

2012 No. 121

HOUSING; RATES; SOCIAL SECURITY

**The Social Security (Miscellaneous Amendments) Regulations
(Northern Ireland) 2012**

Made - - - - *14th March 2012*

Coming into operation in accordance with regulation 1

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 122(1)(a) and (d), 123(1)(d) and (e), 132(3) and (4)(b), 132A(3), 133(2)(i), 134(2), and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a), sections 5(1)(j) and (n), 69(4) and 165(1), (4) and (5) of the Social Security Administration (Northern Ireland) Act 1992(b), Articles, 14(4)(b) and 36(1) and (2) of the Jobseekers (Northern Ireland) Order 1995(c), Articles 11(6) and 74(1), (3) and (4) of the Social Security (Northern Ireland) Order 1998(d), and now vested in it(e), and section 59 of, and paragraph 4(3) and 20(1) of Schedule 7 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(f), section 15(1)(e) and (3) and 19(1) to (3) of the State Pension Credit Act (Northern Ireland) 2002(g) and sections 1(2), 25(1) and (2), 28(2) and 29 of, and paragraphs 1(4)(a), 6(5) of Schedule 1 and paragraphs 1(1) and 7(1)(a) of Schedule 4 to, the Welfare Reform Act (Northern Ireland) 2007(h).

Regulations 6, 7 and 10 are made with the consent of the Department of Finance and Personnel(i).

The Social Security Advisory Committee has agreed that proposals in respect of regulations 6, 7 and 10 should not be referred to it(j).

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- (a) 1992 c. 7; section 123(1)(d) was substituted by paragraph 13(4) and section 123(1)(e) was inserted by paragraph 13(5) of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)) and the word “and” was repealed by Schedule 3 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)), section 132A was inserted by paragraph 3 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)), section 133(2)(d) was substituted by paragraph 18(3) of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995, and section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)
- (b) 1992 c. 8; 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)
- (c) S.I. 1995/2705 (N.I. 15); Article 36(2) was amended by paragraph 55 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999
- (d) 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
- (e) See Article 8(b) of S.R. 1999 No. 481
- (f) 2000 c. 4 (N.I.)
- (g) 2002 c. 14 (N.I.)
- (h) 2007 c. 2 (N.I.); paragraph 1(4)(a) of Schedule 1 was amended by section 12(5)(a) and (b) of the Welfare Reform Act (Northern Ireland) 2010 (c. 13 (N.I.))
- (i) See section 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as inserted by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8)); see also Article 6(b) of S.R. 1999 No. 481
- (j) See section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992

PART 1

GENERAL

Citation and commencement

1.—(1) These Regulations may be cited as the Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2012 and, subject to paragraph (2), shall come into operation on 1st April 2012.

(2) This regulation and regulations 6, 7 and 10 shall come into operation on 2nd April 2012 in relation to any case where rent is payable at intervals of a week, or any multiple of whole weeks, and in any other case on 1st April 2012.

(3) Regulations 18(2) and 19 shall come into operation on 1st May 2012.

Interpretation

2.—(1) In these Regulations—

“the Income Support Regulations” means the Income Support (General) Regulations (Northern Ireland) 1987(a);

“the Housing Benefit Regulations” means the Housing Benefit Regulations (Northern Ireland) 2006(b); and

“the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations (Northern Ireland) 2008(c).

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

PART 2

PATERNITY LEAVE AND PATERNITY PAY PAYMENTS

Amendments relating to paternity leave and paternity pay: income support

3.—(1) The Income Support Regulations are amended in accordance with paragraphs (2) to (4).

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

““paternity leave” means a period of absence from work on ordinary paternity leave by virtue of Article 112A or 112B of the Employment Rights (Northern Ireland) Order 1996(f) or on additional paternity leave by virtue of Article 112AA or 112BB of that Order 1996(g);”.

