STATUTORY RULES OF NORTHERN IRELAND

2017 No. 79

SOCIAL SECURITY

The Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) (Amendment) Regulations (Northern Ireland) 2017

Made - - - -	*19th April 2017*
Laid before Parliament	*20th April 2017*
Coming into operation in accordance with regulation 1	

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 122(1)(a) and (d), 131(1), 132(3) and (4)(b), 133 and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 [F1], Articles 2(2), 6(5) and 14(1) and (4)(b) of the Jobseekers (Northern Ireland) Order 1995 [F2], Articles 9(5)(b), 15(4), 16(3)(b) and (c), 17(1) and (4)(b), 24(2)(d), 25(1)(b), 29(7) and 48(1) and (2) of, and paragraphs 4(1)(a) and (3)(a) and 5(1) of Schedule 1 and paragraphs 1(1) and 3(1)(b) of Schedule 6 to, the Welfare Reform (Northern Ireland) Order 2015 [F3] and Articles 10(6) and 22 of the Welfare Reform and Work (Northern Ireland) Order 2016 [F4].

Those powers are exercisable by the Secretary of State by virtue of Article 4(1)(a) and (b) of the Welfare Reform (Northern Ireland) Order 2015.

F1 1992 c. 7; section 133 is cited for the meaning of "prescribed"; section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21).
F2 S.I. 1995/2705 (N.I. 15); Article 2(2) is cited for the meaning of "prescribed" and "regulations".
F3 S.I. 2015/2006 (N.I. 1)
F4 S.I. 2016/999 (N.I. 1)

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) (Amendment) Regulations (Northern Ireland) 2017.

(2) This regulation and regulations 4 to 8 come into operation on 11th May 2017.

(3) Regulations 2 and 3 come into operation immediately after the coming into operation of the Universal Credit Regulations (Northern Ireland) 2016 [F5].

(4) The Interpretation Act (Northern Ireland) 1954 [F6] shall apply to these Regulations as it applies to an Act of the Assembly.

F5 S.R. 2016 No. 216
F6 1954 c. 33 (N.I.)

Universal Credit – availability of the child element where maximum exceeded

2.—(1) The Universal Credit Regulations (Northern Ireland) 2016 are amended in accordance with paragraphs (2) to (4).

(2) In regulation 2 (interpretation) after the definition of "statutory sick pay" insert—

""step-parent" in relation to a child or qualifying young person ("A"), means a person who is not A's parent but—

(a) is a member of a couple, the other member of which is a parent of A, where both are responsible for A; or

(b) was previously a member of a couple, the other member of which was a parent of A, where immediately prior to ceasing to be a member of that couple the person was, and has since continued to be, responsible for A."

(3) After regulation 25 (the child element) insert—

"**Availability of the child element where maximum exceeded**

25A.—(1) Where a claimant is responsible for more than two children or qualifying young persons, the amount mentioned in Article 15(1) of the Order is to be available in respect of—

(a) the first and second children or qualifying young persons in the claimant's household; and

(b) the third and any subsequent child or qualifying young person in the claimant's household if—

(i) the child or qualifying young person is transitionally protected; or

(ii) an exception applies in relation to that child or qualifying young person.

(2) A reference in paragraph (1) to a child or qualifying young person being the first, second, third or subsequent child or qualifying young person in the claimant's household is a reference to the position of that child or qualifying young person in the order determined in accordance with regulation 25B.

(3) A child or qualifying young person is "transitionally protected" in the circumstances set out in regulation 41 of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016 [F7].

(4) An exception applies in relation to a child or qualifying young person in the circumstances set out in Schedule 12 (availability of the child element where maximum exceeded – exceptions) [F8].

Order of children and qualifying young persons

25B.—(1) Subject to paragraph (2), the order of children or qualifying young persons in a claimant's household is to be determined by reference to the following date in relation to each child or qualifying young person for whom the claimant is responsible ("A"), taking the earliest date first—

(a) where the claimant, or if the claimant is a member of a couple, the other member, is A's parent or step-parent (in either case, other than by adoption), A's date of birth; or

(b) in any other case, the date on which the claimant became responsible for A (or in the case of joint claimants where each of them became responsible for A on a different date, the earlier date).

(2) In a case where—

(a) the date in relation to two or more children or qualifying young persons for whom the claimant is responsible (as determined under paragraph (1)) is the same date; or

(b) a claimant gave birth to a child less than 10 months after becoming responsible for a child or qualifying young person to whom paragraph 4 of Schedule 12 (non-parental caring arrangements) applies,

the order of those children or qualifying young persons (as between themselves only) in the claimant's household is the order determined by the Department that ensures that the amount mentioned in Article 15(1) of the Order is available in respect of the greatest number of children or qualifying young persons.

(3) In this regulation and Schedule 12, "claimant" means a single claimant or either of joint claimants.".

(4) After Schedule 11 (application of ESA or JSA sanctions to universal credit) insert—

"SCHEDULE 12 Regulation 25A(4)

Availability of the child element where maximum exceeded - exceptions

Introduction

1. This Schedule provides for cases where, for the purposes of regulation 25A (availability of the child element where maximum exceeded), an exception applies in relation to a child or qualifying young person for whom a claimant is responsible ("A").

