STATUTORY RULES OF NORTHERN IRELAND

2009 No. 382

HOUSING; RATES

The Housing Benefit (Miscellaneous Amendments) Regulations (Northern Ireland) 2009

Made - - - - 25th November 2009

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)(d), 129(2), 132(4)(b) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**) and sections 73(1) and 165(1) and (4) to (6) of the Social Security Administration (Northern Ireland) Act 1992(**2**) and now vested in it(**3**).

Regulations 2(4)(c) and (6) and 3(4), (5)(c) and (7) are made with the consent of the Department of Finance and Personnel(**4**).

The Social Security Advisory Committee has agreed that proposals in respect of regulations 2(2), (3), (4)(c) and (6), 3(2) to (4), (5)(c) and (7) and 4 should not be referred to it(**5**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit (Miscellaneous Amendments) Regulations (Northern Ireland) 2009 and, subject to paragraph (2), shall come into operation on 21st December 2009.

(2) Regulations 2(4) to (6) and 3(4) to (7) shall come into operation—

(a) in relation to any case where rent is payable at intervals of a week or any multiple of a week, on 5th April 2010; and

(b) in any other case, on 1st April 2010.

(**1**) 1992 c. 7; section 129(2) was amended by Article 8(2) of the Housing Support Services (Northern Ireland) Order 2002 (S.I. 2002/3154 (N.I. 8)) 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 73(1) was amended by paragraph 2 of Schedule 1 and Schedule 2 to the Social Security Administration (Fraud) (Northern Ireland) Order 1997 (S.I. 1997/1182 (N.I. 11)) and 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 subsection (6) was amended by Schedule 7 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))

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

(**4**) *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

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

(3) The Interpretation Act (Northern Ireland) 1954(**6**) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Housing Benefit Regulations

2.—(1) The Housing Benefit Regulations (Northern Ireland) 2006(**7**) are amended in accordance with paragraphs (2) to (6).

(2) In regulation 2(1) (interpretation) after the definition of "the Employment and Support Allowance Regulations"(**8**) insert—

""equity-sharing lease" means a lease of land, the general effect of which is to provide—

(a) that, in consideration for the granting of the lease, the lessee shall pay a capital sum, representing a part payment in respect of the cost of acquisition of the premises demised, and a rent; and

(b) that the lessee may make additional part payments towards the said cost of acquisition and may exercise an option to purchase the whole or part of the lessor's reversion in the premises demised;".

(3) In regulation 13(2)(a) (rent) after "owner" insert "except under an equity-sharing lease in respect of payments specified in paragraph (1)(a) and (e)".

(4) In regulation 99 (method of recovery)—

(a) omit paragraph (2);

(b) in paragraph (3)(**9**) omit "(2),";

(c) in paragraph (5) after "Schedule 5" insert ", or paragraph 10A of that Schedule in a case where the amount of earnings to be disregarded under that paragraph is the amount referred to in regulation 45(2) of the Employment and Support Allowance Regulations or regulation 17(2) of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995(**10**),"; and

(d) in paragraph (6) omit ", except as made under paragraph (2),".

(5) After regulation 101 (sums to be deducted in calculating recoverable overpayments) insert—

"**Sums to be deducted in calculating recoverable overpayments where the claimant has changed dwelling**

101A.—(1) This regulation applies where an overpayment has occurred in the following circumstances—

(a) a claimant has moved from the dwelling previously occupied as his home ("dwelling A") to another dwelling which he occupies as his home ("dwelling B");

(b) the claimant has been awarded housing benefit in the form of a rent allowance in respect of dwelling A to which he is not entitled because he is no longer occupying or treated as occupying dwelling A as his home; and

(c) housing benefit is paid to the same person in respect of the claimant's occupation of dwelling B as it was paid to in respect of dwelling A.

(**6**) 1954 c. 33 (N.I.)
(**7**) S.R. 2006 No. 405; relevant amending Rules are S.R. 2008 Nos. 378 and 504 and S.R. 2009 No. 89
(**8**) The definition of "the Employment and Support Allowance Regulations" was inserted by regulation 3(2)(a)(v) of S.R. 2008 No. 378
(**9**) Paragraph (3) was amended by regulation 2(3)(c) of S.R. 2008 No. 504
(**10**) S.R. 1995 No. 41; regulation 17 was substituted by regulation 2(4) of S.R. 2006 No. 150 and amended by regulation 4(b) of S.R. 2008 No. 375 and regulation 4 of S.R. 2009 No. 318

(2) Where this regulation applies, in calculating the amount of the overpayment which is recoverable the relevant authority may at its discretion deduct an amount equal to the claimant's weekly entitlement to housing benefit in respect of dwelling B for the number of benefit weeks equal to the number of weeks during which the claimant was overpaid housing benefit in respect of dwelling A.