(3) In paragraph 14B of Schedule 1B(h) (prescribed categories of person: paternity leave)—

(a) in sub-paragraph (1) for “paternity leave” substitute “ordinary paternity leave by virtue of Article 112A or 112B of the Employment Rights (Northern Ireland) Order 1996”; and

(a) S.R. 1987 No. 459; relevant amending Regulations are S.R. 1988 No. 146, S.R. 1993 No. 373, S.R. 1996 No. 199, S.R. 2002 No. 363, S.R. 2008 No. 112 and S.R. 2009 Nos. 92 and 338

(b) S.R. 2006 No. 405; relevant amending Regulations are S.R. 2009 No. 92 and S.R. 2010 No. 69

(c) S.R. 2008 No. 280; relevant amending Regulations are S.R. 2010 No. 346 and S.R. 2011 Nos. 357 and 434

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

(e) The definition of “paternity leave” was inserted by regulation 2(2)(b) of S.R. 2002 No. 363

(f) S.I. 1996/1919 (N.I.16); Articles 112A and 112B were inserted by Article 4 of the Employment (Northern Ireland) Order 2002 (S.I. 2002 No. 2836 (N.I. 2))

(g) Articles 112AA and 112BB were inserted by Articles 5 and 6 respectively of the Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N. I. 16))

(h) Schedule 1B was inserted by regulation 22 of S.R. 1996 No. 199 and paragraph 14B was inserted by regulation 2(5) of S.R. 2002 No. 363

- (b) in sub-paragraph (2)(a) for “statutory paternity pay” substitute “ordinary statutory paternity pay”.
- (4) In Schedule 9 (sums to be disregarded in the calculation of income other than earnings)—
 - (a) in paragraph 4(a) for “statutory paternity pay” substitute “ordinary or additional statutory paternity pay”; and
 - (b) in paragraph 4A(b) for “statutory paternity pay” substitute “ordinary or additional statutory paternity pay”.

Amendments relating to paternity leave and paternity pay: jobseeker’s allowance

4.—(1) The Jobseeker’s Allowance Regulations (Northern Ireland) 1996(c) are amended in accordance with paragraphs (2) and (3).

- (2) In regulation 1(2) (interpretation) for the definition of “paternity leave”(d) substitute—
 - ““paternity leave” means a period of absence from work on ordinary paternity leave by virtue of 112A or 112B of the Employment Rights (Northern Ireland) Order 1996 or on additional paternity leave by virtue of section Article 112AA or 112BB of that Order;”.
- (3) In Schedule 6 (sums to be disregarded in the calculation of income other than earnings)—
 - (a) in paragraph 4(e) for “statutory paternity pay” substitute “ordinary or additional statutory paternity pay”; and
 - (b) in paragraph 5(f) for “statutory paternity pay” substitute “ordinary or additional statutory paternity pay”.

Amendments relating to paternity leave and paternity pay: state pension credit

5.—(1) The State Pension Credit Regulations (Northern Ireland) 2003(g) are amended in accordance with paragraphs (2) to (4).

- (2) In regulation 1(2) (interpretation) for the definition of “paternity leave”(h) substitute—
 - ““paternity leave” means a period of absence from work on ordinary paternity leave by virtue of Article 112A or 112B of the Employment Rights (Northern Ireland) Order 1996 or on additional paternity leave by virtue of Article 112AA or 112BB of that Order;”.
- (3) In regulation 15(1) (income for the purposes of the Act) for sub-paragraph (p) substitute—
 - “(p) ordinary statutory paternity pay payable under Part XIIZA of the Contributions and Benefits Act(i);
 - (pa) additional statutory paternity pay payable under Part XIIZA of the Contributions and Benefits Act;”.
- (4) In regulation 17A(2)(j) (earnings of employed earners) for sub-paragraph (i) substitute—
 - “(i) ordinary statutory paternity pay payable under Part XIIZA of the Contributions and Benefits Act;
 - (ia) additional statutory paternity pay payable under Part XIIZA of the Contributions and Benefits Act;”.

- (a) Paragraph 4 was amended by regulation 2(6)(a) of S.R. 2002 No. 363
- (b) Paragraph 4A was inserted by regulation 36(a) of S.R. 1988 No. 146 and amended by regulation 2(6)(b) of S.R. 2002 No. 363 and regulation 2(16)(a) of S.R. 2008 No. 112
- (c) S.R. 1996 No. 198; relevant amending Regulation is S.R. 2002 No. 363
- (d) The definition of “paternity leave” was inserted by regulation 3(2)(b) of S.R. 2002 No. 363
- (e) Paragraph 4 was amended by regulation 3(5)(a) of S.R. 2002 No. 363
- (f) Paragraph 5 was amended by regulation 3(5)(b) of S.R. 2002 No. 363
- (g) S.R. 2003 No. 28; relevant amending Regulations are S.I. 2003 No. 2175 and S.R. 2003 No. 421
- (h) The definition of “paternity leave” was inserted by regulation 2(2)(b) of S.R. 2003 No. 421
- (i) Part XIIZA was inserted by Article 5 of the Employment (Northern Ireland) Order 2002
- (j) Regulation 17A was inserted by regulation 5 of S.I. 2003 No. 2175

