STATUTORY RULES OF NORTHERN IRELAND

2005 No. 580

SOCIAL SECURITY; HOUSING; RATES

The Social Security (Hospital In-Patients) Regulations (Northern Ireland) 2005

Made - - - - 16th December 2005
Coming into operation in accordance with regulation 1(1)

The Department for Social Development, in exercise of the powers conferred by sections 113(1)(b), 122(1)(a) and (d), 123(5), 129(4), 131(1), 132(3), 134(2) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**), sections 5(1)(q), 71(1)(b) and 165(1) and (4) to (6) of the Social Security Administration (Northern Ireland) Act 1992(**2**) and Articles 6(5) and 36(2)(a) of the Jobseekers (Northern Ireland) Order 1995(**3**), and now vested in it(**4**), and sections 2(3), (6) and (9), 3(8) and 19(1) to (3) of the State Pension Credit Act (Northern Ireland) 2002(**5**), with the consent of the Department of Finance and Personnel in so far as regulation 4 is concerned(**6**), and all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 2005 and shall come into operation for the purposes of—

(a) this regulation and regulations 2, 4, 6 and 7, on 10th April 2006;

(b) regulation 3, in so far as it relates to a particular beneficiary, on the first day of the first benefit week to commence for that beneficiary on or after 10th April 2006, and for the purposes of this sub-paragraph "benefit week" has the same meaning as in the Income Support (General) Regulations (Northern Ireland)1987(**7**);

(**1**) 1992 c. 7; section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)
(**2**) 1992 c. 8; section 71(1) was amended by paragraph 32(2) of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I.1995/2705 (N.I. 15)) and 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 36(2)(a) was amended by paragraph 55 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999
(**4**) *See* Article 8(b) of S.R. 1999 No. 481
(**5**) 2002 c. 14
(**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**) S.R. 1987 No. 459; the definition of "benefit week" was amended by regulation 2(a) of S.R. 1988 No. 318

(c) regulation 5, in so far as it relates to a particular beneficiary, on the first day of the first benefit week to commence for that beneficiary on or after 10th April 2006, and for the purposes of this sub-paragraph "benefit week" has the same meaning as in the Jobseeker's Allowance Regulations (Northern Ireland) 1996(**8**); and

(d) regulation 8—

(i) in so far as it relates to a beneficiary specified in sub-paragraph (b) or (c), on the day specified for that beneficiary, and

(ii) otherwise, on 10th April 2006.

(2) The Interpretation Act (Northern Ireland) 1954(**9**) shall apply to these Regulations as it applies to an Act of the Assembly.

Hospital in-patients entitled to an increase in benefit for a dependant

2.—(1) Paragraphs (2) and (3) apply where a beneficiary is entitled to an increase in benefit for an adult or child dependant under Part IV of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**10**).

(2) Where the beneficiary has received free in-patient treatment for a period of not less than 52 weeks, the increase shall not be payable unless the beneficiary applies to the Department to pay the increase on behalf of the beneficiary to—

(a) the dependant; or

(b) some other person who is approved by the Department and who satisfies the Department that he will apply the increase for the benefit of the dependant.

(3) Where both the beneficiary and the dependant are in-patients and each has received free in-patient treatment for a period of not less than 52 weeks, the increase shall not be payable unless the beneficiary applies to the Department to pay the increase on behalf of the beneficiary to—

(a) the dependant; or

(b) some other person who is approved by the Department and who satisfies the Department that he will apply the increase for the benefit of a child of the beneficiary.

(4) For the purposes of this regulation, a person shall be regarded as receiving or having received free in-patient treatment for any period for which he is or has been maintained free of charge while undergoing medical or other treatment as an in-patient—

(a) in a hospital or similar institution under the Health and Personal Social Services (Northern Ireland) Order 1972(**11**) or the Health and Personal Social Services (Northern Ireland) Order 1991(**12**); or

(b) in a hospital or similar institution maintained or administered by the Defence Council,

and such a person shall, for the purposes of sub-paragraph (a), be regarded as being maintained free of charge in such a hospital or similar institution unless his accommodation and services are provided under Article 31 of the Health and Personal Social Services (Northern Ireland) Order 1972(**13**) or paragraph 14 of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991.

