
STATUTORY RULES OF NORTHERN IRELAND

1996 No. 520

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

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)(ii) 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(1), 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,

(1) 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

(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.

(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(2), there shall be disregarded or deducted as appropriate from a claimant’s net earnings—

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

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

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- (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.
- (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.