

2007 No. 395

SOCIAL SECURITY

**The Social Security (National Insurance Credits) (Amendment)
Regulations (Northern Ireland) 2007**

Made - - - - - *6th September 2007*

Coming into operation - - - - - *1st October 2007*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 22(5) and 171(1) and (3) of, and paragraph 8(1)(d) and (1A) of Schedule 1 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and Articles 10(1)(a) and 74(3) of the Social Security (Northern Ireland) Order 1998(b) and now vested in it(c).

Regulation 4 is made with the concurrence of the Commissioners for Her Majesty's Revenue and Customs.

Citation and commencement

1.—(1) These Regulations may be cited as the Social Security (National Insurance Credits) (Amendment) Regulations (Northern Ireland) 2007 and shall come into operation on 1st October 2007.

Amendment of the Social Security (Credits) Regulations

2. After regulation 8C of the Social Security (Credits) Regulations (Northern Ireland) 1975(d), insert—

“Credits for the purposes of entitlement to incapacity benefit following official error

8D.—(1) This regulation applies for the purpose only of enabling a person who was previously entitled to incapacity benefit to satisfy the condition referred to in paragraph 2(3)(a) of Schedule 3 to the Contributions and Benefits Act in respect of a subsequent claim for incapacity benefit where his period of incapacity for work is, together with a previous

(a) 1992 c. 7; section 22(5) was amended by paragraph 5 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)). Section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21). Paragraph 8 of Schedule 1 was amended by paragraph 38(2) and sub-paragraph (1A) inserted by paragraph 38(3) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671). Sub-paragraph (1A) was amended by paragraph 12 of Schedule 11 to the Welfare Reform and Pensions Act 1999 (c. 30). Under section 50(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11) references to the Commissioners of Inland Revenue in enactments are to be taken as references to the Commissioners for Her Majesty's Revenue and Customs

(b) S.I. 1998/1506 (N.I. 10)

(c) See Article 8(b) of S.R. 1999 No. 481

(d) S.R. 1975 No. 113; regulation 8C was inserted by regulation 3(7) of S.R. 2001 No.108

period of incapacity for work, to be treated as one period of incapacity for work under section 30C of that Act(a).

(2) Where—

- (a) a person was previously entitled to incapacity benefit;
- (b) the award of incapacity benefit was as a result of satisfying the condition referred to in paragraph (1) by virtue of being credited with earnings for incapacity for work or approved training in the years from 1993-94 to 2007-08;
- (c) some or all of those credits were credited by virtue of official error derived from the failure to transpose correctly information relating to those credits from the Department for Work and Pensions' Pension Strategy Computer System to Her Majesty's Revenue and Customs' computer system (National Insurance Recording System 2) or from related clerical procedures;
- (d) that person makes a further claim for incapacity benefit; and
- (e) his period of incapacity for work is, together with the period of incapacity for work to which his previous entitlement referred to in sub-paragraph (a) related, to be treated as one period of incapacity for work under section 30C of the Contributions and Benefits Act,

that person shall be credited with such earnings as may be required to enable the condition referred to in paragraph (1) to be satisfied.

(3) In this regulation and regulations 8E and 8F, "official error" means an error made by—

- (a) an officer of the Department or the Department for Work and Pensions or an officer of Revenue and Customs acting as such which no person outside those Departments or Her Majesty's Revenue and Customs caused or to which no person outside those Departments or Her Majesty's Revenue and Customs materially contributed; or
- (b) a person employed by a service provider and to which no person who was not so employed materially contributed,

but excludes any error of law which is shown to have been an error by virtue of a subsequent decision of a Commissioner or a court.

(4) In paragraph (3)—

"Commissioner" means the Chief Social Security Commissioner or any other Social Security Commissioner and includes a tribunal of two or more Commissioners constituted under Article 16(7) of the Social Security (Northern Ireland) Order 1998;

"service provider" means a person providing services to the Department, the Department for Work and Pensions or Her Majesty's Revenue and Customs.

