STATUTORY RULES OF NORTHERN IRELAND

2007 No. 396

HOUSING; RATES; SOCIAL SECURITY

The Social Security (Miscellaneous Amendments No. 5) Regulations (Northern Ireland) 2007

Made - - - - 7th September 2007

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 30C(3), 30E(1), 70(8), 122(1)(a) and (d), 131(1) and (2), 132(3) and (4)(a) to (c), 132A(3), 133(2)(d) and (h), 167D and 171(1) to (4) of, and paragraph 2(3) of Schedule 7 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**) and Articles 6(5) and (12), 14(1), (2) and (4)(a) to (c), 21(8), 22A(9) and 36(2) of, and paragraph 1(2)(a) of Schedule 1 to, the Jobseekers (Northern Ireland) Order 1995(**2**), and now vested in it(**3**), paragraphs 4(5) and 20(1)(b) of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**4**) and sections 2(6), 15(3) and (6)(a) and 19(1) and (3) of the State Pension Credit Act (Northern Ireland) 2002(**5**).

Regulations 9 and 10 are made with the consent of the Department of Finance and Personnel(**6**).

The Social Security Advisory Committee has agreed that proposals in respect of regulations 9 and 10 should not be referred to it(**7**).

(**1**) 1992 c. 7; sections 30C, 30E and 167D were inserted by Articles 5(1) and 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)), section 70 was amended by regulation 2(3) of S.R. 1994 No. 370 and Articles 2(2)(a)(iii) and 3 of the Deregulation (Carer's Allowance) Order (Northern Ireland) 2002 (S.R. 2002 No. 321), section 132A was inserted by paragraph 3 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c.14 (N.I.)), section 133(2)(d) was substituted by paragraph 18(3) of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)), section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21) and paragraph (2) was amended by paragraph 28(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)

(**2**) S.I. 1995/2705 (N.I. 15); Article 22A was inserted by paragraph 14 of Schedule 7 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and Article 36(2) was amended by paragraph 55 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999

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

(**4**) 2000 c. 4 (N.I.)

(**5**) 2002 c. 14 (N.I.)

(**6**) *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

(**7**) *See* section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Miscellaneous Amendments No. 5) Regulations (Northern Ireland) 2007 and, subject to paragraphs (2) to (4), shall come into operation on 1st October 2007.

(2) Regulation 4(12)(a) and (13)(b), 7(14)(a) and (15)(b) and 9(12)(a) and (13)(b) shall come into operation on 7th April 2008.

(3) Regulations 4(12)(b) and 7(14)(b) in so far as they relate to a particular beneficiary, shall come into operation on the first day of the first benefit week to commence for that beneficiary on or after 7th April 2008.

(4) Regulation 9(12)(b), in relation to a case where rent is payable at intervals of a week or any multiple thereof, shall come into operation on 7th April 2008, and in relation to any other case, on 1st April 2008.

(5) In this regulation—

"benefit week" has the same meaning as in—

(a) regulation 2(1)(**8**) of the Income Support (General) Regulations (Northern Ireland) 1987(**9**) so far as it relates to regulation 4(12)(b);

(b) regulation 1(2)(**10**) of the Jobseeker's Allowance Regulations (Northern Ireland) 1996(**11**) so far as it relates to regulation 7(14)(b).

(6) The Interpretation Act (Northern Ireland) 1954(**12**) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Social Security (Invalid Care Allowance) Regulations

2. In regulation 8(1) of the Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976(**13**) (circumstances in which a person is or is not to be treated as gainfully employed) for "an amount equal to the lower earnings limit in force by virtue of regulations under section 5 of that Act on the last day of that week" substitute "£95·00".

Amendment of the Social Security (General Benefit) Regulations

3. In regulation 14 of the Social Security (General Benefit) Regulations (Northern Ireland) 1984(**14**) (earnings level for the purpose of unemployability supplement) for "£4,472·00" substitute "£4,602·00".