(3) Where a sum has been deducted under paragraph (2), an equivalent sum shall be treated as having been paid in respect of the claimant's entitlement to housing benefit in respect of dwelling B for the number of benefit weeks equal to the number of weeks during which the claimant was overpaid housing benefit in respect of dwelling A.".

(6) In Schedule 5 (sums to be disregarded in the calculation of earnings)—

(a) after paragraph 10 insert—

"**10A.**—(1) Where—

(a) the claimant (or if the claimant is a member of a couple, at least one member of that couple) is a person to whom sub-paragraph (5) applies;

(b) the Department is satisfied that that person is undertaking exempt work as defined in sub-paragraph (6); and

(c) paragraph 12 does not apply,

the amount specified in sub-paragraph (7) ("the specified amount").

(2) Where this paragraph applies, paragraphs 3 to 10 do not apply; but in any case where the claimant is a lone parent, and the specified amount would be less than the amount specified in paragraph 4, then paragraph 4 applies instead of this paragraph.

(3) Notwithstanding regulation 22, if sub-paragraph (1) applies to one member of a couple ("A") it shall not apply to the other member of that couple ("B") except to the extent provided in sub-paragraph (4).

(4) Where A's earnings are less than the specified amount, there shall also be disregarded so much of B's earnings as would not when aggregated with A's earnings exceed the specified amount; but the amount of B's earnings which may be disregarded under this sub-paragraph is limited to a maximum of £20 unless the Department is satisfied that B is also undertaking exempt work.

(5) This sub-paragraph applies to a person who is—

(a) in receipt of a contributory employment and support allowance;

(b) in receipt of incapacity benefit;

(c) in receipt of severe disablement allowance; or

(d) being credited with earnings on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations (Northern Ireland) 1975(**11**).

(6) "Exempt work" means, as the case may be, work of the kind described in—

(a) regulation 45(2), (3) or (4) of the Employment and Support Allowance Regulations(**12**); or

(b) regulation 17(2), (3) or (4) of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995,

(**11**) S.R. 1975 No. 113; regulation 8B was inserted by regulation 2(6) of S.R. 1996 No. 430 and amended by regulation 3 of S.R. 2000 No. 404, regulation 2(2) of S.R. 2003 No. 151, regulation 2(3) of S.R. 2007 No. 306 and regulation 7(6) of S.R. 2008 No. 286

(**12**) Regulation 45(3) and (4) was amended by regulation 5(2) of S.R. 2009 No. 318

and, in determining for the purposes of this paragraph whether a claimant or a member of a couple is undertaking any type of exempt work, it is immaterial whether that person or their partner is also undertaking other work.

(7) The specified amount is the amount of money mentioned in any provision referred to in sub-paragraph (6) by virtue of which the work referred to in sub-paragraph (1) is exempt (or, where more than one such provision is relevant and those provisions mention different amounts of money, the highest of those amounts).”; and

(b) in paragraph 17(1)(**13**) for “paragraphs 3 to 10” substitute “paragraphs 3 to 10A”.

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations

3.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(**14**) are amended in accordance with paragraphs (2) to (7).

(2) In regulation 2(1) (interpretation) after the definition of “the Employment and Support Allowance Regulations”(**15**) insert—

““equity-sharing lease” means a lease of land, the general effect of which is to provide—

(a) that, in consideration for the granting of the lease, the lessee shall pay a capital sum, representing a part payment in respect of the cost of acquisition of the premises demised, and a rent; and

(b) that the lessee may make additional part payments towards the said cost of acquisition and may exercise an option to purchase the whole or part of the lessor’s reversion in the premises demised;”.

(3) In regulation 13(2)(a) (rent) after “owner” insert “except under an equity-sharing lease in respect of payments specified in paragraph (1)(a) and (e)”.

(4) In regulation 25(4)(d) (calculation of claimant’s income and capital in savings credit only cases) after “paragraph” insert “5A or”.

(5) In regulation 80 (method of recovery)—

(a) omit paragraph (2);

(b) in paragraph (3)(**16**) omit “(2),”;

(c) in paragraph (5) after “Schedule 5” insert “, or paragraph 5A of that Schedule in a case where the amount of earnings to be disregarded under that paragraph is the amount referred to in regulation 45(2) of the Employment and Support Allowance Regulations or regulation 17(2) of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995,”; and

(d) in paragraph (6) omit “, except as made under paragraph (2),”.

(6) After regulation 82 (sums to be deducted in calculating recoverable overpayments) insert—

(**13**) Paragraph 17(1) was amended by Article 19(9) of S.R. 2009 No. 89
(**14**) S.R. 2006 No. 406; relevant amending Regulations are S.R. 2008 Nos. 378 and 504
(**15**) The definition of “the Employment and Support Allowance Regulations” was inserted by regulation 4(2)(a)(v) of S.R. 2008 No. 378
(**16**) Paragraph (3) was amended by regulation 3(4)(c) of S.R. 2008 No. 504