STATUTORY RULES OF NORTHERN IRELAND

2005 No. 424

HOUSING; RATES; SOCIAL SECURITY

The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2005

Made - - - - 14th September 2005

Coming into operation in accordance with regulation 1

The Department for Social Development, in exercise of the powers conferred by sections 122(1)(a) and (d), 130, 132 and 171(1) and (3) to (5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**) and Articles 14(1), (2) and (4), 15(1) and (2A) and 36(2) of the Jobseekers (Northern Ireland) Order 1995(**2**), and now vested in it(**3**), and sections 15(1)(j), (3) and (6)(b) and 19(1), (2)(a) and (3) of the State Pension Credit Act (Northern Ireland) 2002(**4**) and of all other powers enabling it in that behalf, with the consent of the Department of Finance and Personnel(**5**) in so far as regulation 3 is concerned, and after agreement by the Social Security Advisory Committee that proposals in respect of that regulation should not be referred to it(**6**), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2005 and shall, subject to paragraphs (2) to (5), come into operation on 3rd October 2005.

(2) The following provisions shall come into operation on 30th December 2005—

(a) regulation 2(8)(b) and (9)(b);

(b) regulation 3(5)(b) and (6)(b); and

(c) regulation 4(8)(b) and (9)(b).

(3) Regulation 3(4) shall come into operation on 1st April 2006.

(**1**) 1992 c. 7; section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)

(**2**) S.I. 1995/2705 (N.I. 15); Article 15(2A) was inserted by paragraph 10(2) of Schedule 7 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and 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 (S.I. 1999/671)

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

(**4**) 2002 c. 14 (N.I.)

(**5**) *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

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

(4) The following provisions shall come into operation on 6th April 2006—

(a) regulation 2(3)(a) to (d) and (5);

(b) regulation 3(2) and (3); and

(c) regulation 4(3)(a) to (e) and (5).

(5) The following provisions shall come into operation on the first day of the first benefit week commencing on or after 10th April 2006—

(a) regulation 2(2), (4), (6) and (7); and

(b) regulation 4(2), (4), (6) and (7).

(6) In paragraph (5) the term "benefit week", so far as it relates to regulation 2, has the same meaning as in regulation 2(1) of the Income Support Regulations(**7**) and, so far as it relates to regulation 4, has the same meaning as in regulation 1(2) of the Jobseeker's Allowance Regulations(**8**).

(7) In these Regulations—

"the Income Support Regulations" means the Income Support (General) Regulations (Northern Ireland) 1987(**9**);

"the Jobseeker's Allowance Regulations" means the Jobseeker's Allowance Regulations (Northern Ireland) 1996(**10**).

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

Amendment of the Income Support Regulations

2.—(1) The Income Support Regulations shall be amended in accordance with paragraphs (2) to (9).

(2) In regulation 41(1)(**12**) (capital treated as income) the words "£8,000 or, in a case where regulation 45(aa) (capital limit) applies, £12,000 or, in a case where regulation 45(b) applies," shall be omitted.

(3) In regulation 42 (notional income)—

(a) in paragraph (2)(g)(**13**) after "personal pension scheme" there shall be inserted ", occupational pension scheme";

(b) for paragraph (2A)(**14**) there shall be substituted the following paragraphs—

"(2ZA) A claimant who has attained the age of 60 shall be treated as possessing—

(a) the amount of any income from an occupational pension scheme, personal pension scheme or retirement annuity contract—

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

(**8**) 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**) S.R. 1987 No. 459; relevant amending rules are S.R. 1988 Nos. 146, 318 and 431, S.R. 1989 No. 366, S.R. 1990 No. 137, S.R. 1994 No. 77, S.R. 1995 Nos. 301, 367, 410, 434 and 481, S.R. 1996 Nos. 93 and 199, S.R. 1997 Nos. 22 and 107, S.R. 1998 Nos. 2 and 326, S.R. 1999 Nos. 391 and 472 (C. 36), S.R. 2000 Nos. 71 and 366, S.R. 2002 No. 128, S.R. 2003 Nos. 191, 195 and 417 and S.R. 2005 No. 98

(**10**) S.R. 1996 No. 198; relevant amending rules are S.R. 1996 Nos. 356, 358 and 503, S.R. 1997 Nos. 22 and 412, S.R. 1998 Nos. 2 and 326, S.R. 1999 Nos. 391 and 428 (C. 32), S.R. 2000 Nos. 71, 350 and 366, S.R. 2002 No. 128, S.R. 2003 Nos. 195 and 417 and S.R. 2005 No. 98

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

(**12**) Regulation 41(1) was substituted by Article 7(6) of S.R. 1999 No. 472 (C. 36) and amended by regulation 2(1)(a) of S.R. 2000 No. 366

(**13**) Paragraph (2)(g) was added by regulation 2(4)(a) of S.R. 1995 No. 367

(**14**) Paragraph (2A) was inserted by regulation 2(4)(b) of S.R. 1995 No. 367

(i) for which no claim has been made, and

(ii) to which he might expect to be entitled if a claim for it were made;

(b) income from an occupational pension scheme which the claimant elected to defer,

but only from the date on which it could be expected to be acquired were an application for it to be made.