Amendment of the Income Support (General) Regulations

4.—(1) The Income Support (General) Regulations (Northern Ireland) 1987 are amended in accordance with paragraphs (2) to (13).

(**8**) The definition of "benefit week" was amended by regulation 2(a) of S.R. 1988 No. 318

(**9**) S.R. 1987 No. 459; relevant amending Rules are S.R. 1988 Nos. 146, 318 and 431, S.R. 1989 No. 365, S.R. 1992 No. 403, S.R. 1993 Nos. 120 and 373, S.R. 1994 Nos. 77 and 327, S.R. 1995 No. 86, S.R. 1996 No. 199, S.R. 1997 No. 130, S.R. 1998 No. 182, S.R. 1999 Nos. 342, 371 (C. 28), 390 and 472 (C. 36), S.R. 2000 Nos. 4 and 260, S.R. 2001 No. 151, S.R. 2002 No. 132, S.R. 2003 No. 191, S.R. 2004 Nos. 300 and 389, S.R. 2005 No. 536 and S.R. 2007 Nos. 153 and 306

(**10**) The definition of "benefit week" was amended by regulation 2(2) of S.R. 1996 No. 358, regulation 2(2)(a) of S.R. 1996 No. 503 and regulation 13(2) of S.R. 2006 No. 359

(**11**) S.R. 1996 No. 198; relevant amending Rules are S.R. 1996 Nos. 356 and 358, S.R. 1998 No. 182, S.R. 1999 Nos. 342 and 428 (C. 32), S.R. 2000 Nos. 109 and 260, S.R. 2001 No. 151, S.R. 2004 No. 300, S.R. 2005 No. 536, S.R. 2006 No. 359 and S.R. 2007 Nos. 153 and 306

(**12**) 1954 c. 33 (N.I.)

(**13**) S.R. 1976 No. 99; regulation 8(1) was amended by regulation 2(7)(a) of S.R. 1996 No. 521, regulation 2 of S.R. 2001 No. 117 and paragraph 1(b) of the Schedule to S.R. 2002 No. 323

(**14**) S.R. 1984 No. 92; regulation 14 was amended by regulation 3 of S.R. 2006 No. 359

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

(a) omit the definition of "lower rate"(**15**);

(b) in the definition of "maternity leave"(**16**) for "Articles 15 and 28 to 30 of the Industrial Relations (No. 2) (Northern Ireland) Order 1976" substitute "Part IX of the Employment Rights (Northern Ireland) Order 1996(**17**)"; and

(c) after the definition of "sports award"(**18**) insert—

> ""starting rate", where it relates to the rate of tax, has the same meaning as in the Income Tax Act 2007(**19**) (see section 989 of that Act);".

(3) In regulation 5 (persons treated as engaged in remunerative work)—

(a) in paragraph (5)(**20**) for "A person" substitute "Subject to paragraph (5A), a person"; and

(b) after paragraph (5) insert—

> "(5A) Paragraph (5) shall not apply to earnings disregarded under paragraph 1 of Schedule 8 to these regulations.".

(4) In regulation 22A(1)(a)(**21**) (reduction in applicable amount where the claimant is appealing against a decision which embodies a determination that he is not incapable of work) for "11, 12, 14, 15(c)(i) or (d)(i)" substitute "11 or 12".

(5) In regulation 29(4B)(a)(**22**) (calculation of earnings derived from employed earner's employment and income other than earnings) for "paragraph 5(4) of Schedule 3 to the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965" substitute "Article 23(1) of the Employment Rights (Northern Ireland) Order 1996".

