employment Rights Order;
 - (d) any refund of contributions to which that person was entitled under an occupational pension scheme;
 - “maximum weekly amount” means the maximum weekly amount which, on the date on which the payment of compensation is made, is specified in Article 23(1) of the Employment Rights Order;
 - “part-time employment” has the same meaning as in regulation 6(8) (calculation of earnings of employed earners).

Calculation of net earnings of employed earners

10.—(1) For the purposes of regulations 3 (calculation of earnings) and 6 (calculation of earnings of employed earners), the earnings of a claimant derived from employment as an employed earner to be taken into account shall, subject to paragraphs (2) and (3), be his net earnings.

(2) Except in a case to which paragraph (3) applies, there shall be disregarded or deducted as appropriate from a claimant’s net earnings—

- (a) any sum, where applicable, specified in Schedule 1; and
- (b) any relevant child care charges to which Schedule 2 applies up to a maximum deduction in respect of any claimant of £60 per week.

(3) In the case of entitlement to invalid care allowance under section 70 of the Contributions and Benefits Act(11), there shall be disregarded or deducted as appropriate from a claimant’s net earnings—

- (a) any sum, where applicable, specified in Schedule 1; and
- (b) any care charges to which Schedule 3 applies up to a maximum deduction, in respect of any claimant, of 50 per cent. of his net earnings less those sums, if any, specified in Schedule 1 which are disregarded.

(11) Section 70 was amended by regulation 2(3) of S.R. 1994 No. 370

(4) For the purposes of paragraph (1), net earnings shall be calculated by taking into account the gross earnings of the claimant from that employment less—

- (a) any amount deducted from those earnings by way of—
 - (i) income tax,
 - (ii) primary Class 1 contributions under the Contributions and Benefits Act; and
- (b) one half of any sum paid by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

(5) Where the claimant is an employed earner in the Republic of Ireland the amounts to be deducted for income tax and primary Class 1 contributions under this regulation shall be such amounts as, in the opinion of the adjudicating authority, would have been deducted had the claimant been employed in Northern Ireland.

Part III

Self-Employed Earners

Calculation of earnings of self-employed earners

11.—(1) Except where paragraph (2) applies, where a claimant’s earnings consist of earnings from employment as a self-employed earner the weekly amount of his earnings shall be determined by reference to his average weekly earnings from that employment—

- (a) over a period of one year; or
- (b) where the claimant has recently become engaged in that employment or there has been a change which is likely to affect the normal pattern of business, over such other period as may, in the particular case, enable the weekly amount of his earnings to be determined more accurately.

(2) Where the claimant’s earnings consist of royalties or sums paid periodically for, or in respect of, any copyright, those earnings shall be taken into account over a period equal to such number of weeks as is equal to the number (less any fraction of a whole number) calculated in accordance with the formula—

$$\frac{S}{T + U}$$

where—

S is the earnings;

T is the amount of the relevant earnings limit plus one penny; and

U is the total of the sums which would fall to be disregarded or deducted as appropriate under regulation 13(2) or (3) (calculation of net profit of self-employed earners),

and that period shall begin on the date on which the earnings are treated as paid under regulation 7.

Earnings of self-employed earners

12.—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross receipts of the employment and includes any allowance paid to the claimant pursuant to provision or arrangements made by the Department of Economic Development under

sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945⁽¹²⁾ or section 1(1) of the Employment and Training Act (Northern Ireland) 1950⁽¹³⁾ or any sum analogous to such an allowance payable to the claimant under the legislation of, or any scheme operating in, the Republic of Ireland for the purpose of assisting him in carrying on his business.

- (2) “Earnings” shall not include—
- (a) any payment to be disregarded in the calculation of earnings as referred to in paragraphs 1 to 3 of Schedule 1;
 - (b) any payment to which paragraph 6 or 7 of Schedule 1 refers.

