STATUTORY RULES OF NORTHERN IRELAND

2011 No. 357

HOUSING; RATES; SOCIAL SECURITY

The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2011

Made - - - - 10th October 2011

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 90, 122(1)(a) and (d), 129(3), 129A(2), 131(1), 132A(3), 132(3) and (4), 134(1)(a), 147(4), 167A(2), 167D(1), and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**), sections 2A(1), (3)(b), (d) and (e), (4) and (5), 2AA(1) and (4)(f), 5(1)(h) and (q) and 165(1) and (4) to (6) of the Social Security Administration (Northern Ireland) Act 1992(**2**), Articles 6(5), 14(1) and (4)(a) to (c) and 36(2) of, and paragraphs 1(1) and 8A of Schedule 1 to, the Jobseekers (Northern Ireland) Order 1995(**3**), paragraph 8 of Schedule 1 to the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997(**4**), Articles 10(1)(a) and 21(1)(a) of the Social Security (Northern Ireland) Order 1998(**5**), and now vested in it(**6**), sections 15(3) and (6)(b) and 19(1) to (3) of the State Pension Credit Act (Northern Ireland) 2002(**7**), and sections 3(2)(d) ,4(2)(a), 8(1) and (4)(a) and (5), 9(1) and (4)(a), 17(1) and (3)(b), 25(2) and 28(2) of, and paragraph 1(4) of Schedule 1, and paragraph 1(a) of Schedule 2 and paragraphs 1(1) and 8 of Schedule 4 to, the Welfare Reform Act (Northern Ireland) 2007(**8**).

(**1**) 1992 c.7; the remaining provisions of section 90 (in relation to carer's allowance) were repealed with savings by section 14 and Part 2 of Schedule 4 to the Welfare Reform Act (Northern Ireland) 2010 (c. 13 (N.I.)), section 134(1) was substituted by Article 66(1) of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)); section 147(4) was amended and section 167D was inserted respectively by paragraph 34 of Schedule 1 to, and Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)), and section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)

(**2**) 1992 c. 8; section 2A was inserted by Article 54 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and amended by sections 2(3), 3(2)(a) and (b) and 29(2) and (4) of the Welfare Reform Act (Northern Ireland) 2010; 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)

(**3**) S.I. 1995/2705 (N.I. 15); Article 10 was amended by paragraph 8 of Schedule 7, paragraph 27(3) of Schedule 8 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 and section 26(3)(a) and 27(1) to (3) of the Welfare Reform Act (Northern Ireland) 2010, Article 36(2) was amended by paragraph 55 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and paragraph 8A of Schedule 1 was inserted by paragraph 16(2) of Schedule 7 to the Welfare Reform and Pensions (Northern Ireland) Order 1999

(**4**) S.I. 1997/1183 (N.I. 12); Paragraph 8 of Schedule 1 applies to lump sum payments by virtue of Article 3A of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997, which was inserted by section 8 of the Mesothelioma, etc., Act (Northern Ireland) 2008 (c. 9)

(**5**) 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

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

(**7**) 2002 c. 14 (N.I.)

(**8**) 2007 c. 2 (N.I.)

Regulations 19 and 20 are made with the consent of the Department of Finance and Personnel(**9**).

The Social Security Advisory Committee has agreed that proposals in respect of regulations 19 and 20 should not be referred to it(**10**).

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2011 and, subject to paragraph (2) shall come into operation on 31st October 2011.

(2) Regulation 6 comes in to operation on 6th April 2012.

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

Application

2. Regulations 9(2)(amendments of the Social Security (Incapacity for Work) (General) Regulations) and 21(5) and (6) (amendments to the Employment and Support Allowance Regulations) apply only in relation to information requested in the form of a questionnaire first issued to a person on or after 31st October 2011, in accordance with—

(a) regulation 6(1)(b) of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995(**12**) (information required for determining capacity for work); or or

(b) regulations 21(1)(b) (information required for determining capability for work) or 36(1)(a) (information required for determining capability for work-related activity) of the Employment and Support Allowance Regulations (Northern Ireland) 2008(**13**).

PART 2

AMENDMENTS TO PRIMARY LEGISLATION

Amendment of the Social Security Administration (Northern Ireland) Act

3. In section 155(5) of the Social Security Administration (Northern Ireland) Act 1992(**14**) (reciprocal agreements with countries outside the United Kingdom) for "or this Act" substitute ", this Act or Part 1 of the Welfare Reform Act (Northern Ireland) 2007".