(6) In regulation 35(**23**) (earnings of employed earners)—

(a) in paragraph (1)—

(i) in sub-paragraph (g) for "Article 32(2)(a) or (5) of the Industrial Relations (Northern Ireland) Order 1976 (remedies for unfair dismissal and compensation)" substitute "Article 146(4) or 151(3)(a) of the Employment Rights (Northern Ireland) Order 1996 (the remedies: orders and compensation, enforcement of order and compensation)";

(ii) after sub-paragraph (g) insert—

> "(gg) any payment or remuneration made under Article 60, 66, 96, 100 or 102 of the Employment Rights (Northern Ireland) Order 1996 (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to industrial tribunals);", and

(iii) in sub-paragraph (h) for "Article 14(2) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977 (certain sums to be earnings for social security purposes)" substitute "section 112(3) of the Contributions and Benefits Act (certain sums to be earnings)"; and

(b) in paragraph (3)—

(**15**) The definition of "lower rate" was inserted by regulation 4(2) of S.R. 1992 No. 403
(**16**) The definition of "maternity leave" was inserted by regulation 4(2)(c) of S.R. 1993 No. 373
(**17**) S.I. 1996/1919 (N.I. 16)
(**18**) The definition of "sports award" was inserted by regulation 2(2)(d) of S.R. 1999 No. 342
(**19**) 2007 c. 3
(**20**) Paragraph (5) was amended by regulation 3 of S.R. 1988 No. 431 and regulation 3 of S.R. 1989 No. 365
(**21**) Regulation 22A was inserted by regulation 13 of S.R. 1996 No. 199 and paragraph (1) was amended by Article 9(2)(a) of S.R. 1999 No. 371 (C. 28), regulation 4(2)(a) of S.R. 2000 No. 4 and paragraph 7 of the Schedule to S.R. 2002 No. 132
(**22**) Paragraph (4B) was inserted by regulation 9(c) of S.R. 1989 No. 365
(**23**) Regulation 35(1) was amended by regulation 11(a) of S.R. 1989 No. 365

(i) in sub-paragraph (a)(iii)(**24**) for "section 11(1) of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965" substitute "Article 170(1) of the Employment Rights (Northern Ireland) Order 1996", and

(ii) in sub-paragraph (b) for "paragraph 5(4) of Schedule 3 to the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965" substitute "Article 23(1) of the Employment Rights (Northern Ireland) Order 1996".

(7) In regulation 39(1)(**25**) (deduction of tax and contributions for self-employed earners) for "lower rate", in each place where it occurs, substitute "starting rate".

(8) In regulation 39D (deduction in respect of tax for participants in the self-employment route) in paragraphs (1)(c) and (2)(**26**) for "lower rate", in each place where it occurs, substitute "starting rate".

(9) In regulation 42 (notional income)—

(a) omit "or" at the end of (6A)(b)(ii);

(b) at the end of paragraph (6A)(c)(**27**) add—

"; or

(d) to a claimant who is participating in a work placement approved by the Department for Employment and Learning (or a person providing services to that Department) before the placement starts.

(6AA) In paragraph (6A)(d) "work placement" means practical work experience which is not undertaken in expectation of payment."; and

(c) in paragraph (8)(a)(**28**) for "lower rate", in each place where it occurs, substitute "starting rate".

(10) For regulation 49(**29**) (calculation of capital in the United Kingdom) substitute—

"**Calculation of capital in the United Kingdom**

49. Capital which a claimant possesses in the United Kingdom shall be calculated at its current market or surrender value less—

(a) where there would be expenses attributable to sale, 10 per cent.; and

(b) the amount of any encumbrance secured on it.".

(11) In Schedule 8 (sums to be disregarded in the calculation of earnings)

(a) for paragraph 1(**30**) substitute—

"**1.**—(1) In the case of a claimant who has been engaged in remunerative work as an employed earner or, had the employment been in Northern Ireland, would have been so engaged—

(**24**) Paragraph (3) was added by regulation 11(b) of S.R. 1989 No. 365 and sub-paragraph (a) was amended by regulation 4(b) of S.R. 1997 No. 130

(**25**) Regulation 39(1) was amended by regulation 4(7) of S.R. 1992 No. 403, regulation 2(8) of S.R. 1994 No. 327 and regulation 3(4) of S.R. 2007 No. 306

(**26**) Regulation 39D(2) was inserted by regulation 3(3) of S.R. 1998 No. 182 and amended by regulation 14(3)(c) of S.R. 2001 No. 151 and regulation 3(5)(b) of S.R. 2007 No. 306