Calculation of net profit of self-employed earners

13.—(1) For the purposes of regulations 3 (calculation of earnings) and 11 (calculation of earnings of self-employed earners), the earnings of a claimant to be taken into account shall be—

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman, his share of the net profit derived from that employment less—
 - (i) an amount in respect of income tax and of contributions payable under Part I of the Contributions and Benefits Act, calculated in accordance with regulation 14 (deduction of tax and contributions for self-employed earners), and
 - (ii) one half of any premium paid in the period that is relevant under regulation 11 in respect of a retirement annuity contract or a personal pension scheme;
- (c) in this regulation “share fisherman” means any person who—
 - (i) is ordinarily employed in the fishing industry otherwise than under a contract of service, as a master or member of the crew of a fishing boat manned by more than one person, and is remunerated, in whole or in part, in respect of that employment by a share of the profits or gross earnings of that boat, or
 - (ii) has ordinarily been so employed, but who, by reason of age or infirmity, permanently ceases to be so employed and becomes ordinarily engaged in employment ashore in Northern Ireland, otherwise than under a contract of service, making or mending any gear appurtenant to a fishing boat or performing other services ancillary to, or in connection with, that boat and is remunerated, in whole or in part, in respect of that employment by a share of the profits or gross earnings of that boat and has not ceased to be ordinarily engaged in such employment.

(2) Except in a case to which paragraph (3) applies, there shall be disregarded or deducted as appropriate from a claimant’s net profit—

- (a) any sum, where applicable, specified in Schedule 1; and
- (b) any relevant child care charges to which Schedule 2 applies up to a maximum deduction in respect of any claimant of £60 per week.

(3) In the case of entitlement to invalid care allowance under section 70 of the Contributions and Benefits Act, there shall be disregarded or deducted as appropriate from a claimant’s net profit—

- (a) any sum, where applicable, specified in Schedule 1; and

(12) 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))

(13) 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)) and Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

(b) any care charges to which Schedule 3 applies up to a maximum deduction, in respect of any claimant, of 50 per cent. of his net profit less those sums, if any, specified in Schedule 1 which are disregarded.

(4) For the purposes of paragraph (1)(a), the net profit of the employment shall, except where paragraph (10) applies, be calculated by taking into account the earnings of the employment over the period determined under regulation 11 less—

- (a) subject to paragraphs (6) to (8), any expenses wholly and exclusively defrayed in that period for the purposes of that employment;
- (b) an amount in respect of—
 - (i) income tax, and
 - (ii) contributions payable under Part I of the Contributions and Benefits Act, calculated in accordance with regulation 14; and
- (c) one half of any premium paid in the period that is relevant under regulation 11 in respect of a retirement annuity contract or personal pension scheme.

(5) For the purposes of paragraph (1)(b), the net profit of the employment shall be calculated by taking into account the earnings of the employment over the period determined under regulation 11 less, subject to paragraphs (6) to (8), any expenses wholly and exclusively defrayed in that period for the purposes of that employment.

(6) Subject to paragraph (7), a deduction shall not be made under paragraph (4)(a) or (5) in respect of—

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (c) any sum employed, or intended to be employed, in the setting up or expansion of the employment;
- (d) any loss incurred before the beginning of the period determined under regulation 11;
- (e) the repayment of capital on any loan taken out for the purposes of the employment;
- (f) any expenses incurred in providing business entertainment.

(7) A deduction shall be made under paragraph (4)(a) or (5) in respect of the repayment of capital on any loan used for—

- (a) the replacement, in the course of business, of equipment or machinery;
- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair; and
- (c) the purchase of land under the Northern Ireland Land Act 1925(14).

(8) The adjudicating authority shall refuse to make a deduction in respect of any expenses under paragraph (4)(a) or (5) where it is not satisfied that the expense has been defrayed or, having regard to the nature of the expense and its amount, that it has been reasonably incurred.