(2A) Where a person, aged not less than 60, is a person entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

(a) in the case of an occupational pension scheme or personal pension scheme, he fails to purchase an annuity with the funds available in that scheme where—

(i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;

(ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid, or

(iii) income withdrawal is not available to him under that scheme; or

(b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

the amount of any income foregone shall be treated as possessed by him, but only from the date on which it could be expected to be acquired were an application for it to be made.";

(c) in paragraph (2C)(**15**)—

(i) for "relevant personal pension scheme" there shall be substituted "relevant occupational or personal pension scheme", and

(ii) for "under a personal pension scheme" there shall be substituted "under a scheme";

(d) after paragraph (2C) there shall be inserted—

"(2CA) In paragraph (2A), "money purchase benefits" has the meaning it has in the Pension Schemes (Northern Ireland) Act 1993(**16**).''; and

(e) at the end of paragraph (4)(**17**) after "any payment in kind" there shall be added "to the third party".

(4) For regulation 45(**18**) (capital limit) there shall be substituted the following regulation—

"**Capital Limit**

45. For the purposes of section 130(1) of the Contributions and Benefits Act as it applies to income support (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is £16,000.".

(**15**) Paragraph (2C) was inserted by regulation 2(4)(b) of S.R. 1995 No. 367 and amended by regulation 24(2) of S.R. 2003 No. 191

(**16**) 1993 c. 49

(**17**) Paragraph (4) was substituted by regulation 9(a) of S.R. 1988 No. 318 and amended by regulation 4(4)(a) of S.R. 1994 No. 77, regulation 5(2) of S.R. 1995 No. 410, regulation 2(1)(a) and (2) of S.R. 1995 No. 481, regulation 2(2)(a) of S.R. 1998 No. 326, regulation 2(1)(a) of S.R. 1999 No. 391, regulation 2(3) of S.R. 2002 No. 128, paragraph 10(e) and (f) of Schedule 1 to S.R. 2003 No. 195 and regulation 2(6) of S.R. 2005 No. 98

(**18**) Regulation 45 was substituted by regulation 11(1)(a) of S.R. 1996 No. 93 and amended by regulation 2(1)(b) of S.R. 2000 No. 366

(5) In regulation 51(2) (notional capital) after sub-paragraph (d)(**19**) there shall be inserted the following sub-paragraph—

"(da) an occupational pension scheme where the claimant is aged under 60; or".

(6) In regulation 53(**20**) (calculation of tariff income from capital)—

(a) in paragraph (1)—

(i) the words "(1ZA) or" shall be omitted;

(ii) for "£3,000" (in both places where it occurs) there shall be substituted "£6,000", and

(iii) for "£8,000" there shall be substituted "£16,000";

(b) paragraph (1ZA) shall be omitted;

(c) in paragraph (1B) the words "and regulation 45" shall be omitted; and

(d) in paragraphs (2) and (3) ", (1ZA)" shall be omitted.

(7) In Schedule 3(**21**) (housing costs) in paragraph 14(4)(a) and (c) for "£8,000" there shall be substituted "£16,000".

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

(a) in paragraph 21(**22**) after sub-paragraph (3) there shall be added the following sub-paragraph—

"(4) The reference in sub-paragraph (1) to "income in kind" does not include a payment to a third party made in respect of the claimant which is used by the third party to provide benefits in kind to the claimant.";

(b) in paragraph 25—

(i) in sub-paragraph (1)(b)(**23**) for "in accordance with regulations made under section 57A of the Adoption Act 1976 (permitted allowances) or paragraph 3 of Schedule 4 to the Adoption and Children Act 2002 or" there shall be substituted "pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002(**24**) or in accordance", and

(ii) for sub-paragraph (1A)(**25**) there shall be substituted the following sub-paragraph—

"(1A) Any payment, other than a payment to which sub-paragraph (1)(b) applies, made to the claimant pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002."; and

(c) for paragraph 58(**26**) there shall be substituted the following paragraph—

"**58.** Any payment made under regulations made under section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002(**27**).".

