

2009 No. 240

SOCIAL SECURITY

**The Social Security (Miscellaneous Amendments No. 2)
Regulations (Northern Ireland) 2009**

Made - - - - - *19th June 2009*

Coming into operation - - - - - *13th July 2009*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 1(1), 5(1)(a), (b), (h), (j), (k) and (q), 5A(6)(c) and 165(1), (4) to (6) of the Social Security Administration (Northern Ireland) Act 1992(a) and Articles 10(1)(a), 11(6) and 74(1), (3) and (6) of the Social Security (Northern Ireland) Order 1998(b), and now vested in it(c).

Citation and commencement

1. These Regulations may be cited as the Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2009 and shall come into operation on 13th July 2009.

Amendment of the Social Security (Claims and Payments) Regulations

2.—(1) The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(d) are amended in accordance with paragraphs (2) to (8).

(2) In regulation 2(1) (interpretation) for the definition of “appropriate office”(e) substitute—

““appropriate office” means an office of the Department and, where any provision in these Regulations relates to a claim, notice or other information, evidence or document being received by or sent, delivered or otherwise furnished in writing to an appropriate office, includes a postal address specified by the Department for that purpose;”.

(3) In regulation 3(cb)(f) (claims not required for entitlement to benefit in certain cases)—

(a) omit “or” after sub-paragraph (i); and

(a) 1992 c. 8; section 5A was inserted by Article 68 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), section 165(1) was amended by paragraph 49(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and section 165(6) was amended by Schedule 7 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))

(b) S.I. 1998/1506 (N.I. 10); Article 74(1) was amended by paragraph 17(2) of Schedule 4 to the Tax Credits Act 2002 (c. 21)

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

(d) S.R. 1987 No. 465; relevant amending Regulations are S.R. 1988 No. 67, S.R. 1991 No. 488, S.R. 1997 No. 156, S.R. 2000 No. 365, S.R. 2001 Nos. 175 and 176, S.R. 2003 Nos. 191 and 317, S.R. 2005 Nos. 14 and 299, S.R. 2006 No. 168, S.R. 2007 Nos. 206, 392 and 467 and S.R. 2008 Nos. 69, 286 and 417

(e) The definition of “appropriate office” was amended by paragraph 2(2) of Schedule 2 to S.R. 2001 No. 175

(f) Regulation 3(cb) was inserted by regulation 2(2)(a) of S.R. 2007 No. 392 and substituted by regulation 2 of S.R. 2008 No. 69

- (b) after sub-paragraph (ii) add—
 - “or
 - (iii) the spouse or civil partner of the beneficiary dies having been entitled to a Category A retirement pension at the date of death;”.

(4) In regulation 4 (making a claim for benefit)—

- (a) in paragraph (6A)(d)(a) for “or incapacity benefit” substitute “, incapacity benefit or an employment and support allowance”;

- (b) for paragraph (7)(b) substitute—

“(7) If a claim, other than a claim for income support or jobseeker’s allowance, is defective at the date it is received in an appropriate office or office specified in paragraph (6B)(c) where that paragraph applies—

- (a) the Department shall advise the claimant of the defect; and
- (b) if a properly completed claim is received within one month, or such longer period as the Department may consider reasonable, from the date on which the claimant is advised of the defect, the Department shall treat the claim as properly made in the first instance.

(7ZA) If a claim, other than a claim for income support or jobseeker’s allowance, has been made in writing but not on the form approved for the time being—

- (a) the Department may supply the claimant with the approved form; and
- (b) if the form is received properly completed within one month, or such longer period as the Department may consider reasonable, from the date on which the claimant is supplied with the approved form, the Department shall treat the claim as properly made in the first instance.”;

- (c) in paragraph (10)(d) after “state pension credit or” insert “, subject to regulation 6(1D),”;

- (d) in paragraph (11A)(e) for “which the Department accepts for the purposes of making a telephone claim” substitute “for which the Department accepts telephone claims, or in any other case where the Department is willing to do so”;

- (e) for paragraphs (12) and (13)(f) substitute—

“(12) A claim made by telephone in accordance with paragraph (11) or (11A) is properly completed if the Department is provided with all the information required to determine the claim and the claim is defective if not so completed.