Amendments relating to paternity leave and paternity pay: housing benefit for those not of pensionable age

- 6.—(1) The Housing Benefit Regulations are amended in accordance with paragraphs (2) to (5).
- (2) In regulation 2(1) (interpretation) for the definition of “paternity leave” substitute—
- ““paternity leave” means a period of absence from work on ordinary paternity leave by virtue of Article 112A or 112B of the Employment Rights Order or on additional paternity leave by virtue of Article 112AA or 112BB of that Order;”.
- (3) In regulation 25(14) (treatment of child care charges)—
- (a) in sub-paragraph (a)(iii) for “statutory paternity pay by virtue of section 167ZA or 167ZB of the Act (a)” substitute “ordinary statutory paternity pay by virtue of section 167ZA or 167ZB of the Act, additional statutory paternity pay by virtue of section 167ZEA or 167ZEB of the Act(b)”; and
- (b) in sub-paragraph (b)(ii) and (iii) for “statutory paternity pay” in each place substitute “ordinary or additional statutory paternity pay”.
- (4) In regulation 32(1)(i) (earnings of employed earners) for “statutory paternity pay” substitute “ordinary or additional statutory paternity pay”.
- (5) In regulation 33(3)(d) (calculation of net earnings of employed earners) for “statutory paternity pay” substitute “ordinary or additional statutory paternity pay”.

Amendments relating to paternity leave and paternity pay: housing benefit for those of pensionable age

- 7.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(c) are amended in accordance with paragraphs (2) to (6).
- (2) In regulation 2(1) (interpretation) for the definition of “paternity leave” substitute—
- ““paternity leave” means a period of absence from work on ordinary paternity leave by virtue of Article 112A or 112B of the Employment Rights Order or on additional paternity leave by virtue of Article 112AA or 112BB of that Order;”.
- (3) In regulation 27(1)(h) (meaning of income) for head (xiv) substitute—
- “(xiv) ordinary statutory paternity pay payable under Part XIIZA of the Act;
(xiva) additional statutory paternity pay payable under Part XIIZA of the Act;”.
- (4) In regulation 29 (treatment of child care charges)—
- (a) in paragraph (14)(c) for “statutory paternity pay by virtue of 167ZA or 167ZB of the Act” substitute “ordinary statutory paternity pay by virtue of section 167ZA or 167ZB of the Act, additional statutory paternity pay by virtue of section 167ZEA or 167ZEB of the Act”; and
- (b) in paragraph (15)(b) and (c) for “statutory paternity pay” substitute “ordinary or additional statutory paternity pay”.
- (5) In regulation 33(1) (earnings of employed earners) for sub-paragraph (i) substitute—
- “(i) ordinary statutory paternity pay payable under Part XIIZA of the Act;
(ia) additional statutory paternity pay payable under Part XIIZA of the Act;”.
- (6) In regulation 34(2)(d) (calculation of net earnings of employed earners) for “statutory paternity pay” substitute “ordinary or additional statutory paternity pay”.

(a) Sections 167ZA and 167ZB were inserted by Article 5 of the Employment (Northern Ireland) Order 2002

(b) Sections 167ZEA and 167ZEB were inserted by Article 8 of the Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16))

(c) S.R. 2006 No. 406

Amendments relating to paternity leave and paternity pay: employment and support allowance

8. In regulation 2(1) of the Employment and Support Allowance Regulations (interpretation) after the definition of “passenger” insert—

““paternity leave” means a period of absence from work on ordinary paternity leave by virtue of Article 112A or 112B of the Employment Rights Order or on additional paternity leave by virtue of Article 112AA or 112BB of that Order;”;

PART 3

AMENDMENTS RELATING TO FULL-TIME, NON-ADVANCED EDUCATION

Amendments relating to full-time, non-advanced education: income support

9. In paragraph 15A of Schedule 1B(a) to the Income Support Regulations (prescribed categories of person: persons under 21 with no parents, or living away from their parents, undertaking full-time, non-advanced education)—

(a) for the heading, substitute—

“Certain persons who have enrolled on, been accepted for or are undertaking full-time, non-advanced education”; and

(b) for sub-paragraphs (1) to (4) substitute—

“(1) A person who satisfies the following conditions.