(9) In Schedule 10 (capital to be disregarded)—

(a) for paragraph 63(**28**) there shall be substituted the following paragraph—

(**19**) Paragraph (2)(d) was added by regulation 2(5) of S.R. 1995 No. 367
(**20**) Regulation 53 was amended by regulation 12 of S.R. 1988 No. 431, regulation 5(2) of S.R. 1990 No. 137, regulation 11(1)(b) of S.R. 1996 No. 93, regulation 8 of S.R. 1997 No. 22, regulation 2(1)(c) of S.R. 2000 No. 366 and regulation 24(3) of S.R. 2003 No. 191
(**21**) Schedule 3 was substituted by Schedule 1 to S.R. 1995 No. 301; relevant amending regulations are S.R. 1995 No. 434, S.R. 1996 No. 199 and S.R. 1999 No. 107
(**22**) Paragraph 21 was substituted by regulation 36(d) of S.R. 1988 No. 146; relevant amending regulations are S.R. 2000 No. 71
(**23**) Sub-paragraph (1) was substituted by regulation 4 of S.R. 1989 No. 366 and head (b) was substituted by regulation 2(8)(a) of S.R. 1998 No. 2 and amended by regulation 2(4)(a)(i) of S.R. 2003 No. 417
(**24**) 2002 c. 38
(**25**) Sub-paragraph (1A) was inserted by regulation 2(4)(a)(ii) of S.R. 2003 No. 417
(**26**) Paragraph 58 was added by regulation 2(2)(b) of S.R. 1997 No. 22
(**27**) 2002 c. 6 (N.I.)
(**28**) Paragraph 63 was added by regulation 2(5)(b) of S.R. 2003 No. 417

"**63.** Any payment made under regulations made under section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002."; and

(b) for paragraph 64(**29**) there shall be substituted the following paragraph—

"**64.** Any payment made to the claimant pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002.".

Amendment of the Housing Benefit (General) Regulations

3.—(1) The Housing Benefit (General) Regulations (Northern Ireland) 1987(**30**) shall be amended in accordance with paragraphs (2) to (6).

(2) In regulation 35(2)(c)(**31**) (notional income) after "personal pension scheme" there shall be inserted ", occupational pension scheme".

(3) In regulation 43(2)(d)(**32**) (notional capital) after "personal pension scheme" there shall be inserted ", occupational pension scheme".

(4) In regulation 45(**33**) (calculation of tariff income from capital)—

(a) in paragraph (1)—

(i) the words "(1ZA) or" shall be omitted, and

(ii) for "£3,000" (in both places where it occurs) there shall be substituted "£6,000";

(b) paragraph (1ZA) shall be omitted; and

(c) in paragraphs (2) and (3) ", (1ZA)" shall be omitted.

(5) In Schedule 4 (sums to be disregarded in the calculation of income other than earnings)—

(a) paragraph 23(**34**) shall be renumbered sub-paragraph (1) of paragraph 23 and after that sub-paragraph there shall be added the following sub-paragraph—

"(2) The reference in sub-paragraph (1) to "income in kind" does not include a payment to a third party made in respect of the claimant which is used by the third party to provide benefits in kind to the claimant.";

(b) in paragraph 25—

(i) in sub-paragraph (1)(b)(**35**) for "in accordance with regulations made under section 57A of the Adoption Act 1976 (permitted allowances) or paragraph 3 of Schedule 4 to the Adoption and Children Act 2002 or" there shall be substituted "pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002 or in accordance", and

(ii) for sub-paragraph (1A)(**36**) there shall be substituted the following sub-paragraph—

"(1A) Any payment, other than a payment to which sub-paragraph (1)(b) applies, made to the claimant pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002."; and

(**29**) Paragraph 64 was added by regulation 2(5)(b) of S.R. 2003 No. 417
(**30**) S.R. 1987 No. 461; relevant amending regulations are S.R. 1989 No. 366, S.R. 1990 No. 137, S.R. 1995 No. 367, S.R. 1996 No. 93, S.R. 1998 Nos. 2 and 424, S.R. 2000 Nos. 71 and 366 and S.R. 2003 No. 417
(**31**) Regulation 35(2)(a) to (c) was substituted by regulation 3(4)(a) of S.R. 1995 No. 367
(**32**) Regulation 43(2)(d) was added by regulation 3(5) of S.R. 1995 No. 367
(**33**) Regulation 45 was amended by regulation 14 of S.R. 1988 No. 424, regulation 4(2) of S.R. 1990 No. 137, regulation 11(2)(b) of S.R. 1996 No. 93 and regulation 2(3) of S.R. 2000 No. 366
(**34**) Paragraph 23 was amended by regulation 6(6) of S.R. 2000 No. 71
(**35**) Sub-paragraph (1) was substituted by regulation 3 of S.R. 1989 No. 366 and head (b) was substituted by regulation 3(6)(a) of S.R. 1998 No. 2 and amended by regulation 3(5)(a)(i) of S.R. 2003 No. 417
(**36**) Sub-paragraph (1A) was inserted by regulation 3(5)(a)(ii) of S.R. 2003 No. 417