(**9**) *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)); *seealso* Article 6(b) of S.R. 1999 No. 481

(**10**) *See* section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992

(**11**) 1954 c. 33 (N.I.)

(**12**) S.R. 1995 No. 41; regulation 6(1)(b) was substituted by regulation 2(3)(c) of S.R 2000 No. 4

(**13**) S.R. 2008 No. 280

(**14**) 1992 c .8.; section 155(5) was amended by paragraph 48(4) of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)), paragraph 19(c) of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14),

Amendment of the Data Protection Act

4. In section 56(6) of the Data Protection Act 1998(**15**) (prohibition of requirement as to production of certain records) in paragraph 3 of the Table, for "or the Jobseekers (Northern Ireland) Order 1995" substitute ", the Jobseekers (Northern Ireland) Order 1995 or Part 1 of the Welfare Reform Act (Northern Ireland) 2007.".

PART 3

AMENDMENTS TO SECONDARY LEGISLATION

Amendment of the Social Security Benefit (Dependency) Regulations

5. In Part 2 of Schedule 2 to the Social Security Benefit (Dependency) Regulations (Northern Ireland 1977(**16**) (prescribed circumstances for increase of a carer's allowance)—

(a) in paragraph 6 (increase of carer's allowance for adult dependants) for "section 49" substitute "section 90 of the Contributions and Benefits Act"; and

(b) in paragraph 7 for "the Act" substitute "the Contributions and Benefits Act".

Amendment of the Statutory Sick Pay (General) Regulations

6. In regulation 2(1) of the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982(**17**) (persons deemed incapable of work)—

(a) in sub-paragraph (b)(**18**), for "by reason of his being a carrier, or having been in contact with" substitute "by reason of it being known or reasonably suspected that he is infected or contaminated by, or has been in contact with"; and

(b) for sub-paragraphs (cc) and (dd) substitute—

"(cc) regulations 8 and 9 of the Public Health (Ships) Regulations (Northern Ireland) 2008(**19**) (examination etc., of persons on ships and powers in respect of persons leaving ships) apply;

(dd) regulations 7 and 8 of the Public Health (Aircraft) Regulations (Northern Ireland) 2008(**20**) (examination etc., of persons on aircraft and powers in respect of persons leaving aircraft) apply; ".

Amendment of the Income Support (General) Regulations

7.—(1) The Income Support (General) Regulations (Northern Ireland) 1987(**21**) are amended in accordance with paragraphs (2) to (7).

(2) In regulation 2(1) (interpretation)—

(a) after the definition of "board and lodging accommodation"(**22**) insert—

Schedule 6 to the Tax Credits Act 2002 (c. 21) and paragraph 4(25)(c) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 (c. 2)

(**15**) 1998 c. 29; sub-section 6 has amendments not relevant to these Regulations.

(**16**) S.R. 1977 No. 74; Schedule 2 was amended by paragraph 1(c) of the Schedule to S.R. 2002 No. 323

(**17**) S.R. 1982 No. 263; relevant amending Regulations are S.R. 2006 No. 142

(**18**) Sub-paragraph (b) was substituted by regulation 2 of S.R 2006 No. 142

(**19**) S.R. 2008 No. 333

(**20**) S.R. 2008 No. 436

(**21**) S.R. 1987 No. 459; relevant amending Regulations are S.R. 1988 Nos. 146, 205, 318 and 431, S.R. 1990 No. 33, S.R. 1991 No. 204, S.R. 1992 No. 201, S.R. 1993 Nos. 195 and 233, S.R. 1998 No. 326, S.R. 2000 No. 367, S.R. 2004 Nos. 213 and 389, S.R. 2005 No. 550, S.R. 2006 No. 178, S.R. 2008 No. 428, S.R. 2009 No.68, S.R. 2010 No. 69 and S.R. 2011 No. 135

(**22**) The definition of "board and lodging accommodation" was inserted by regulation 2(a) of S.R. 1988 No. 431

""the Caxton Foundation" means the charitable trust of that name established on 28th March 2011 for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with its provisions;"; and

(b) in the definition of "qualifying person"(**23**) after "the Skipton Fund" insert ", the Caxton Foundation".