(2) The first condition is that he has enrolled on, been accepted for or is undertaking a course of full-time, non-advanced education.

(3) The second condition is that he is—

(a) under the age of 21; or

(b) 21 and attained that age whilst undertaking a course of full-time, non-advanced education.

(4) The third condition is that—

(a) he has no parent;

(b) of necessity he has to live away from his parents because—

(i) he is estranged from his parents,

(ii) he is in physical or moral danger, or

(iii) there is a serious risk to his physical or mental health; or

(c) he is living away from his parents because they are unable to support him financially and are—

(i) chronically sick or mentally or physically disabled,

(ii) detained in custody pending trial or sentencing upon conviction or under a sentence imposed by a court, or

(iii) prohibited from entering or re-entering Northern Ireland.”;

(c) omit sub-paragraph (5); and

(a) Schedule 1B was inserted by regulation 22 of S.R. 1996 No. 199; paragraph 15A was inserted by regulation 2(11)(b) of S.R. 2009 No. 92 and amended by regulation 2(13)(b) of S.R. 2009 No. 338

- (d) in sub-paragraph (6) for the definition of “course of full-time, non-advanced education” substitute—

““course of full-time, non-advanced education” means a course of full-time education which is not a course of advanced education and which is not provided to the person by virtue of his employment or any office held by him, which is—

- (a) provided at a school or college; or
- (b) provided elsewhere but is approved by the Department as being such a course, and for this purpose, “a course of advanced education” has the same meaning as in regulation 61(1);”.

Amendments relating to full-time non-advanced education: housing benefit

10. In regulation 53 of the Housing Benefit Regulations (full-time students to be treated as not liable to make payments in respect of a dwelling)—

- (a) for paragraph (2)(h)(a) substitute—

“(h) who is—

- (i) aged under 21 and whose course of study is not a course of higher education;
- (ii) aged 21 and attained that age during a course of study which is not a course of higher education; or
- (iii) a qualifying young person or child within the meaning of section 138 of the Act(b) (child and qualifying young person);”;

- (b) for paragraph (2A)(c) substitute—

“(2A) Paragraph (2)(h)(ii) only applies to a claimant until the end of the course during which the claimant attained the age of 21.”.

PART 4

OTHER AMENDMENTS

Amendment of the Statutory Sick Pay (General) Regulations

11. In regulation 2(1)(b)(d) of the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982(e) (persons deemed incapable of work) for sub-paragraphs (bb), (cc) and (dd) substitute—

“(bb) regulations 8 and 9 of the Public Health (Ships) Regulations (Northern Ireland) 2008(f) (examination etc., of persons on ships and powers in respect of persons leaving ships) apply;

(cc) regulations 7 and 8 of the Public Health (Aircraft) Regulations (Northern Ireland) 2008(g) (examination etc., of persons on aircraft and powers in respect of persons leaving aircraft) apply;”.

(a) Sub-paragraph (h) was amended by regulation 6(6)(a) of S.R. 2009 No. 92
(b) Section 138 was substituted by section 2(2) of the Child Benefit Act 2005 (c. 6); *see also* regulation 2 of S.I. 2006/223
(c) Paragraph (2A) was inserted by regulation 6(6)(b) of S.R. 2009 No. 92 and amended by regulation 8(7) of S.R. 2010 No. 69
(d) Sub-paragraph (b) was substituted by regulation 2 of S.R. 2006 No. 142 and amended by regulation 6 of S.R. 2011 No. 357
(e) S.R. 1982 No. 263; relevant amending Regulations are S.R. 2006 No. 142 and S.R. 2011 No. 357
(f) S.R. 2008 No. 333
(g) S.R. 2008 No. 436

Amendment of the Income Support Regulations: persons in relevant education

12. In regulation 13(3)(b) of the Income Support Regulations(a) (circumstances in which persons in relevant education are to be entitled to income support)—

(a) at the end of head (iii) add “; or”

(b) after head (iii) add

“(iv) who is entitled to an employment and support allowance which includes a work-related activity component or support component.”.

