

**2004 No. 308**

**SOCIAL SECURITY**

**The Social Security (Income Support and Jobseeker's Allowance) (Amendment) Regulations (Northern Ireland) 2004**

*Made* - - - - - 22nd July 2004

*Coming into operation* 4th October 2004

The Department for Social Development, in exercise of the powers conferred by sections 122(1)(a), 133(2)(b), 167D(1) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and Articles 8(4), 9(4) and 36(2) of, and paragraph 11(2) of Schedule 1 to, the Jobseekers (Northern Ireland) Order 1995(b), and now vested in it(c), 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 Social Security (Income Support and Jobseeker's Allowance) (Amendment) Regulations (Northern Ireland) 2004 and shall come into operation on 4th October 2004.

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

**Amendment of the Income Support (General) Regulations**

2. In regulation 4 of the Income Support (General) Regulations (Northern Ireland) 1987(e) (temporary absence from Northern Ireland), after paragraph (3)(f) there shall be inserted the following paragraph –

“(3A) A claimant's entitlement to income support shall continue during a period of temporary absence from Northern Ireland if –

- (a) he satisfied the conditions of entitlement to income support immediately before the beginning of that period of temporary absence; and
- (b) that period of temporary absence is for the purpose of the claimant receiving treatment at a hospital or other institution outside Northern Ireland where that treatment is being provided –

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(a) 1992 c. 7; section 167D(1) was inserted by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

(b) S.I. 1995/2705 (N.I. 15); Article 36(2)(a) was amended by Article 4 of and, paragraph 55 of Schedule 3 to the Social Security Contributions (Transfer of Functions etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)

(c) See Article 8(b) and Part II of Schedule 6 to, S.R. 1999 No. 481

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

(e) S.R. 1987 No. 459; relevant amending Regulations are S.R. 1990 No. 131

(f) Paragraph (3) was added by regulation 3(b) of S.R. 1990 No. 131

- (i) under Articles 5(a), 7 and 8 of the Health and Personal Social Services (Northern Ireland) Order 1972(b) (services generally);
- (ii) pursuant to arrangements made under Article 14A of that Order(c) (voluntary organisations and other bodies), or
- (iii) pursuant to arrangements made under paragraph 13 of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991(d) (Health and Social Services trusts – specific powers).”.

### **Amendment of the Jobseeker’s Allowance Regulations**

3.—(1) The Jobseeker’s Allowance Regulations (Northern Ireland) 1996(e) shall be amended in accordance with paragraphs (2) to (6).

(2) In regulation 14(1)(f) (circumstances in which a person is to be treated as available) –

(a) after sub-paragraph (k) there shall be inserted the following sub-paragraph –

“(kk) if he is treated as capable of work in accordance with regulation 55A(g), for the period determined in accordance with that regulation;”;

(b) after sub-paragraph (o)(h) there shall be added the following sub-paragraph –

“(p) if he is temporarily absent from Northern Ireland in the circumstances prescribed by regulation 50(6AA)(i) or, as the case may be, (6C)(j).”.

(3) In regulation 19(1) (circumstances in which a person is to be treated as actively seeking employment) –

(a) after sub-paragraph (k) there shall be inserted the following sub-paragraph –

“(kk) in any week during which he is for not less than 3 days treated as capable of work in accordance with regulation 55A;”;

(b) after sub-paragraph (s)(k) there shall be added the following sub-paragraph –

“(t) if he is temporarily absent from Northern Ireland in the circumstances prescribed in regulation 50(6AA) or, as the case may be (6C).”.

(4) In regulation 50 (persons temporarily absent from Northern Ireland) –

(a) after paragraph (6) there shall be inserted the following paragraph –

“(6AA) For the purposes of the Order a claimant shall be treated as being in Northern Ireland during any period of temporary absence from Northern Ireland if –

(a) he was entitled to a jobseeker’s allowance immediately before the beginning of that period of temporary absence; and

(b) that period of temporary absence is for the purpose of the claimant receiving treatment at a hospital or other institution outside Northern Ireland where that treatment is being provided –

(i) under Articles 5, 7 and 8 of the Health and Personal Social Services (Northern Ireland) Order 1972 (services generally);

(ii) pursuant to arrangements made under Article 14A of that Order (voluntary organisations and other bodies), or

(iii) pursuant to arrangements made under paragraph 13 of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991 (Health and Social Services trusts – specific powers).”;

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(a) Article 5 was amended by the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) and the Health and Social Security (Northern Ireland) Order 1984 (S.I. 1984/1158 (N.I. 8))

(b) S.I. 1972/1265 (N.I. 14)

(c) Article 14A was inserted by paragraph 2 of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992 (S.I. 1992/3204 (N.I. 20))

(d) S.I. 1991/194 (N.I. 1); paragraph 13 of Schedule 3 was amended by Schedule 1 to the Health and Personal Social Services (Northern Ireland) Order 1994 (S.I. 1994/429 (N.I. 2))

(e) S.R. 1996 No. 198; relevant amending Regulations are S.R. 1997 No. 138, S.R. 2000 No. 350 and S.R. 2001 No. 56