(9) For the avoidance of doubt—

- (a) a deduction shall not be made under paragraph (4)(a) or (5) in respect of any sum unless it has been expended for the purposes of the business;
- (b) a deduction shall be made thereunder in respect of—
 - (i) the excess of any value added tax paid over value added tax received in the period determined under regulation 11,

- (ii) any income expended in the repair of an existing asset except to the extent that any sum is payable under an insurance policy for its repair,
- (iii) any payment of interest on a loan taken out for the purposes of the employment.

(10) Where a claimant is engaged in employment as a child minder, the net profit of the employment shall be one third of the earnings of that employment, less—

- (a) an amount in respect of—
 - (i) income tax, and
 - (ii) contributions payable under Part I of the Contributions and Benefits Act, calculated in accordance with regulation 14; and
- (b) one half of any premium paid in respect of a retirement annuity contract or a personal pension scheme.

(11) Notwithstanding regulation 11 and the foregoing paragraphs, an adjudicating authority may assess any item of a claimant's earnings or expenditure over a period other than that determined under regulation 11 as may, in the particular case, enable the weekly amount of that item of earnings or expenditure to be determined more accurately.

(12) For the avoidance of doubt, where a claimant is engaged in employment as a self-employed earner and he is engaged in one or more other employments as a self-employed or employed earner, any loss incurred in any one of his employments shall not be offset against his earnings in any other of his employments.

(13) Where the claimant is a self-employed earner or a share fisherman in the Republic of Ireland the amounts to be deducted for income tax and contributions under this regulation shall be such amounts as, in the opinion of the adjudicating authority, would have been deducted had the claimant been employed in Northern Ireland.

Deduction of tax and contributions for self-employed earners

14.—(1) The amount to be deducted in respect of income tax under regulation 13(1)(b)(i), (4)(b)(i) or (10)(a)(i) (calculation of net profit of self-employed earners) shall be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at the lower rate or, as the case may be, the lower rate and the basic rate of tax less only the personal relief to which the claimant is entitled under sections 257(1), 257A(1) and 259 of the Taxes Act(15) as is appropriate to his circumstances; but if the period determined under regulation 11 (calculation of earnings of self-employed earners) is less than a year, the earnings to which the lower rate of tax is to be applied and the amount of the personal relief deductible under this paragraph shall be calculated on a pro rata basis.

(2) The amount to be deducted in respect of contributions under regulation 13(1)(b)(i), (4)(b)(ii) or (10)(a)(ii) shall be the total of—

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, (3) of the Contributions and Benefits Act(16) at the rate applicable at the date of the determination of the claim or of any subsequent review except where the claimant's chargeable income is less than the amount specified in section 11(4) of that Act for the tax year in which that date falls; but if the assessment period is less than a year, the amount specified for that year shall be reduced pro rata; and

(15) Sections 257 to 257F were substituted for section 257 by section 33 of the Finance Act 1988 (c. 39); section 257A(1) was amended by section 77(2) of the Finance Act 1994 (c. 9); section 259 was amended by section 30 of, and paragraph 5 of Schedule 3 to, the Finance Act 1988, paragraph 5 of Schedule 5 to the Finance (No. 2) Act 1992 (c. 48) and section 77(3) of, and paragraph 6 of Schedule 8 to, the Finance Act 1994

(16) Section 11 was amended by Article 3 of S.R. 1996 No. 72

- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of that Act⁽¹⁷⁾ at the percentage rate applicable at the date of the determination of the claim or of any subsequent review 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 that date falls; but if the assessment period is less than a year, those limits shall be reduced pro rata.
- (3) In this regulation “chargeable income” means—
 - (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under regulation 13(4)(a) or, as the case may be, (5);
 - (b) in the case of employment as a child minder, one third of the earnings of that employment.