(3) In regulation 21AA(**24**) (special cases: supplemental – persons from abroad) omit paragraph (4)(f)(i).

(4) For regulation 42(1) (notional income), substitute—

"(1) A claimant is to be treated as possessing income of which the claimant has deprived themselves for the purpose of securing entitlement to income support or increasing the amount of that benefit, or for the purpose of securing entitlement to, or increasing the amount of a jobseeker's allowance or an employment and support allowance.".—

(5) In—

(a) regulation 42(4ZA)(a)(**25**);

(b) regulation 48(10)(c)(**26**) (income treated as capital);

(c) Schedule 3 (housing costs) paragraph 18(8)(b)(**27**);

(d) Schedule 9 (sums to be disregarded in the calculation of income other than earnings) paragraphs 21(2)(**28**) and 39(1)(**29**); and

(e) Schedule 10 (capital to be disregarded) paragraph 29(**30**),

after "MFET Limited" insert ", the Skipton Fund", the Caxton Foundation".

(6) In—

(a) regulation 51(3A)(a)(**31**) (notional capital);

(b) Schedule 9 paragraph 39(7)(**32**); and

(c) Schedule 10 paragraph 22(1)(**33**) and (7)(**34**),

(**23**) The definition of "qualifying person" was inserted by regulation 5(2)(b) of S.R. 1992 No. 201 and amended by regulation 2(a) of S.R. 2004 No. 213, regulation 2(2)(b) of S.R. 2005 No. 550 and regulation 2(3)(a) of S.R. 2010 No. 69

(**24**) Regulation 21AA was inserted by regulation 2(3) of S.R. 2006 No. 178; sub-paragraph (4) was substituted by regulation 2 of S.R. 2006 No. 523 and head (i) of sub-paragraph(4)(f) was amended by regulation 2(a) of S.R. 2009 No. 68

(**25**) Paragraph (4ZA) was inserted by regulation 2(2)(b) of S.R. 1998 No. 326 and sub-paragraph (a) was amended by regulation 2(5)(a) of S.R. 2008 No. 428 and regulation 2(3)(b) and (7)(a) of S.R. 2010 No. 69

(**26**) Sub-paragraph (c) was amended by regulation 4(3)(b) of S.R. 1990 No. 33, regulation 4(4) of S.R. 1991 No. 204, regulation 5(4) of S.R. 1992 No. 201, regulation 5(3)(b) of S.R. 1993 Nos. 195 and 233, regulation 2(5)(b) of S.R. 2008 No. 428 and regulation 2(3)(c) and (7)(b) of S.R. 2010 No. 69

(**27**) Sub-paragraph (8)(b) was amended by regulation 2(5)(e) of S.R. 2008 No. 428 and regulation 2(3)(e) and (7)(d) of S.R. 2010 No. 69

(**28**) Paragraph 21 was substituted by regulation 36(d) of S.R. 1988 No. 146 and sub-paragraph (2) was amended by regulation 5(d) of S.R. 1988 No. 205, regulation 4(3)(e) of S.R. 1990 No. 33, regulation 4(7)(a) of S.R. 1991 No. 204, regulation 5(7)(a) of S.R. 1992 No. 201, regulation 5(3)(f) of S.R. 1993 No. 195, regulation 5(4)(a) of S.R. 1993 No. 233, regulation 2(5)(f) of S.R. 2008 No. 428 and regulation 2(3)(f) of S.R. 2010 No. 69

(**29**) Paragraph 39(1) was substituted by regulation 4(7)(b) of S.R. 1991 No. 204 and amended by regulation 5(7)(b)(i) of S.R. 1992 No. 201, regulation 5(3)(f) of S.R. 1993 No. 195, regulation 5(4)(b)(i) of S.R. 1993 No. 233, regulation 2(5)(f) of S.R. 2008 No. 428 and regulation 2(3)(f) and (7)(e) of S.R. 2010 No. 69

(**30**) Paragraph 29 was added by regulation 25 of S.R. 1988 No. 318 and amended by regulation 4(4) of S.R. 1990 No. 33, regulation 5(8)(b) of S.R. 1992 No. 201, regulation 5(4) of S.R. 1993 No. 195, Article 2(3) of S.R. 2007 No. 382, regulation 2(10) of S.R. 2008 No. 428 and regulation 2(7) (f) and (10) of S.R. 2010 No. 69