Amendment of the Social Security (Claims and Payments) Regulations

13.—(1) The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(b) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 21 (direct credit transfer)—

(a) in paragraph (1)(c) for the words from the beginning to “regulation 33(1)(c),” substitute “The Department may arrange for benefit to”; and

(b) omit paragraph (5).

(3) In regulation 37(1)(bb)(d) (extinguishment of right to payment of sums by way of benefit where payment is not obtained within the prescribed period) for “the person entitled to it and the Department have” substitute “the Department has”.

Amendment of the Social Security (Payments on Account, Overpayments and Recovery) Regulations

14. In regulation 11(2)(b)(ii) of the Social Security (Payments on Account, Overpayments and Recovery) Regulations (Northern Ireland) 1988 (e) (recovery of overpayments by automated or other direct credit transfer) for “before he agreed to the arrangement” substitute “before the arrangement came into effect”.

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

15. In regulation 7(7)(b)(i)(f) of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(g) (date from which a decision superseded under Article 11 takes effect) after “Income Support Regulations” insert “; regulation 2 of the Jobseeker’s Allowance Regulations”.

Amendment of the Social Fund Winter Fuel Payment Regulations

16.—(1) The Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000(h) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 3(1)(a)(i) (persons not entitled to a social fund winter fuel payment) for “in the qualifying week” substitute “throughout the qualifying week”.

(3) In both regulation 3(1)(b) and (2)(a) and regulation 4(1) (making a winter fuel payment without a claim) for “before the 31st March” substitute “on or before the 31st March”.

(a) Regulation 13(3)(b) was amended by regulation 2(3) of S.R. 2009 No. 338

(b) S.R. 1987 No. 465; relevant amending Regulations are S.R. 2002 No. 297, S.R. 2005 No. 46 and S.R. 2006 No. 168

(c) Paragraph (1) was substituted by regulation 2(2)(a) of S.R. 2002 No. 297 and amended by regulation 2(11) of S.R. 2006 No. 168

(d) Regulation 37(1)(bb) was inserted by regulation 5(8)(a) of S.R. 2005 No. 46

(e) S.R. 1988 No. 142; regulation 11(2)(b) was substituted by regulation 3 of S.R. 2005 No. 14

(f) Regulation 7(7) was substituted by regulation 4(4)(b) of S.R. 2006 No. 168 and amended by regulation 22(5)(d) of S.R. 2008 No. 286

(g) S.R. 1999 No. 162

(h) S.R. 2000 No. 91; relevant amending Regulation is S.R. 2010 No. 103

(i) Regulation 3(1) was amended by regulation 6(4) of S.R. 2010 No. 103

Amendment of the Housing Benefit (Decisions and Appeals) Regulations

17. In regulation 1(2) of the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001(a) (interpretation) in the definition of “official error”(b) for “paragraphs (a) to (c)” substitute “paragraph (a) or (b)”.

Amendment of the Employment and Support Allowance Regulations

18.—(1) The Employment and Support Allowance Regulations are amended in accordance with paragraphs (2) to (4).

(2) In regulation 8(2)(c) (relaxation of the first contribution condition)—

- (a) at the end of sub-paragraph (c) add “or”;
- (b) at the end of sub-paragraph (ca)(d) omit “; or”; and
- (c) omit sub-paragraph (d).

(3) In regulation 14 (meaning of education) after paragraph (2) add—

“(2A) Paragraph (2) does not apply to any course of study which the claimant is required to attend for the purpose of meeting a requirement to undertake work-related activity.”.

(4) In regulation 44(e) (claimants who are treated as not entitled to any allowance at all by reason of regulation 40(1) are to be treated as not having limited capability for work) after paragraph (1) insert—

“(2) Paragraph (1) does not apply where the claimant remains entitled to a contributory allowance, but is not entitled to an income-related allowance by reason of regulation 40(1).”.

Amendment of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland)

19. In regulation 16 of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010(f) (application of other statutory provisions applying to employment and support allowance) after paragraph (1) insert—

“(1A) Where—

- (a) a person makes a claim for an employment and support allowance subsequent to the termination of that person’s entitlement to an employment and support allowance by virtue of these Regulations; and
- (b) the period of limited capability for work in relation to that claim would link, by virtue of regulation 145(1) of the 2008 Regulations, to a period of limited capability for work in respect of which an award was made by virtue of these Regulations,

that person’s entitlement to an award of an employment and support allowance shall be determined in accordance with these Regulations.”.