(**8**) S.R. 1996 No. 198; the definition of "benefit week" was amended by regulation 2(2) of S.R. 1996 No. 358 and regulation 2(2)(a) of S.R. 1996 No. 503
(**9**) 1954 c. 33 (N.I.)
(**10**) Provisions for increases in benefit for child dependants were repealed by Schedule 6 to the Tax Credits Act 2002 subject to savings and transitional provisions under section 62 of that Act
(**11**) S.I. 1972/1265 (N.I. 14)
(**12**) S.I. 1991/194 (N.I. 1)
(**13**) Article 31 was substituted by Article 3(9) of the Health and Medicines (Northern Ireland) Order 1988 (S.I. 1988/2249 (N.I. 24))

(5) For the purposes of paragraph (4), a period during which a person is regarded as receiving or having received free in-patient treatment shall be deemed to begin on and includes the day after the day on which he enters a hospital or similar institution referred to in that paragraph and to end on the day on which he leaves such a hospital or similar institution.

(6) For the purposes of this regulation—

(a) where an increase in a person's benefit is payable in respect of an adult or child dependant the increase shall be treated as a separate benefit; and

(b) where a beneficiary's spouse or civil partner ("dependant") is temporarily absent from Northern Ireland for the purpose of being treated for incapacity which commenced before he left Northern Ireland the absence shall be disregarded for the purpose of determining whether the beneficiary is residing with the dependant and is entitled to an increase in benefit for him.

Amendment of the Income Support (General) Regulations

3.—(1) The Income Support (General) Regulations (Northern Ireland) 1987 shall be amended in accordance with the paragraphs (2) to (6).

(2) In regulation 21 (special cases)—

(a) paragraph (2)(**14**) shall be omitted; and

(b) in paragraph (3) in the definition of "patient" for "the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975" there shall be substituted "regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 2005".

(3) In paragraph 12(1) of Schedule 2 (applicable amounts)—

(a) in head (b)(ii)(bb)(**15**) at the beginning there shall be inserted "subject to paragraphs 2A and 2B of Schedule 7,"; and

(b) in head (d)(**16**) for "(1)(a), (b), (c)(ii) or (d)(ii) there shall be substituted "2A or 2B".

(4) In paragraph 18(7)(g) of Schedule 3(**17**) (housing costs) for sub-heads (i) and (ii) there shall be substituted the following sub-heads—

"(i) "patient" has the meaning given in paragraph 3(13)(b) and "prisoner" has the meaning given in regulation 21(3); and

(ii) in calculating a period of 52 weeks as a patient, any two or more distinct periods separated by one or more intervals each not exceeding 28 days shall be treated as a single period; or".

(5) In Schedule 7 (applicable amounts in special cases)—

(a) paragraphs 1(**18**) (but not the heading before it) and 2 shall be omitted; and

(b) for paragraph 2A(**19**) there shall be substituted the following paragraphs—

"**2A.** A claimant who is detained, or liable to be detained, under Article 53 of the Mental Health (Northern Ireland) Order 1986 (removal to	**2A.** Nil.

(**14**) Paragraph (2) was amended by regulation 3(b) of S.R. 2003 No. 412
(**15**) Head (b) was substituted by regulation 2(12)(a)(ii) of S.R. 1995 No. 67 and amended by regulation 2(8) of S.R 1995 No. 367
(**16**) Head (d) was inserted by regulation 24(5)(e) of S.R. 2003 No. 191 and amended by regulation 4 of S.R. 2004 No. 213
(**17**) Schedule 3 was substituted by Schedule 1 to S. R. 1995 No. 301 and paragraph 18(7)(g) was amended by regulation 3(4) of S.R.2003 No. 261 and regulation 4(b)(ii)(aa) of S.R. 2004 No. 394
(**18**) Paragraph 1 was amended by regulation 19(a) of S.R. 1988 No. 431, paragraph 15(a) of Part I of the Schedule to S.R. 2002 No. 132, paragraph 21(a) to (c) of Schedule 1 to S.R. 2003 No. 195 and regulation 3(5)(a) of S.R. 2003 No. 261
(**19**) Paragraph 2A was inserted by regulation 19(b) of S.R. 1990 No. 131 and amended by regulation 5 of S.R. 1998 No. 81

hospital of persons serving sentences of imprisonment, etc.) but not if his detention continues after the date which the Secretary of State certifies would have been the earliest date on which he could have been released in respect of, or from, the prison sentence if he had not been detained in hospital.	
2B. Subject to paragraph 2A, a single claimant who has been a patient for a continuous period of more than 52 weeks or, where the claimant is one of a couple, the other member of the couple has been a patient for a continuous period of more than 52 weeks.	**2B.** The amount applicable under regulation 17(1) less any amount applicable by virtue of paragraphs 10 or 11 and 12 or paragraph 13A of Schedule 2.".

(6) In Schedule 9 (sums to be disregarded in the calculation of income other than earnings) paragraph 38(**20**) shall be omitted.

Amendment of the Housing Benefit (General) Regulations

4.—(1) The Housing Benefit (General) Regulations (Northern Ireland) 1987(**21**) shall be amended in accordance with the paragraphs (2) and (3).