(13) Where a claim made by telephone is defective—

- (a) in the case of a claim other than a claim for income support or jobseeker’s allowance, paragraph (7) applies;
- (b) in the case of a claim for income support, paragraph (7A)(g) applies; and
- (c) in the case of a claim for jobseeker’s allowance, paragraph (7B) applies,

except that references to a defective claim being received or received in an appropriate office or office specified in paragraph (6B) where that paragraph applies are to be read as references to a defective claim being made by telephone and the reference in paragraph (7)(b) to a properly completed claim being received is to be read as a reference to a claim made by telephone being properly completed.”; and

(a) Paragraph (6A) was inserted by regulation 2(2)(b) of S.R. 2003 No. 317 and amended by regulation 2(4)(a) of S.R. 2005 No. 299, regulation 2(3) of S.R. 2006 No. 168 and regulation 6(2)(a) of S.R. 2007 No. 467

(b) Paragraph (7) was amended by regulation 3(3)(d) of S.R. 1997 No. 156 and regulation 2(2)(c) of S.R. 2003 No. 317

(c) Paragraph (6B) was inserted by regulation 2(2)(b) of S.R. 2003 No. 317 and amended by regulation 6(2)(b) of S.R. 2007 No. 467

(d) Paragraph (10) was added by regulation 4(1) of S.R. 2003 No. 191 and amended by regulation 13(4) of S.R. 2008 No. 286

(e) Paragraph (11A) was inserted by regulation 2(3)(c) of S.R. 2008 No. 417

(f) Paragraphs (12) to (14) were added by regulation 2(2)(b) of S.R. 2005 No. 14 and paragraph (12) was amended by regulation 2(3)(d) of S.R. 2008 No. 417

(g) Paragraphs (7A) and (7B) were inserted by regulation 2(3)(f) of S.R. 2000 No. 365

(f) omit paragraph (14).

(5) In regulation 5(1)(a) (amendment and withdrawal of claim) for “or 4C(6A)” substitute “, 4C(6A) or 4F(1)(b)”.

(6) In regulation 6 (date of claim)—

(a) in paragraph (1)(c)—

(i) in sub-paragraph (b) for “duly” substitute “properly”,

(ii) in sub-paragraph (c) for “of that telephone call” substitute “the claim is properly completed”, and

(iii) in sub-paragraph (d) for “regulation 4(14) as having been duly” substitute “regulation 4(13)(a) as having been properly”;

(b) in paragraph (1A)(d)—

(i) in sub-paragraphs (a) and (b) after “an appropriate office” insert “or a claim made by telephone is properly completed”, and

(ii) in sub-paragraph (b) after “the date on which that notification is” insert “made or is”;

(c) for paragraph (1D)(e) substitute—

“(1D) In the case of a claim for an employment and support allowance, the date on which the claim is made or treated as made shall be the first date on which—

(a) a claim made by telephone is properly completed, or a properly completed claim is received in an appropriate office, or office mentioned in regulation 4G(3);

(b) a defective claim is received or made but is treated as properly made in the first instance in accordance with regulation 4F(5) in the case of a telephone claim, or 4G(7) in the case of a written claim; or

(c) the Department is notified of an intention to claim and within one month or such longer period as the Department considers reasonable of first notification, a claim made by telephone is properly completed, or a properly completed claim is received in an appropriate office, or office mentioned in regulation 4G(3),

or the first day in respect of which the claim is made, if later.

(1E) In paragraph (1D) “properly completed” has the meaning assigned by regulation 4(8)(f) in the case of a written claim and 4(12) in the case of a telephone claim.”;

(d) in paragraph (4ZC)(g) in sub-paragraphs (a) and (b) after “an appropriate office” insert “or a claim made by telephone is properly completed”;

(e) in paragraph (4A)(b)(h) in heads (i) and (ii) after “an appropriate office” insert “or a claim made by telephone is properly completed”; and

(f) in paragraph (4AA)(i) after “shall be provided” insert “or made”, and

(g) after paragraph (4AA) insert—

“(4AB) The Department may direct that the time for providing or making a properly completed claim may be extended to a date no later than the date one month after the date of first notification of intention to make that claim.”.