Part IV

Transitional Provisions, Consequential Amendments and Revocations

Transitional provision for the treatment of earnings

15. In regulation 4 of the Social Security Benefit (Dependency and Computation of Earnings) (Amendment) Regulations (Northern Ireland) 1989⁽¹⁸⁾ for paragraph (4) there shall be substituted the following paragraph—

“(4) The definition of “earnings” in regulation 2(1) of the Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1996 shall apply as though the words “or personal” were omitted.”.

Transitional provision to suspend benefit and make interim payments

16.—(1) Where the Department has prior to 25th November 1996 directed under regulation 6(1) of the Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1978⁽¹⁹⁾ (interim payments) that payment of any benefit shall be suspended and it appears to it that a question arises whether the award ought to be revised, that direction shall, unless the Department directs otherwise, continue to have effect and the benefit shall continue to be suspended for a further period until the amount of the claimant’s earnings in respect of that further period has been determined in accordance with these Regulations.

(2) Where the Department has prior to 25th November 1996 made interim payments under regulation 6(2) of the Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1978 and it is impracticable for a review relating to the claim to be immediately determined, it may make such further interim payments (not exceeding the amount of benefit in question which would be payable if there were no earnings less any interim payments already made) as it may think appropriate in the circumstances.

(3) After such further interim payments have been made for any period beginning on or after 25th November 1996 and the amount of the earnings in question has been determined—

- (a) where the adjudicating authority determines that, for that period, benefit is payable, the adjudicating authority shall direct that those further interim payments shall, so far as they do not exceed that benefit, be treated as having been made on account of it;
- (b) where the adjudicating authority determines that, for that period, benefit—
 - (i) is not payable, or

⁽¹⁷⁾ Section 15 was amended by Article 5 of [S.R. 1996 No. 72](#)

⁽¹⁸⁾ [S.R. 1989 No. 381](#)

⁽¹⁹⁾ [S.R. 1978 No. 371](#)

(ii) which is less than the amount of those further interim payments, is payable, the Department shall require repayment of those further interim payments or, as the case may be, of so much of those further interim payments to the extent that they exceed entitlement to that benefit.

(4) The provisions of the Contributions and Benefits Act and the Administration Act and regulations made under those Acts shall apply to any further interim payment required to be repaid by virtue of paragraph (3) as if it had been a payment of benefit required to be repaid.

(5) The provisions of the Contributions and Benefits Act and the Administration Act and regulations made under those Acts relating to—

- (a) the time and manner of payment of benefit;
- (b) the extinguishment of the right to sums payable by way of benefit which are not obtained within the prescribed time; and
- (c) the information to be given when obtaining payment of benefit,

shall apply to and in respect of any further interim payment by virtue of this regulation as if it were a payment of the appropriate benefit.

Consequential amendments

17. In the Social Security Benefit (Dependency) Regulations (Northern Ireland) 1977⁽²⁰⁾—

- (a) in regulation 8(7)(a)(ii) for “the period of 7 days beginning with midnight between Sunday and Monday” there shall be substituted “any period of 7 days corresponding to the week in respect of which the relevant benefit is due to be paid or ending on the day before the first day of the first such week following the date of claim”; and
- (b) in Schedule 2 in paragraph 2C for the definition of “week” there shall be substituted the following definition—

““week” means any period of 7 days corresponding to the week in respect of which the relevant benefit is due to be paid or ending on the day before the first day of the first such week following the date of claim.”.

Revocations and saving

18.—(1) The regulations specified in column (1) of Schedule 4 are hereby revoked to the extent mentioned in column (3).

(2) In the case of a claimant who was entitled to benefit for a benefit week which commenced on a date prior to 25th November 1996 then, in respect of each day in that benefit week, the Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1978 shall have effect in his case as if paragraph (1) had not been made.

⁽²⁰⁾ Relevant amending regulations are [S.R. 1984 No. 382](#) and [S.R. 1992 No. 521](#)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 5th November 1996.

L.S.

John O'Neill
Assistant Secretary