STATUTORY RULES OF NORTHERN IRELAND

2008 No. 413

SOCIAL SECURITY

The Employment and Support Allowance (Miscellaneous Amendments) Regulations (Northern Ireland) 2008

Made - - - -	*6th October 2008*
Coming into operation	*27th October 2008*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 2(1)(c), 3(2)(b) and (d) and (3), 4(2)(a), 5(3), 8(1), (2)(a) and (b), 17(1), (2) and (3)(b), 25(2)(a) and 28(2) of, and paragraphs 1(4) and 6(1)(b), (2) to (5) and (8) of Schedule 1 and paragraphs 1(a), 2 and 10 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007(**1**).

Citation and commencement

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Miscellaneous Amendments) Regulations (Northern Ireland) 2008 and, subject to paragraph (2), shall come into operation on 27th October 2008.

(2) Regulation 5 shall come into operation immediately before the coming into operation of regulations 12, 16, 19 and 30 of, and Schedule 2 to, the Employment and Support Allowance (Consequential Provisions) Regulations (Northern Ireland) 2008(**2**).

Amendment of the Administration Act

2. In section 72(3) of the Administration Act(**3**) (income support and other payments) in paragraph (c) and the full-out words after that paragraph for "or an income-based jobseeker's allowance", in each place where it occurs, substitute ", an income-based jobseeker's allowance or an income-related employment and support allowance".

Amendment of the Employment and Support Allowance Regulations

3.—(1) The Employment and Support Allowance Regulations (Northern Ireland) 2008 are amended in accordance with paragraphs (2) to (33).

(2) In regulation 2 (interpretation)—

(**1**) 2007 c. 2 (N.I.)
(**2**) S.R. 2008 No. 286
(**3**) Section 72(3) was amended by paragraph 33 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)) and paragraph 4(8)(b) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.))

(a) in paragraph (1)—

(i) after the definition of "attendance allowance" insert—

""basic rate" has the meaning given by section 989 of the Income Tax Act 2007(**4**);",

(ii) omit the definition of "the starting rate", and

(iii) after the definition of "sports award" insert—

""state pension credit" means a state pension credit under the State Pension Credit Act (Northern Ireland) 2002(**5**);"; and

(b) in paragraph (2) omit "Chapter 9 of Part 10 (income and capital: child support) and".

(3) In regulation 9 (condition relating to youth – claimants aged 20 or over but under 25) after paragraph (5) add—

"(6) A claimant is to be treated as not having limited capability for work on a day which is not, for the purposes of paragraph 4(1)(d)(ii) of Schedule 1 to the Act (period of 196 consecutive days preceding the relevant period of limited capability for work), part of any consecutive days of limited capability for work.".

(4) In regulation 26 (claimants receiving certain regular treatment) for paragraph (2) substitute—

"(2) A claimant who receives the treatment referred to in paragraph (1) is only to be treated as having limited capability for work from the first week of treatment in which the claimant undergoes no fewer than—

(a) two days of treatment;

(b) two days of recovery from any of the forms of treatment listed in paragraph (1); or

(c) one day of treatment and one day of recovery from that treatment,

but the days of treatment or recovery from that treatment or both need not be consecutive.".

(5) For regulation 32 substitute—

"**Certain claimants to be treated as not having limited capability for work**

32.—(1) A claimant who is or has been a member of Her Majesty's forces is to be treated as not having limited capability for work on any day which is recorded by the Secretary of State for Defence as a day of sickness absence from duty.

(2) A claimant is to be treated as not having limited capability for work on any day on which the claimant attends a training course in respect of which the claimant is paid a training allowance or premium pursuant to arrangements made under section 1 or 3 of the Employment and Training Act.

(3) Paragraph (2) is not to apply—

(a) for the purposes of any claim to employment and support allowance for a period commencing after the claimant ceased attending the training course in question; or

(b) where any training allowance or premium paid to the claimant is paid for the sole purpose of travelling or meal expenses incurred or to be incurred under the arrangement made under section 1 or 3 of the Employment and Training Act.".

(6) In regulation 45(3) and (4) (exempt work) for "£88·50" substitute "£92·00".

(7) After regulation 72 (permanent health insurance) insert—

(**4**) 2007 c. 3
(**5**) 2002 c. 14 (N.I.)

"**Financial Assistance Scheme**

72A.—(1) For the purposes of sections 2(1)(c) and 3 of the Act (deductions from contributory allowance) pension payment is to include a Financial Assistance Scheme payment.

(2) In this regulation "Financial Assistance Scheme payment" means a payment made under the Financial Assistance Scheme Regulations 2005(**6**).".

(8) In regulation 76(1) (deductions for councillor's allowance) for "£88·50" substitute "£92·00".

(9) For regulation 85 substitute—

"**Child maintenance and liable relative payments**

85. Regulations 91 to 109 and 111 to 117 and Chapter 10 do not apply to any payment which is calculated in accordance with Chapter 8 (child maintenance and liable relative payments).".

(10) Omit regulation 86 (child support).

(11) In regulation 99 (deduction of tax and contributions for self-employed earners)—

(a) in paragraph (1) omit "the starting rate or, as the case may be, the starting rate and"; and

(b) in paragraph (2) for "starting rate" substitute "basic rate".

(12) In regulation 103 (deduction in respect of tax for participants in the self-employment route)—

(a) in paragraph (1)(c) omit "the starting rate of tax or, as the case may be, the starting rate and"; and

(b) in paragraph (2) for "starting rate" substitute "basic rate".