(**27**) Paragraph (6A) was inserted by regulation 2(2)(b) and amended by regulation 2(2)(c) of S.R. 1999 No. 390 and sub-paragraph (c) was amended by regulation 4(2)(a) of S.R. 2004 No. 389

(**28**) Paragraph (8)(a) was amended by regulation 4(8) of S.R. 1992 No. 403, regulation 2(8) of S.R. 1994 No. 327 and regulation 3(6)(f) of S.R. 2007 No. 306

(**29**) Regulation 49 was amended by Article 7(9) of S.R. 1999 No. 472 (C. 36)

(**30**) Paragraph 1 was amended by regulation 35(a) of S.R. 1988 No. 146, regulation 23(a) of S.R. 1988 No. 318, regulation 18 of S.R. 1989 No. 365, regulation 4(21)(a) of S.R. 1993 No. 373 and regulation 24(7)(a) of S.R. 2003 No. 191

(a) any earnings, other than items to which sub-paragraph (2) applies, paid or due to be paid from that employment which terminated before the first day of entitlement to income support;

(b) any earnings, other than a payment of the nature described in regulation 35(1)(e) or (i) (in so far as it applies to regulation 35(1)(e)), paid or due to be paid from that employment which has not been terminated where the claimant is not—

(i) engaged in remunerative work, or

(ii) suspended from his employment.

(2) This sub-paragraph applies to—

(a) any payment of the nature described in regulation 35(1)(e) or (i) (in so far as it applies to regulation 35(1)(e)); and

(b) any award, sum or payment of the nature described in—

(i) regulation 35(1)(g), (h) or (i) (in so far as it applies to regulation 35(1)(g) or (h)), or

(ii) Article 66 or 102 of the Employment Rights (Northern Ireland) Order 1996 (guarantee payments and suspension from work: complaints to industrial tribunals),

including any payment made following the settlement of a complaint to an industrial tribunal or of court proceedings."; and

(b) for paragraph 2(**31**) substitute—

"**2.**—(1) In the case of a claimant to whom this paragraph applies, any earnings (other than a payment of the nature described in regulation 35(1)(e) or (i) (in so far as it applies to regulation 35(1)(e)) which relate to employment which ceased before the first day of entitlement to income support whether or not that employment has terminated.

(2) This paragraph applies to a claimant who has been engaged in part-time employment as an employed earner or, had the employment been in Northern Ireland, would have been so engaged; but it does not apply to a claimant who has been suspended from his employment.".

(12) In Schedule 9 (sums to be disregarded in the calculation of income other than earnings)—

(a) in paragraph 11(1)(**32**) at the end add "or a payment corresponding to such an education maintenance allowance made pursuant to section 3 of the Employment and Training Act (Northern Ireland) 1950(**33**)";

(b) in paragraph 19(**34**) for sub-paragraphs (a) and (b) substitute—

"(a) where the aggregate of any payments made in respect of any one week in respect of the occupation of the dwelling by that person or a member of his family, or by that person and a member of his family, is less than £20, the whole of that amount; or

(b) where the aggregate of any such payments is £20 or more per week, £20."; and

(**31**) Paragraph 2 was substituted by regulation 4(21)(b) of S.R. 1993 No. 373

(**32**) Paragraph 11 was substituted by regulation 5(3) of S.R. 2004 No. 300

(**33**) 1950 c.29 (N.I.); section 3 was amended by Article 16 of, and Part I of Schedule 4 to, the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)) and Article 35 of, and paragraph 1 of Schedule 3 to, the Industrial Training (Northern Ireland) Order 1984 (S.I. 1984/1159 (N.I. 9))

(**34**) Paragraph 19 was substituted by regulation 4(9)(b) of S.R. 1994 No. 77 and amended by regulation 2(12)(c) of S.R. 1995 No. 86 and the amount in sub-paragraph (b) was substituted by Article 16(9) of S.R. 2007 No. 153