STATUTORY RULES OF NORTHERN IRELAND

2016 No. 223

SOCIAL SECURITY

The Social Security (Payments on Account of Benefit) Regulations (Northern Ireland) 2016

Made - - - - *3rd May 2016*

Laid before Parliament *10th May 2016*

Coming into operation in accordance with regulation 1(2) and (3)

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 5(1)(s), 165(1), (4) to (6) and 167(1) of the Social Security Administration (Northern Ireland) Act 1992(**1**) and Articles 2(2) and 74(1) and (5) of, and paragraph 9 of Schedule 2 to, the Social Security (Northern Ireland) Order 1998(**2**).

Those powers are exercisable by the Secretary of State by virtue of Article 4(1)(b) of the Welfare Reform (Northern Ireland) Order 2015(**3**).

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Social Security (Payments on Account of Benefit) Regulations (Northern Ireland) 2016.

(2) The following provisions come into operation on the day appointed for the coming into force of Article 76(1) of the 2015 Order—

(a) this Part (except the provisions specified in paragraph (3)(a) and (b));

(b) Part 2 (except the provisions specified in paragraph (3)(c) to (g));

(**1**) 1992 c. 8; section 5(1)(s) is substituted by Article 106(1) of the Welfare Reform (Northern Ireland) Order 2015 (N.I.1), in section 165 subsection (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 18(5) of the National Insurance Contributions Act 2014 (c. 7) and subsections (5A) and (5B) are inserted by Article 108(1) of the Welfare Reform (Northern Ireland) Order 2015 and section 167(1) is cited for the meaning of "prescribe" and "regulations".

(**2**) 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) and Article 2(2) is cited for the meaning of "prescribe".

(**3**) S.I. 2015/2006 (N.I. 1).

(c) Part 4.

(3) The following provisions come into operation immediately after the coming into operation of the Universal Credit Regulations—

(a) in regulation 2(1)—

(i) paragraph (a) of the definition of "couple", and

(ii) the definitions of "the UC etc. Claims and Payments Regulations", "universal credit" and "the Universal Credit Regulations";

(b) regulation 2(2) and (3)(b);

(c) regulation 3(1)(a);

(d) in regulation 3(2)—

(i) paragraph (a) of the definition of "employment and support allowance", and

(ii) paragraph (a) of the definition of "jobseeker's allowance";

(e) regulation 5(3)(b);

(f) regulation 7(2);

(g) regulation 8(2); and

(h) Part 3.

Interpretation

2.—(1) In these Regulations—

"the 2007 Act" means the Welfare Reform (Northern Ireland) Act 2007(**4**);

"the 2015 Order" means the Welfare Reform (Northern Ireland) Order 2015;

"the Claims and Payments Regulations" means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**5**);

"couple"—

(a) where these Regulations apply in relation to universal credit, has the same meaning as in Article 45 of the 2015 Order;

(b) where these Regulations apply in relation to the benefits specified in regulation 3(1)(b) to (f), has the same meaning as in section 133(1) of the Contributions and Benefits Act(**6**);

"the Jobseekers Order" means the Jobseekers (Northern Ireland) Order 1995(**7**);

"partner" means, where the person being referred to is a member of a couple, the other member of the couple;

"the UC etc. Claims and Payments Regulations" means the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016(**8**);

"universal credit" means the benefit under Part 2 of the 2015 Order;

"the Universal Credit Regulations" means the Universal Credit Regulations (Northern Ireland) 2016(**9**).

(**4**) 2007 c. 2 (N.I.).
(**5**) 1987 No. 465.
(**6**) The definition of "couple" was inserted by paragraph 99(3) of Schedule 24 to the Civil Partnership Act 2004 (c. 33).
(**7**) S.R. 1995 No. 2705 (N.I. 15).
(**8**) S.R. 2016 No. 220.
(**9**) S.R. 2016 No. 216.

(2) Where these Regulations apply in relation to universal credit "child" and "qualifying young person" have the same meaning as in Article 46 of the 2015 Order and whether or not a person is responsible for a child or qualifying young person is to be determined in accordance with regulation 4 of the Universal Credit Regulations.

(3) In these Regulations "writing" includes writing produced by means of electronic communications and where such communications are used by the Department—

(a) Schedule 8D to the Claims and Payments Regulations(**10**); or

(b) Schedule 1 to the UC etc. Claims and Payments Regulations,

as the case may be, has effect in connection with notices required to be given or sent under regulations 8 and 17 as it has effect in connection with claims for, and awards of, any benefit to which those Regulations apply.

(4) The Interpretation Act (Northern Ireland) 1954(**11**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

PART 2

Payments on account of benefit

Definition of "benefit"

3.—(1) In this Part "benefit" means any of the following—

(a) universal credit;

(b) employment and support allowance;

(c) income support;

(d) jobseeker's allowance;

(e) state pension credit;

(f) benefit under Parts II to V of the Contributions and Benefits Act except attendance allowance, disability living allowance and guardian's allowance;

(g) a state pension under Part 1 of the Pensions Act (Northern Ireland) 2015(**12**).

(2) For the purpose of paragraph (1)—

"employment and support allowance" means an allowance under—

(a) Part 1 of the 2007 Act as amended by Schedule 3 and Part 1 of Schedule 12 to the 2015 Order (to remove references to an income-related allowance); and

(b) Part 1 of the 2007 Act as it has effect apart from the amendments made by Schedule 3 and Part 1 of Schedule 12 to the 2015 Order;

"jobseeker's allowance" means an allowance under—

(c) the Jobseekers Order as amended by Part 1 of Schedule 12 to the 2015 Order (to remove references to an income-based allowance); and

(d) the Jobseekers Order as it has effect apart from the amendments made by Part 1 of Schedule 12 to the 2015 Order.