(13) In regulation 104 (calculation of income other than earnings)—

(a) in paragraph (4) for "Paragraph (5) applies" substitute "Paragraphs (5) and (5A) apply";

(b) at the beginning of paragraph (5) for "The" substitute "Where a relevant payment is made quarterly, the";

(c) after paragraph (5) insert—

"(5A) Where a relevant payment is made by 2 or more instalments in a quarter, the amount of a relevant payment to be taken into account for the assessment period for the purposes of paragraph (1) in respect of a person to whom paragraph (4) applies, shall be calculated by applying the formula in paragraph (5) but as if—

A	=	the total amount of the relevant payments which that person received, or would have received, from the first day of the academic year to the day the person abandoned the course, or was dismissed from it, less any deduction under regulation 137(6).''; and

(d) in paragraph (6)—

(i) for "For the purposes of this paragraph and paragraphs (4) and (5)" substitute "In this regulation", and

(ii) for the definition of "assessment period" substitute—

""assessment period" means—

(a) in a case where a relevant payment is made quarterly, the period beginning with the benefit week which includes the day on which the claimant abandoned, or was dismissed from, the course and ending with

(**6**) S.I. 2005/1986

the benefit week which includes the last day of the last quarter for which an instalment of the relevant payment was payable to that claimant;

(b) in a case where the relevant payment is made by 2 or more instalments in a quarter, the period beginning with the benefit week which includes the day on which the claimant abandoned, or was dismissed from, the course and ending with the benefit week which includes—

(i) the day immediately before the day on which the next instalment of the relevant payment would have been due had the payments continued, or

(ii) the last day of the last quarter for which an instalment of the relevant payment was payable to that claimant,

whichever of those dates is earlier;".

(14) In regulation 109(2) (notional income – calculation and interpretation)—

(a) in sub-paragraph (a) omit "the starting rate or, as the case may be, the starting rate and"; and

(b) in sub-paragraph (b) for "starting rate" substitute "basic rate".

(15) In regulation 118(6) (calculation of tariff income from capital) for "regulations 112 and 126 (income treated as capital and liable relative payments treated as capital)" substitute "regulation 112 (income treated as capital)".

(16) In Chapter 8 of Part 10 for the heading "Liable relatives" substitute "Child maintenance and liable relatives payments".

(17) In regulation 119 (interpretation)—

(a) before the definition of "claimant" insert—

""child maintenance" means any payment towards the maintenance of a child or young person, including any payment made voluntarily and payments made under—

(a) the Child Support Act 1991(**7**);

(b) the Child Support (Northern Ireland) Order 1991(**8**);

(c) a court order;

(d) a consent order;

(e) a maintenance agreement registered for execution in the Books of Council and Session or the sheriff court books;";

(b) after the definition of "claimant" insert—

""claimant's family" shall be construed in accordance with section 133 of the Contributions and Benefits Act (interpretation of Part 7 and supplementary provisions);

"housing costs" means those costs which may be met under paragraph 1(1) of Schedule 6;";

(c) after the definition of "liable relative" insert—

""ordinary clothing and footwear" means clothing and footwear for normal daily use but does not include school uniforms;";

(d) in the definition of "payment"—

(**7**) 1991 c. 48
(**8**) S.I. 1991/2628 (N.I. 23)

(i) omit "including, except in the case of a discretionary trust, any payment which would be so made or derived upon application being made by the claimant but which has not been acquired by the claimant but only from the date on which it could be expected to be acquired were an application made;", and

(ii) for paragraph (d) substitute—

"(d) made to a third party, or in respect of a third party, unless the payment is—

(i) in relation to the claimant or the claimant's family, and

(ii) the payment is in respect of food, ordinary clothing or footwear, fuel, rent or rates, housing costs or water charges;"; and

(e) in the definition of "periodical payment"—

(i) in paragraph (a) omit "in pursuance of a court order or agreement for maintenance", and

(ii) in paragraph (c) for "not exceeding" substitute ", after the appropriate disregard under paragraph 57 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) has been applied to it, that does not exceed".

(18) In regulation 120 (treatment of liable relative payments)—

(a) in the heading after "Treatment of" insert "child maintenance or"; and

(b) for "except where regulation 126(1) (liable relative payments to be treated as capital) applies" substitute "paragraph 57 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings)".

(19) For regulation 123 substitute—

"**Period over which payments other than periodical payments are to be taken into account**

123.—(1) The period over which a payment other than a periodical payment (a "non-periodical payment") is to be taken account shall be determined as follows.

(2) Except in a case where paragraph (4) applies, the number of weeks over which a non-periodical payment is to be taken into account shall be equal to the number obtained by dividing that payment by the amount referred to in paragraph (3).

(3) The amount is the aggregate of £2 and—

(a) the amount of employment and support allowance that would be payable had no payment been made; and

(b) where applicable, the maximum amount of disregard that would apply to the payment under paragraph 57 of Schedule 8.

(4) This paragraph applies in a case where a liable relative makes a periodical payment and a non-periodical payment concurrently and the weekly amount of the periodical payment (as calculated in accordance with regulation 124) is less than B.

(5) In a case where paragraph (4) applies, the non-periodical payment shall, subject to paragraphs (6) and (7), be taken into account over a period of the number of weeks equal to the number obtained by applying the formula—

$$\frac{A}{B-C}$$