Multiple births

2. An exception applies where—

(a) the claimant is a parent (other than an adoptive parent) of A;

(b) A was one of 2 or more children born as a result of the same pregnancy;

(c) the claimant is responsible for at least 2 of the children or qualifying young persons born as a result of that pregnancy; and

(d) A is not the first in the order of those children or qualifying young persons as determined under regulation 25B (order of children and qualifying young persons).

Adoptions

3. An exception applies where A has been placed for adoption with, or adopted by, the claimant in accordance with the Adoption (Northern Ireland) Order 1987 [F9], but not where—

(a) the claimant (or, if the claimant is a member of a couple, the other member)—

(i) was a step-parent of A immediately prior to the adoption; or

(ii) has been a parent of A (other than by adoption) at any time;

(b) the adoption order made in respect of A was made as a Convention adoption order [F10] (as defined in Article 2(2) of the Adoption (Northern Ireland) Order 1987); or

(c) prior to that adoption, A had been adopted by the claimant (or, if the claimant is a member of a couple, the other member) under the law of any country or territory outside the British Islands.

Non-parental caring arrangements

4.—(1) An exception applies where the claimant—

(a) is a friend or family carer in relation to A; or

(b) is responsible for a child who is a parent of A.

(2) In this paragraph, "friend or family carer" means a person who is responsible for A, but is not (or, if that person is a member of a couple, neither member is) A's parent or step-parent and—

(a) is named in a residence order under Article 8 of the Children (Northern Ireland) Order 1995 [F11], that is in force with respect to A, as a person with whom A is to live;

(b) is entitled to a guardian's allowance under section 77 of the Contributions and Benefits Act in respect of A;

(c) is a guardian of A appointed under Articles 159 and 160 of the Children (Northern Ireland) Order 1995;

(d) fell within any of paragraphs (a) to (c) immediately prior to A's 16th birthday and has since continued to be responsible for A; or

(e) has undertaken the care of A in circumstances in which it is likely that A would otherwise be looked after by an authority.

Non-consensual conception

5.—(1) An exception applies where—

(a) the claimant ("C") is A's parent; and

(b) the Department determines that—

(i) A is likely to have been conceived as a result of sexual intercourse to which C did not agree by choice, or did not have the freedom and capacity to agree by choice; and

(ii) C is not living at the same address as the other party to that intercourse ("B").

(2) The circumstances in which C is to be treated as not having the freedom or capacity to agree by choice to the sexual intercourse are to include (but are not limited to) circumstances in which, at around the time A was conceived—

(a) B was personally connected to C;

(b) B was repeatedly or continuously engaging in controlling behaviour or coercive behaviour towards C; and

(c) that behaviour had a serious effect on C.

(3) The Department may make the determination in sub-paragraph (1)(b)(i) only if—

(a) C provides evidence from an approved person which demonstrates that—

(i) C had contact with that approved person or another approved person; and

(ii) C's circumstances are consistent with those of a person to whom sub-paragraphs (1)(a) and (1)(b)(i) apply; or

(b) there has been—

(i) a conviction for—

(aa) an offence of rape under Article 5 of the Sexual Offences (Northern Ireland) Order 2008 [F12]; or

(bb) an offence under the law of a country outside Northern Ireland that the Department considers to be analogous to the offence mentioned in sub-paragraph (aa) above; or

(ii) an award under the Northern Ireland Criminal Injuries Compensation Scheme in respect of a relevant criminal injury sustained by C,

where it appears likely to the Department that the offence was committed, or the criminal injury was caused, by B and resulted in the conception of A or diminished C's freedom or capacity to agree by choice to the sexual intercourse which resulted in that conception.

(4) The Department may make the determination in sub-paragraph (1)(b)(ii) where only the available evidence is confirmation by C that that sub-paragraph applies.

(5) For the purposes of sub-paragraph (2)(a), B was personally connected to C if, at or around the time A was conceived—

(a) they were in an intimate personal relationship with each other; or

(b) they were living together and—

(i) were members of the same family; or

(ii) had previously been in an intimate personal relationship with each other.

(6) For the purposes of sub-paragraph (2)(c), B's behaviour had a serious effect on C if—

(a) it caused C to fear, on at least two occasions, that the violence would be used against C; or

(b) it caused C serious alarm or distress which had a substantial adverse effect on C's day-to-day activities.

(7) For the purposes of sub-paragraph (5)(b)(i), B and C were members of the same family if, at or around the time A was conceived—

(a) they were, or had been, married to each other;

(b) they were, or had been, civil partners of each other;

(c) they were relatives (within the meaning given by Article 2(2) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 [F13]);

(d) they had agreed to marry each other, whether or not the agreement had been terminated;

(e) they had entered into a civil partnership agreement (within the meaning given by section 197(3) of the Civil Partnership Act 2004 [F14]), whether or not the agreement had been terminated;

(f) they were both parents of the same child; or

(g) they had, or had had, parental responsibility (within the meaning given in regulation 5(2)) for the same child.

(8) In this paragraph—

"approved person" means a person of a description specified on a list approved by the Department for the purposes of sub-paragraph (3)(a) and acting in their capacity as such;

"coercive behaviour" has the meaning given in regulation 96(5);

"controlling behaviour" has the meaning given in regulation 96(5);