(**10**) Schedule 8D was inserted by Article 2(4) of S.R. 2006 No. 203 and amended by Article 2(4) of S.R. 2011 No. 298 and Article 2(3) of S.R. 2011 No. 431.
(**11**) 1954 c. 33 (N.I.).
(**12**) 2015 c. 5 (N.I.).

Payments on account of benefit

4.—(1) The Department may, subject to paragraph (2), make a payment on account of benefit to a person ("A") in accordance with this Part.

(2) Paragraph (1) does not apply pending the determination of an appeal relating to the benefit on account of which the payment would otherwise have been made.

Payment on account of benefit where there is no award of benefit

5.—(1) The Department may make a payment on account of benefit to A if—

(a) either paragraph (2) or (3) applies;

(b) it appears to the Department likely that the conditions of entitlement for benefit are satisfied (or will be satisfied during the period in respect of which the payment is to be made); and

(c) it is satisfied that A is in financial need.

(2) This paragraph applies where A has made a claim for benefit but the claim has not yet been determined.

(3) This paragraph applies where A is not required to make a claim for benefit by virtue of—

(a) regulation 3 of the Claims and Payments Regulations(**13**) (claims not required for entitlement to benefit in certain cases); or

(b) regulation 6 of the UC etc. Claims and Payments Regulations (claims not required for entitlement to employment and support allowance in certain cases),

as the case may be, but an award of benefit has not yet been made.

Payment on account of benefit where there is an award of benefit

6.—(1) The Department may make a payment on account of benefit to A if—

(a) an award of benefit has been made to A;

(b) any of paragraphs (2) to (5) applies; and

(c) it is satisfied that A is in financial need.

(2) This paragraph applies where—

(a) A currently satisfies the conditions of entitlement to that benefit; and

(b) the date on which the first payment of that benefit to A is due to be made in accordance with the award has not yet been reached.

(3) This paragraph applies where—

(a) the first payment of that benefit has been made to A in accordance with the award;

(b) the period in respect of which that payment was made is shorter than the period in respect of which subsequent payments of that benefit are to be made in accordance with that award should entitlement continue; and

(c) the date on which a subsequent payment of that benefit is due to be made to A has not yet been reached.

(**13**) Regulation 3 was amended by regulation 2 of S.R. 1989 No. 40, regulation 2(2) of S.R. 1994 No. 456, regulation 5 of S.R. 1999 No. 381, Article 9(4) of S.R. 1999 No. 472 (C. 36), regulation 11(2) of S.R. 2001 No. 78, regulation 10(3) of S.R. 2001 No. 108, regulation 4 of S.R. 2003 No. 367, regulation 2(3) of S.R. 2005 No. 299, regulation 2(2)(a) of S.R. 2007 No. 392, regulation 2 of S.R. 2008 No. 69, regulation 13(3) of S.R. 2008 No. 286, regulation 2(2) of S.R. 2008 No. 417, regulation 2(3) of S.R. 2009 No. 240, regulation 2(2) of S.R. 2010 No. 337 and regulation 4 of S.R. 2015 No. 185 and is modified by paragraph 5 of Schedule 2 to S.R. 2010 No. 312.

(4) This paragraph applies where there has been a change of circumstances which would increase the amount of benefit payable under the award and—

(a) the award has not yet been revised or superseded to reflect that change; or

(b) the award has been revised or superseded to reflect that change but the date on which the payment of benefit is due to be made in accordance with the revised or superseded award has not yet been reached.

(5) This paragraph applies where—

(a) A is entitled to a payment of that benefit pursuant to the award; and

(b) it is impracticable to make some or all of that payment on the day on which it is due.

Definition of financial need

7.—(1) A is in financial need for the purposes of regulation 5(1)(c) or 6(1)(c) where the circumstances in regulation 5(2) or (3) or, as the case may be, 6(2), (3), (4) or (5) result in a serious risk of damage to the health or safety of A or any member of A's family.

(2) Where the payment on account of benefit is to be on account of universal credit, the following are members of A's family for the purpose of paragraph (1)—

(a) any child or qualifying young person for whom A is responsible; and

(b) where A is a member of a couple, A's partner.

(3) Where the payment on account of benefit is to be on account of a benefit specified in regulation 3(1)(b) to (g), for the purpose of paragraph (1), "family" has the meaning given in section 133(1) of the Contributions and Benefits Act(**14**).

Requirement for notice

8.—(1) The Department must, on or before making a payment on account of benefit to A, give or send notice in writing to A of A's liability—

(a) to have the amount of the payment on account of benefit deducted from subsequent payments of benefit; and

(b) to repay the amount of any payment on account of benefit to the extent that it is not deducted from subsequent payments of benefit.

(2) Where A is a member of a couple and the payment on account of benefit is on account of universal credit, notice in writing must also be given or sent to A's partner containing the information referred to in paragraph (1)(a) and (b).

Payment by direct credit transfer

9. A payment on account of benefit may be paid by way of direct credit transfer into a bank account or other account nominated by A or a person acting on A's behalf.

Bringing payments on account of benefit into account

10. Where it is practicable to do so, a payment on account of benefit—

(a) which was made in anticipation of an award of benefit, is to be offset by the Department against the sum payable to A under the award of benefit on account of which it was made;

(b) whether or not made in anticipation of an award, which is not offset under paragraph (a), is to be deducted by the Department from—

(**14**) The definition of "family" was amended by paragraph 99(2) of Schedule 24 to the Civil Partnership Act 2004.