(a) S.R. 2001 No. 213; relevant amending Regulations are S.R. 2002 No. 189 and S.R. 2003 No. 274
(b) The definition of “official error” was amended by regulation 3(2)(b) of S.R. 2002 No.189 and paragraph 7(a)(ii) of Schedule 2 to S.R. 2003 No. 274
(c) Regulation 8 was amended by regulation 3(3) of S.R. 2010 No. 346 and regulation 21(3) of S.R. 2011 No. 357
(d) Sub-paragraph (ca) was inserted by regulation 3 of S.R. 2011 No. 434
(e) Regulation 44(2) was revoked by regulation 26 and the Schedule to S.R. 2011 No. 357
(f) S.R. 2010 No. 312

Revocations

20. The provisions 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 14th March 2012

(L.S.)

Anne McCleary

A senior officer of the Department for Social Development

The Department of Finance and Personnel consents to regulations 6, 7 and 10.

Sealed with the Official Seal of the Department of Finance and Personnel on 14th March 2012

(L.S.)

John McKibbin

A senior officer of the Department of Finance and Personnel

SCHEDULE

Regulation 20

Revocations

<i>Column (1)</i> <i>Citation</i>	<i>Column (2)</i> <i>Reference</i>	<i>Column (3)</i> <i>Extent of revocation</i>
The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987	S.R. 1987 No. 465	Regulation 21(5)
The State Pension Credit (Transitional and Miscellaneous Provisions) (Amendment) Regulations (Northern Ireland) 2003	S.R. 2003 No. 421	Regulation 2(2)(b)
The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2006	S.R. 2006 No. 168	Regulation 2(11)
The Employment and Support Allowance Regulations (Northern Ireland) 2008	S.R. 2008 No. 280	Regulation 8(2)(d)
The Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2009	S.R. 2009 No. 92	Regulation 6(6)
The Social Security (Miscellaneous Amendments No. 4) Regulations (Northern Ireland) 2009	S.R. 2009 No. 338	Regulation 2(13)(b)
The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2010	S.R. 2010 No. 69	Regulation 8(7)
The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2011	S.R. 2011 No. 357	Regulation 6(b)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend various sets of social security regulations.

Part 2 makes amendments relating to the introduction of additional paternity leave and additional statutory paternity pay. Regulations 3, 4 and 8 respectively amend the Income Support (General) Regulations (Northern Ireland) 1987 (“the Income Support Regulations”), the Jobseeker’s Allowance Regulations (Northern Ireland) 1996 and the Employment and Support Allowance Regulations (Northern Ireland) 2008 (“the Employment and Support Allowance Regulations”). This is so that references in those regulations to paternity leave are references both to ordinary paternity leave and additional paternity leave. However, the relevant disregards for income in relation to national insurance and pension contributions will apply to additional statutory paternity pay and remuneration while a person is on additional paternity leave.

Regulations 5, 6 and 7 respectively amend the State Pension Credit Regulations (Northern Ireland) 2003, the Housing Benefit Regulations (Northern Ireland) 2006 (“the Housing Benefit Regulations”), and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006. These ensure that all references in those

regulations to paternity leave include both ordinary and additional paternity leave and references to statutory paternity pay include both ordinary and additional statutory paternity pay.

Part 3 amends the Income Support Regulations and the Housing Benefit Regulations to make changes to the circumstances where a claimant is entitled to those benefits where they are in full-time non-advanced education.

In relation to income support, the amendments made by regulation 9 will apply where the claimant has enrolled on, been accepted for or is undertaking a course of full-time, non-advanced education, is either below the age of 21 or is 21 and attained that age whilst taking part in the course, and in either case has no parents or lives apart from them in the circumstances set out in new sub-paragraph (4) of paragraph 15A of Schedule 1B to the Income Support Regulations. Regulation 9 also changes the definition of “course of full-time, non-advanced education” so that it applies to any course of full-time education which is not advanced education, is not provided because of the claimant’s employment or office and which is either provided at a school or college or provided elsewhere but approved by the Department.