Credits for the purposes of entitlement to retirement pension following official error

8E.—(1) This regulation applies for the purpose only of enabling the condition referred to in paragraph 5(3)(a) of Schedule 3 to the Contributions and Benefits Act(b) to be satisfied in respect of a claim for retirement pension made by a person ("the claimant")—

- (a) who would attain pensionable age no later than 31st May 2008;
- (b) not falling within sub-paragraph (a) but based on the satisfaction of that condition by another person—
 - (i) who would attain, or would have attained, pensionable age no later than 31st May 2008, or

(a) Section 30C was inserted by Article 5(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)) and amended by paragraph 37 of Schedule 3 to the Tax Credits Act 2002

(b) Paragraph 5(3)(a) was amended by Article 126 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

(ii) in respect of whose death the claimant received a bereavement benefit.

(2) Where—

- (a) a person claims retirement pension;
- (b) the satisfaction of the condition referred to in paragraph (1) would be based on earnings credited for incapacity for work or approved training in the years from 1993-94 to 2007-08; and
- (c) some or all of those credits were credited by virtue of official error derived from the failure to transpose correctly information relating to those credits from the Department for Work and Pensions' Pension Strategy Computer System to Her Majesty's Revenue and Customs' computer system (National Insurance Recording System 2) or from related clerical procedures,

those earnings shall be credited.

(3) In this regulation, "bereavement benefit" means a bereavement allowance, a widowed mother's allowance, a widowed parent's allowance or a widow's pension.

Credits for the purposes of entitlement to contribution-based jobseeker's allowance following official error

8F.—(1) This regulation applies for the purpose only of enabling a person to satisfy the condition referred to in Article 4(1)(b) of the Jobseekers (Northern Ireland) Order 1995(a) (the contribution-based conditions).

(2) Where—

- (a) a person claims a jobseeker's allowance;
- (b) the satisfaction of the condition referred to in paragraph (1) would be based on earnings credited for incapacity for work or approved training in the years from 1993-94 to 2007-08; and
- (c) some or all of those credits were credited by virtue of official error derived from the failure to transpose correctly information relating to those credits from the Department for Work and Pensions' Pension Strategy Computer System to Her Majesty's Revenue and Customs' computer system (National Insurance Recording System 2) or from related clerical procedures,

that person shall be credited with those earnings.”.

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations

3. In regulation 3 of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(b) (revision of decisions)—

(a) at the beginning of paragraph (5)(a) insert “except where paragraph (5ZA) applies”;

(b) after paragraph (5) insert—

“(5ZA) This paragraph applies where—

- (a) the decision which would otherwise fall to be revised is a decision to award a benefit specified in paragraph (5ZB), whether or not the award has already been put in payment;
- (b) that award was based on the satisfaction by a person of the contribution conditions, in whole or in part, by virtue of credits of earnings for incapacity for work or approved training in the tax years from 1993-94 to 2007-08;

(a) S.I. 1995/2705 (N.I. 15); Article 4(1) was amended by paragraph 4 of Schedule 7 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)). Sub-paragraph (b) was modified by regulations 159 and 166 of S.R. 1996 No. 198 as amended by regulation 13(9) and (10) of S.R. 2006 No. 359

(b) S.R. 1999 No. 162; to which there are amendments not relevant to these Regulations

- (c) the official error derives from the failure to transpose correctly information relating to those credits from the Department for Work and Pensions' Pension Strategy Computer System to Her Majesty's Revenue and Customs' computer system (National Insurance Recording System 2) or from related clerical procedures; and
- (d) that error has resulted in an award to the claimant which is more advantageous to him than if the error had not been made.

(5ZB) The specified benefits are—

- (a) bereavement allowance;
- (b) contribution-based jobseeker's allowance;
- (c) incapacity benefit;
- (d) retirement pension;
- (e) widowed mother's allowance;
- (f) widowed parent's allowance; and
- (g) widow's pension.

(5ZC) In paragraph (5ZA)(b), "tax year" has the meaning ascribed to it by section 121(1) of the Contributions and Benefits Act."

Amendment of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations

4.—(1) The Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations (Northern Ireland) 2001^(a) are amended in accordance with paragraphs (2) to (4).