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- (a) Regulation 5(1) was amended by regulation 2(3) of S.R. 2005 No. 14 and regulation 2(6) of S.R. 2006 No. 168
- (b) Regulations 4F and 4G were inserted by regulation 13(5) of S.R. 2008 No. 286
- (c) Paragraph (1) was amended by regulation 3(4)(a) of S.R. 1997 No. 156, paragraph 3 of Schedule 3 to S.R. 2001 No. 176, regulation 2(4) of S.R. 2005 No. 14 and regulation 2(4)(a) of S.R. 2008 No. 417
- (d) Paragraph (1A) was inserted by regulation 3(4)(b) of S.R. 1997 No. 156
- (e) Paragraph (1D) was inserted by regulation 13(6) of S.R. 2008 No. 286
- (f) Paragraph (8) was substituted by regulation 3(3)(f) of S.R. 1997 No. 156
- (g) Paragraph (4ZC) was inserted by regulation 2(4)(a) of S.R. 2000 No. 365
- (h) Paragraph (4A) was inserted by regulation 3(4)(d) of S.R. 1997 No. 156 and amended by regulation 2(4)(b) of S.R. 2000 No. 365 and paragraph 2(4) of Schedule 2 to S.R. 2001 No. 175
- (i) Paragraph (4AA) was inserted by regulation 3(4)(d) of S.R. 1997 No. 156 and substituted by regulation 2(4)(c) of S.R. 2000 No. 365

(7) In regulation 32A(3)(a) (information relating to awards of benefit) after sub-paragraph (e) insert—

“(ee) employment and support allowance;”.

(8) In Schedule 8A (deductions from benefits and direct payment to third parties) in paragraph 4A(1)(b)—

(a) in head (a) for “he” substitute “the beneficiary”;

(b) for head (b) substitute—

“(b) either the beneficiary or the beneficiary’s partner—

(i) is resident in a hostel and has claimed housing benefit, or

(ii) is resident in premises provided and maintained by virtue of Article 4(2) of the Probation Board (Northern Ireland) Order 1982(c); and”;

(c) omit head (c); and

(d) in head (d) after “that hostel” insert “or those premises, as the case may be,”.

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

3.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(d) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 3 (revision of decisions)—

(a) omit paragraph (5D)(e);

(b) in paragraph (7ZA)(f)—

(i) in sub-paragraph (a) after “income support” insert “, income-based jobseeker’s allowance”,

(ii) in sub-paragraph (b) after “the Income Support Regulations” insert “, regulation 2 of the Jobseeker’s Allowance Regulations”,

(iii) in sub-paragraph (c)(i) after “the Income Support Regulations” insert “, regulation 83(e) or 86A(c) of the Jobseeker’s Allowance Regulations(g)”, and

(iv) in sub-paragraph (d)(ii) after “the Income Support Regulations,” insert “, paragraph 15(4)(a) or 20I(3)(a) of Schedule 1 to the Jobseeker’s Allowance Regulations(h)”; and

(c) after paragraph (7C)(i) insert—

“(7CC) Where—

(a) a person’s entitlement to income support is terminated because of a determination that the person is not incapable of work;

(b) the person subsequently claims and is awarded jobseeker’s allowance; and

(a) Regulation 32A was inserted by regulation 6(5) of S.R. 2007 No. 467

(b) Schedule 8A was inserted by regulation 2(3) of S.R. 1988 No. 67, paragraph 4A was inserted by regulation 6(7)(d) of S.R. 1991 No. 488 and sub-paragraph (1) was amended by regulation 13(18)(d)(i) of S.R. 2008 No. 286 and regulation 2(c) of S.R. 2007 No. 206

(c) S.I. 1982/713 (N.I. 10)

(d) S.R. 1999 No. 162; relevant amending Rules are S.R. 1999 Nos. 267 and 472 (C. 36), S.R. 2003 No. 224, S.R. 2005 No. 46, S.R. 2006 No. 168 and S.R. 2008 No. 286

(e) Paragraph (5D) was inserted by regulation 22(3)(c) of S.R. 2008 No. 286

(f) Paragraph (7ZA) was inserted by regulation 7(2)(a) of S.R. 2005 No. 46 and amended by regulation 22(3)(d) of S.R. 2008 No. 286

(g) Regulation 83 was amended by paragraph 4 of Part II of the Schedule to S.R. 2002 No. 132 and regulation 86A was inserted by paragraph 35 of Schedule 2 to S.R. 2000 No. 350 and amended by paragraph 8 of Part II of the Schedule to S.R. 2002 No. 132

(h) Paragraph 20I was inserted by paragraph 53(4) of Schedule 2 to S.R. 2000 No. 350

(i) Paragraph (7C) was inserted by regulation 7(2)(b) of S.R. 2005 No. 46 and amended by regulation 4(2)(b) of S.R. 2006 No. 168

- (c) the decision which embodies the determination that the person is not incapable of work is revised or successfully appealed,

the Department may revise the decisions to terminate income support entitlement and to award jobseeker's allowance.”.