(**31**) Paragraph (3A) was inserted by regulation 3(2)(b) and (3)(c) of S.R. 1998 No. 326 and sub-paragraph (a) was amended by regulation 2(1) and (2)(b) of S.R. 2004 No. 389, regulation 2(3) of S.R. 2005 No. 550 and regulation 2(5)(c) of S.R. 2008 No. 428 and regulation 2(3)(d) and (7)(c) of S.R. 2010 No. 69

(**32**) Paragraph 39(7) was substituted by regulation 4(7)(b) of S.R. 1991 No. 204; sub-paragraph (7) was added by regulation 5(7)(b)(vi) of S.R. 1992 No. 201 and amended by regulation 2(3) and (4) of S.R. 2004 No. 389, regulation 2(4) of S.R. 2005 No. 550 and regulation 2(3)(f) of S.R. 2010 No. 69

(**33**) Paragraph 22 was substituted by regulation 4(8)(a) of S.R. 1991 No. 204, sub-paragraph (1) was amended by regulation 5(8)(a)(i) of S.R. 1992 No. 201, regulation 5(5)(a) of S.R. 1993 No. 233, regulation 3(1) and (2)(b) of S.R. 2004 No. 213,

after "the Skipton Fund" insert ", the Caxton Foundation".

(7) In Schedule 2, paragraph 13A(1A)(**35**) (applicable amounts: enhanced disability premium) after "claimant" insert "or partner".

Amendment of the Social Security (Claims and Payments) Regulations

8. In paragraph 1 of Schedule 8A to the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**36**) (deductions from benefit and direct payment to third parties) for sub-paragraph (2)(b)(**37**) substitute—

"(b) contributory employment and support allowance where—

(i) both income-related employment and support allowance and contributory employment and support allowance are in payment and the income-related employment and support allowance alone is insufficient for the purposes of this Schedule, or

(ii) if there was no entitlement to a contributory employment and support allowance, there would be entitlement to income-related employment and support allowance at the same rate.".

Amendment of the Social Security (Incapacity for Work) (General) Regulations

9.—(1) The Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995(**38**) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 7(2) (failure to provide information)—

(a) in sub-paragraph (a) for "6 weeks" substitute "4 weeks"; and

(b) in sub-paragraph (b)—

(i) for "4 weeks" substitute "3 weeks"; and

(ii) for "2 weeks have" substitute "1 week has".

(3) In regulation 11(1)(**39**) (person with an infectious or contagious disease)—

(a) for "by reason of his being a carrier, or having been in contact with" substitute "by reason of it being known or reasonably suspected that he is infected or contaminated by, or has been in contact with"; and

(b) for sub-paragraphs(b)(ii) and (iii) substitute—

"(ii) regulations 8 and 9 of the Public Health (Ships) Regulations (Northern Ireland) 2008(**40**) (examination etc., of persons on ships and powers in respect of persons leaving ships) apply;

regulation 2(5)(a)(i) of S.R. 2005 No. 550, regulation 2(5)(g) of S.R. 2008 No. 428 and regulation 2(3)(g) and (7)(f) of S.R. 2010 No. 69

(**34**) Sub-paragraph (7) was added by regulation 5(8)(a)(vi) of S.R. 1992 No. 201 and amended by regulation 3(4)(b) of S.R. 2004 No. 213, regulation 2(5)(a)(ii) of S.R. 2005 No. 550 and regulation 2(3)(g) of S.R. 2010 No. 69

(**35**) Paragraph 13A was inserted by regulation 2(c)(ii) of S.R. 2000 No. 367, sub-paragraph (1A) was inserted by regulation 3(6)(a) of S.R. 2011 No. 135

(**36**) S.R. 1987 No.465; Schedule 8A was inserted by regulation 2(3) of S.R. 1988 No. 67; paragraph 1 was amended by regulation 7(a) of S.R. 2008 No. 413

(**37**) Sub-paragraph (2) was added by regulation 7(a)(ii) of S.R. 2008 No. 413

(**38**) S.R. 1995 No. 41; relevant amending Regulation is S.R. 2006 No. 359

(**39**) Regulation 11 was substituted by regulation 12(2) of S.R. 2006 No. 359

(**40**) S.R. 2008 No. 333