In relation to Housing Benefit, the amendments made by regulation 10 extend the circumstances in which a full-time student whose course of study is not higher education, is exempt from the usual rule that provides that full-time students are to be treated as not being liable to make payments in respect of a dwelling. The amendment also extends the exemption from that rule to full-time students who are 21 and attained that age whilst undertaking a course of study which is not higher education but only until the end of the course. It also removes the requirement that the full-time student began, enrolled on or was accepted for the course before attaining the age of 19.

Part 4 makes other amendments.

Regulation 11 makes a technical amendment to the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982.

Regulation 12 amends the Income Support Regulations so that a person will fall within the definition of “chronically sick or mentally or physically disabled” for the purposes of regulation 13 of those Regulations if they are entitled to the work-related activity component or the support component of employment and support allowance.

Regulation 13 amends the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987. Paragraph 2(a) clarifies that payment of benefit by direct credit need not be by arrangement with the recipient of the benefit payment. This will enable payment to be arranged in those exceptional cases where the recipient does not wish their own bank or other account to be used. Paragraphs 2(b) and (3) make consequential amendments to those Regulations and regulation 14 makes a consequential amendment to the Social Security (Payments on Account, Overpayments and Recovery) Regulations (Northern Ireland) 1988.

Regulation 15 amends the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 to provide that where a person is claiming a jobseeker’s allowance and would be entitled to a severe disability premium if a non-dependant were not in the household, where the non-dependant leaves the household, the superseding decision takes effect on the same date as it would if the person were claiming income support, employment and support allowance or state pension credit.

Regulation 16 amends the Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000. This is to clarify that a claimant only has to satisfy the qualifying conditions for a winter fuel payment throughout the qualifying week and not just for one day in that week and to provide that all winter fuel payment claim forms must be received by the Department on or before the 31st March following the relevant winter period.

Regulation 17 makes a minor amendment to regulation 1(2) of the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001 to remove a reference to a revoked paragraph (c) in the definition of “official error”.

Regulation 18 amends the Employment and Support Allowance Regulations. Paragraph 2(c) revokes regulation 8(2)(d). Regulation 8 provides that a claimant who satisfies any of the conditions in paragraph (2) is to be taken to satisfy the first contribution condition for entitlement to an employment and support allowance (“ESA”). Paragraph 2(d) applies in respect of a claimant who on the first day of a period of limited capability for work, had received an award of contributory ESA in the last complete tax year immediately preceding the relevant benefit year in which entitlement to contributory ESA is being decided.

Paragraph (3) amends regulation 14. Paragraph 6 of Schedule 1 to the Welfare Reform Act (Northern Ireland) 2007 (c. 2) prescribes that a person is not entitled to income-based ESA if they are receiving education. Regulation 14 defines the term “education” for that purpose. That definition is amended to exempt any course of study that would otherwise fall within that definition where the claimant has been required to participate in it in order to meet a requirement to undertake work-related activity.

Paragraph (4) is an amendment to remake a previously revoked regulation.

Regulation 19 amends regulation 16 of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 (“the Reassessment Regulations”). The Reassessment Regulations make transitional provision in relation to the introduction of ESA and apply to existing awards of benefit (that is, incapacity benefit, severe disablement allowance and income support on grounds of disability).

Regulation 16 of the Reassessment Regulations provides that certain enactments apply (subject to the modifications specified in Schedule 2 to those Regulations) after an existing award has been converted to an award of ESA, for certain purposes.

Regulation 19 of these Regulations adds paragraph (1A) to regulation 16 of the Reassessment Regulations. It applies where a claim for ESA is made subsequent to the termination of that person’s ESA entitlement by virtue of the Reassessment Regulations and the period of limited capability for work in relation to that subsequent claim would link to a period of limited capability for work in respect of an award made under the Reassessment Regulations. In those circumstances, paragraph (1A) ensures that the claimant’s entitlement to an ESA award is to be determined in accordance with the Reassessment Regulations.

Regulation 20 makes consequential revocations.

In so far as these Regulations are required, for the purposes of regulations 6, 7 and 10, to be referred to the Social Security Advisory Committee under section 149(2) of the Social Security Administration (Northern Ireland) Act 1992, after agreement by the Social Security Advisory Committee, they have not been so referred by virtue of section 150(1)(b) of that Act. Otherwise they 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, that Act, are not subject to the requirement of section 149(2) or, as the case may be, (2A) of that section for prior reference to the Social Security Advisory Committee or the Industrial Injuries Advisory Council.

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