(3) In regulation 7(2)(c)(ii)(a) (date from which a decision superseded under Article 11 takes effect) after “incapacity determination”, in both places where it occurs, insert “or an employment and support allowance decision where there has been a limited capability for work determination”.

Revocations

4. The Regulations specified in column (1) of the Schedule are revoked to the extent specified in column (3).

Sealed with the Official Seal of the Department for Social Development on 19th June 2009

(L.S.)

Barney McGahan

A senior officer of the Department for Social Development

(a) Regulation 7(2)(c) was amended by regulation 2(5) of S.R. 1999 No. 267, Article 17(b)(ii) of S.R. 1999 No. 472 (C. 36), regulation 3(6)(b) of S.R. 2003 No. 224, regulation 7(5)(a) of S.R. 2005 No. 46 and regulation 4(4)(a) of S.R. 2006 No. 168

SCHEDULE

Regulation 4

Revocations

<i>Column (1) Citation</i>	<i>Column (2) Reference</i>	<i>Column (3) Extent of revocation</i>
The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987	S.R. 1987 No. 465	In regulation 3(cb) the word “or” after sub-paragraph (i) Regulation 4(14) Paragraph 4A(1)(c) of Schedule 8A
The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 1997	S.R. 1997 No. 156	Regulation 3(3)(d)
The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999	S.R. 1999 No. 162	Regulation 3(5D)
The Social Security (Claims and Information) Regulations (Northern Ireland) 2001	S.R. 2001 No. 175	Paragraph 2(2) of Schedule 2
The Social Security (Claims and Payments and Miscellaneous Amendments) Regulations (Northern Ireland) 2003	S.R. 2003 No. 317	Regulation 2(2)(c)
The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2006	S.R. 2006 No. 168	Regulation 2(6)
The Employment and Support Allowance (Consequential Provisions) Regulations (Northern Ireland) 2008	S.R. 2008 No. 286	Regulation 13(6)
The Social Security (Miscellaneous Amendments No. 4) Regulations (Northern Ireland) 2008	S.R. 2008 No. 417	Regulation 2(3)(d)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 (“the Claims and Payments Regulations”) and the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 (“the Decisions and Appeals Regulations”).

Regulation 2 amends the Claims and Payments Regulations to—

enable the Department for Social Development (“the Department”) to specify a postal address to which a claim in writing or other written material is to be submitted (paragraph (2));

provide for Category B retirement pension to be awarded without the need to make a claim if the beneficiary’s deceased spouse or civil partner was entitled to a Category A retirement pension (paragraph (3));

make further amendments consequential on the introduction of employment and support allowance (paragraphs (4)(a), (5) and (7));

bring the provisions of regulations 4 and 6 on telephone claims more closely into line with those relating to written claims (paragraphs (4)(b), (c), (e) and (f) and (6)(a) to (f));

allow the Department flexibility to accept telephone claims for income support or jobseeker’s allowance at its discretion as well as in relation to categories of cases (paragraph (4)(d));

reinstate a provision which was previously omitted in error regarding the time for providing a properly completed claim form (paragraph (6)(g)); and

include service charges for certain premises provided and maintained by virtue of Article 4(2) of the Probation Board (Northern Ireland) Order 1982 in payments that may be made to third parties (paragraph (8)).

Regulation 3 amends the Decisions and Appeals Regulations to—

provide that a decision may be revised where an award for income support is terminated and the claimant goes on to successfully claim jobseeker’s allowance but the termination is subsequently revised or reversed on appeal (paragraph (2)(c)); and

make minor clarificatory amendments (paragraphs (2)(a) and (b) and (3)).

Regulation 4 makes consequential revocations.

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.

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SOCIAL SECURITY

The Social Security (Miscellaneous Amendments No. 2)
Regulations (Northern Ireland) 2009

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