(2) After regulation 1(2) (interpretation), insert—

"(2A) In these Regulations, "official error" means an error made by—

- (a) an officer of the Department or the Department for Work and Pensions or an officer of Revenue and Customs acting as such which no person outside those Departments or Her Majesty's Revenue and Customs caused or to which no person outside those Departments or Her Majesty's Revenue and Customs materially contributed; or
- (b) a person employed by a service provider and to which no person who was not so employed materially contributed,

but excludes any error of law which is shown to have been an error by virtue of a subsequent decision of a Commissioner or a court.

(2B) In paragraph (2A)—

"Commissioner" means the Chief Social Security Commissioner or any other Social Security Commissioner and includes a tribunal of two or more Commissioners constituted under Article 16(7) of the Social Security (Northern Ireland) Order 1998;

"officer of Revenue and Customs" has the meaning given by section 2(1) of the Commissioners for Revenue and Customs Act 2005;

"service provider" means a person providing services to the Department, the Department for Work and Pensions or Her Majesty's Revenue and Customs."

(3) In regulation 4 (treatment for the purpose of any contributory benefit of late paid contributions)—

- (a) in paragraph (1), for "6A"^(b) substitute "6B";
- (b) after paragraph (1) insert—

^(a) S.R. 2001 No. 102; relevant amending Regulations are S.R. 2004 No. 223
^(b) See regulation 2(a) of S.R. 2004 No. 223

- “(1A) Any relevant contribution which is paid—
- (a) by virtue of an official error; and
 - (b) more than six years after the end of the year in which the contributor was first advised of that error,
- shall be treated as not paid.”.
- (4) After regulation 6A(a) insert—

“Treatment for the purpose of any contributory benefit of certain Class 2 or Class 3 contributions

6B. For the purpose of entitlement to any contributory benefit, a Class 2 or a Class 3 contribution paid after the due date—

- (a) which would otherwise under regulation 4 (apart from paragraph (1A) of that regulation)—
 - (i) have been treated as paid on a day other than the day on which it was actually paid, or
 - (ii) have been treated as not paid; and
 - (b) which was paid after the due date by virtue of an official error,
- shall be treated as paid on the day on which it is paid.”.

Sealed with the Official Seal of the Department for Social Development on 6th September 2007

(L.S.)

John O'Neill
A senior officer of the Department for Social Development

The Commissioners for Her Majesty's Revenue and Customs concur to regulation 4.

Mike Hanson
Mike Eland

6th September 2007 Two of the Commissioners for Her Majesty's Revenue and Customs

(a) Regulation 6A was inserted by regulation 2(b) of S.R. 2004 No. 223

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Credits) Regulations (Northern Ireland) 1975, the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 and the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations (Northern Ireland) 2001.

Regulation 2 amends the Social Security (Credits) Regulations (Northern Ireland) 1975 so that certain claimants—

previously entitled to incapacity benefit as a result of satisfying the contribution condition referred to in paragraph 2(3)(a) of Schedule 3 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992; or

who wish to satisfy the condition referred to in paragraph 5(3)(a) of Schedule 3 to that Act for a retirement pension or in Article 4 of the Jobseekers (Northern Ireland) Order 1995 for contribution-based jobseeker's allowance,

and whose National Insurance contributions record had previously contained earnings credited by virtue of official error deriving from a failure to transpose correctly certain information from the Department for Work and Pensions' Pension Strategy Computer System to Her Majesty's Revenue and Customs' computer system (National Insurance Recording System 2) will be credited with earnings to enable them to be entitled to incapacity benefit, a retirement pension or a contribution-based jobseeker's allowance.

Regulation 3 amends the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 to provide that decisions to award retirement pensions, contribution-based jobseeker's allowance, incapacity benefit and bereavement benefits need not be revised for an official error where that error relates to credits or earnings for incapacity for work and derives from the failure to transpose certain information correctly and the resulting award was more advantageous to the claimant.

Regulation 4 amends the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations (Northern Ireland) 2001 to provide that certain Class 2 and Class 3 contributions which may have been paid after the due date as a result of official error but less than six years after the end of the year in which the contributor was first advised of the error, are to be treated as paid on the day on which they are paid so as to give rise to entitlement to contributory benefits.

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.