(f) Paragraph (1) was amended by regulation 2(2) of S.R. 1997 No. 138

(g) Regulation 55A is inserted by regulation 3(6) of these Regulations

(h) Sub-paragraph (o) was inserted by regulation 2(2)(c) of S.R. 2001 No. 56

(i) Paragraph (6AA) is inserted by regulation 3(4)(a) of these Regulations

(j) Paragraph (6C) is inserted by regulation 3(4)(b) of these Regulations

(k) Sub-paragraph (s) was inserted by regulation 2(3)(c) of S.R. 2001 No. 56

(b) after paragraph (6B)(a) there shall be inserted the following paragraph –

“(6C) For the purposes of the Order a member of a joint-claim couple (“the first member”) shall be treated as being in Northern Ireland during any period of temporary absence if –

- (a) he and the other member of that couple were entitled to a joint-claim jobseeker’s allowance immediately before the beginning of that period of temporary absence; and
- (b) that period of temporary absence is for the purpose of the first member receiving treatment at a hospital or other institution outside Northern Ireland where that treatment is being provided –
  - (i) under Articles 5, 7 and 8 of the Health and Personal Social Services (Northern Ireland) Order 1972 (services generally);
  - (ii) pursuant to arrangements made under Article 14A of that Order (voluntary organisations and other bodies), or
  - (iii) pursuant to arrangements made under paragraph 13 of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991 (Health and Social Services trusts – specific powers).”

(5) In regulation 55 (short periods of sickness) after paragraph (4) there shall be added the following paragraph –

“(5) The preceding provisions of this regulation shall not apply to a claimant who is temporarily absent from Northern Ireland in the circumstances prescribed by regulation 50(6AA) or, as the case may be, (6C).”

(6) After regulation 55 there shall be inserted the following regulation –

**“Periods of sickness and persons receiving treatment outside Northern Ireland**

**55A.**—(1) A person –

- (a) who has been awarded a jobseeker’s allowance, a joint-claim jobseeker’s allowance or is a person to whom any of the circumstances mentioned in Article 21(5) or (6) or 22A(2)(b) of the Order apply;
- (b) who is temporarily absent from Northern Ireland in the circumstances prescribed by regulation 50(6AA) or, as the case may be, (6C);
- (c) who proves to the satisfaction of the Department that he is unable to work on account of some specific disease or disablement, and
- (d) but for his disease or disablement, would satisfy the requirements for entitlement to a jobseeker’s allowance other than those specified in Article 3(2)(a), (c) and (f) of the Order (available for and actively seeking employment and capable of work),

shall be treated during that period of temporary absence abroad as capable of work, except where that person has stated in writing before that period of temporary absence abroad begins that immediately before the beginning of the period of that temporary absence abroad he has claimed incapacity benefit, severe disablement allowance or income support.

(2) The evidence which is required for the purposes of paragraph (1)(c) is a declaration made by that person in writing, in a form approved for the purposes by the Department, that he will be unfit for work from a date or for a period specified in the declaration.”

Sealed with the Official Seal of the Department for Social Development on 22nd July 2004.

(L.S.)

*John O’Neill*  
Senior Officer of the Department for Social Development

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(a) Paragraphs (6A) and (6B) were inserted by regulation 2(5) and paragraph 13 of Schedule 2 to S.R. 2000 No. 350  
(b) Article 22A was inserted by Article 56 of, and paragraph 14 of Schedule 7 to, the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

## EXPLANATORY NOTE

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

These Regulations amend the Income Support (General) Regulations (Northern Ireland) 1987 (“the Income Support Regulations”) and the Jobseeker’s Allowance Regulations (Northern Ireland) 1996 (“the Jobseeker’s Allowance Regulations”) to provide that a person who is entitled to income support or a jobseeker’s allowance retains his entitlement to benefit during a period of temporary absence from Northern Ireland in order to receive National Health Service (NHS) hospital treatment pursuant to the Health and Personal Social Services (Northern Ireland) Order 1972 (N.I. 14) or the Health and Personal Social Services (Northern Ireland) Order 1991 (N.I. 1).

Regulation 2 amends regulation 4 of the Income Support Regulations to provide that a person’s entitlement to income support shall continue during such a period of temporary absence if immediately before the beginning of that period the person was entitled to income support.

Regulation 3(4) amends regulation 50 of the Jobseeker’s Allowance Regulations to provide that a claimant or a member of a joint-claim couple shall be treated as being in Northern Ireland during a period of temporary absence from Northern Ireland if immediately before the beginning of that period he was entitled to a jobseeker’s allowance and that absence is for the purpose of receiving NHS hospital treatment.

A new regulation 55A of the Jobseeker’s Allowance Regulations provides that such a claimant or such a member of a joint-claim couple shall also be treated as capable of work during a period of temporary absence from Northern Ireland for the purpose of receiving NHS hospital treatment unless he makes a written statement before that period of temporary absence that he has claimed incapacity benefit, severe disablement allowance or income support (regulation 3(5) and (6)).

Corresponding amendments are made to regulations 14 and 19 of the Jobseeker’s Allowance Regulations to provide that such a claimant or, as the case may be, such a member of a joint-claim couple shall be treated as available for employment and actively seeking employment (regulation 3(2) and (3)).

These Regulations make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992, are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.

These Regulations do not impose any charge on business.

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