(2) In regulation 16(5)(**22**) (applicable amounts), as modified in respect of any person who has attained the qualifying age for state pension credit, in the definition of "patient" for "the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975" there shall be substituted "regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 2005".

(3) In regulation 21A(4)(c)(**23**) (treatment of child care charges) for "the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975" there shall be substituted "regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 2005".

Amendment of the Jobseeker's Allowance Regulations

5.—(1) The Jobseeker's Allowance Regulations (Northern Ireland) 1996 shall be amended in accordance with paragraphs (2) to (6).

(2) In regulation 85 (special cases)—

(a) paragraph (3)(**24**) shall be omitted; and

(b) in paragraph (4) in the definition of "patient" for "the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975" there shall be substituted "regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 2005.".

(3) In regulation 86C(**25**) (joint-claim couples: special cases) paragraph (3) shall be omitted.

(**20**) Paragraph 38 was added by regulation 36(g) of S.R. 1988 No. 146
(**21**) S.R. 1987 No. 461; relevant amending regulations are S.R. 1994 No. 274, S.R. 2003 No. 197 and S.R. 2005 No. 444
(**22**) Regulation 16 was substituted by regulation 6(1) of S.R. 2003 No. 197 and paragraph (5) was substituted by regulation 2(3)(b) of S.R. 2005 No. 444
(**23**) Regulation 21A was inserted by regulation 2(3) of S.R.1994 No. 274 and paragraph (4)(c) was amended by regulation 2(5) of S.R. 2005 No. 444
(**24**) Paragraph (3) was amended by paragraph 4(a) of Schedule 3 to S.R. 2005 No. 458
(**25**) Regulation 86C was inserted by paragraph 35 of Schedule 2 to S.R. 2000 No. 350 and paragraph (3) was amended by regulation 5(2)(c) of S.R. 2004 No. 143

(4) In paragraph 17(7)(g) of Schedule 2(**26**) (housing costs) for sub-heads (i) and (ii) there shall be substituted the following sub-heads—

"(i) "patient" has the meaning given in paragraph 3(13)(b) and "prisoner" has the meaning given in regulation 85(4), and

(ii) in calculating any period of 52 weeks as a patient, any 2 or more distinct periods separated by one or more intervals each not exceeding 28 days shall be treated as a single period; or".

(5) In Schedule 4 (applicable amounts in special cases)—

(a) paragraph 1(**27**) shall be omitted; and

(b) after that paragraph there shall be inserted the following paragraph—

"Claimant who is a patient	
1A. A claimant who has been a patient for a continuous period of more than 52 weeks.	**1A.** The amount applicable under regulation 83 less any amount applicable by virtue of paragraphs 12 or 13 and 14 or paragraph 15A of Schedule 1.".

(6) In Schedule 4A(**28**) (applicable amounts of joint-claim couples in special cases)—

(a) paragraph 1 (but not the heading before it) shall be omitted; and

(b) after that paragraph there shall be inserted the following paragraph—

"**1A.** A claimant who has been a patient for a continuous period of more than 52 weeks.	**1A.** The amount applicable under regulation 86A less any amount applicable by virtue of paragraphs 20F or 20G and 20H or paragraph 20IA of Schedule 1.".

Amendment of the Social Fund Winter Fuel Payment Regulations

6. In regulation 1(2) of the Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000(**29**) (interpretation) in the definition of "free in-patient treatment" for "regulation 2(2) of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975" there shall be substituted "regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 2005".

Amendment of the State Pension Credit Regulations

7.—(1) The State Pension Credit Regulations (Northern Ireland) 2003(**30**) shall be amended in accordance with paragraphs (2) to (5).

(2) In regulation 1(2) (interpretation) for the definition of "patient" there shall be substituted the following definition—

""patient", except in Schedule 2, means a person (other than a prisoner) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 2005;".

(**26**) Head (g) was amended by regulation 5(4) of S.R. 2003 No. 261 and regulation 5(b)(ii)(aa) of S.R. 2004 No. 394
(**27**) Paragraph 1 was amended by regulation 5(5)(a) of S.R. 2003 No. 261 and regulation 4(11)(a) of S.R. 2003 No. 267
(**28**) Schedule 4A was inserted by paragraph 57 of Schedule 2 to S.R. 2000 No. 350 and paragraph 1 was amended by regulation 5(6) of S.R. 2003 No. 261 and regulation 4(12)(a) of S.R. 2003 No. 267
(**29**) S.R. 2000 No. 91; to which there are amendments not relevant to these regulations
(**30**) S.R. 2003 No. 28; relevant amending regulations are S.R. 2003 No. 261