STATUTORY RULES OF NORTHERN IRELAND

# 2005 No. 46

# SOCIAL SECURITY
# FAMILY LAW
# CHILD SUPPORT

## The Social Security, Child Support and Tax Credits (Miscellaneous Amendments) Regulations (Northern Ireland) 2005

*Made - - - -* *16th February 2005*

*Coming into operation* *18th March 2005*

The Department for Social Development, in exercise of the powers conferred by Article 22(4), (5) and (6) of the Child Support (Northern Ireland) Order 1991(**1**), sections 122(1)(a), 123(1)(e) and 171(1) and (3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**2**), sections 5(1)(a), (g), (j), (n), (q) and (s), 5A(2), 69(5), (5A) and (8), 72(2), 165(1), (4) to (6) of the Social Security Administration (Northern Ireland) Act 1992(**3**), Article 13(5)(a) and (b) of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997(**4**), Articles 7(3), 10(1) and (6), 11(3) and (6), 13(2), (6) and (7), 15(3)(b) and (11), 16(1), 17(2), 28(1) and 74(1), (3) to (6) of, and paragraphs 1, 3, 4 and 6 of Schedule 4 to, the Social Security (Northern Ireland) Order 1998(**5**), and now vested in it(**6**), and paragraphs 3(1), 6(8), 10(1) and 20(1) and (3) of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**7**) and of all other powers

(**1**) S.I. 1991/2628 (N.I. 23); Article 22 was substituted by Article 42 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and is substituted by section 10 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4)

(**2**) 1992 c. 7; section 123(1)(e) was inserted by paragraph 13(5) of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)) and section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)

(**3**) 1992 c. 8; section 5A was inserted by Article 68 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and amended by paragraph 8 of Schedule 1 to the Social Security Act (Northern Ireland) 2002 (c. 10), in section 69 subsection (5) was amended by paragraph 62(2) of Schedule 6 to the Social Security (Northern Ireland) Order 1998, subsection (5A) was inserted by section 2(4) of the Social Security (Overpayments) Act 1996 (c. 51) and amended by paragraph 62(3) of Schedule 6 to the Social Security (Northern Ireland) Order 1998 and subsection (8) was amended by paragraph 8 of Schedule 4 to the Tax Credits Act 2002, section 72(2) was amended by paragraph 11(b) of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14) 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)

(**4**) S.I. 1997/1183 (N.I. 12)

(**5**) S.I. 1998/1506 (N.I. 10); Article 13(2) was substituted by paragraph 19(3) of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 and Article 74(1) was amended by paragraph 17(2) of Schedule 4 to the Tax Credits Act 2002. The powers in Chapter II of Part II exercised in these Regulations in respect of tax credits, are applied and modified under section 63(8) of the Tax Credits Act 2002 by S.I. 2002/2926

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

(**7**) 2000 c. 4

enabling it in that behalf, with the concurrence of the Lord Chancellor in so far as regulation 7(19) is concerned, hereby makes the following Regulations:

### Citation and commencement

**1.** These Regulations may be cited as the Social Security, Child Support and Tax Credits (Miscellaneous Amendments) Regulations (Northern Ireland) 2005 and shall come into operation on 18th March 2005.

### Amendment of the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations

**2.** Regulation 5 of the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations (Northern Ireland) 1986(**8**) (development of disease) shall be renumbered paragraph (1) of regulation 5 and after that paragraph there shall be added the following paragraph –

> "(2) Where a person claims benefit under Part V of the Contributions and Benefits Act and it is decided that he is not entitled on the basis of a finding that he was not suffering from a prescribed disease, the finding shall be conclusive for the purpose of a decision on a subsequent claim of that kind in respect of the same disease and the same person.".

### Amendment of the Income Support (General) Regulations

**3.** In paragraph 25 of Schedule 1B to the Income Support (General) Regulations (Northern Ireland) 1987(**9**) (prescribed categories of person) for "prior to" there shall be substituted "beginning with the date on which that determination takes effect until".

### Amendment of the Housing Benefit (General) Regulations

**4.** In regulation 71 of the Housing Benefit (General) Regulations (Northern Ireland) 1987(**10**) (who may claim) –

(a) in paragraph (4) after "paragraph (3)" there shall be inserted "or treated a person as an appointee under paragraph (5)"; and

(b) in paragraph (5) for "so requests in writing" there shall be substituted "agrees".

### Amendment of the Social Security (Claims and Payments) Regulations

**5.**—(1) The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**11**) shall be amended in accordance with paragraphs (2) to (11).

(2) In regulation 4 (making a claim for benefit) after paragraph (6C)(**12**) there shall be inserted the following paragraph –

> "(6CA) Paragraph (6C)(b) to (e) applies in respect of information, evidence and advice relating to any claim by a person to whom paragraph (6A) applies, whether the claim is made in accordance with paragraph (6B)(b) or otherwise.".

(3) In regulation 4C(**13**) (making a claim for state pension credit) –

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(**8**) S.R. 1986 No. 179; to which there are amendments not relevant to these regulations
(**9**) S.R. 1987 No. 459; relevant amending regulations are S.R. 1996 Nos. 199 and 371 (C. 28) and S.R. 2000 No. 4
(**10**) S.R. 1987 No. 461; relevant amending regulations are S.R. 2001 No. 215
(**11**) S.R. 1987 No. 465; relevant amending regulations are S.R. 1989 No. 398, S.R. 1992 No. 7, S.R. 1994 No. 65, S.R. 1996 No. 85, S.R. 1999 No. 428 (C. 32), S.R. 2000 No. 215, S.R. 2001 No. 108, S.R. 2002 No. 67 and S.R. 2003 Nos. 191 and 317
(**12**) Paragraph (6C) was inserted by regulation 2(2)(b) of S.R. 2003 No. 317
(**13**) Regulation 4C was inserted by regulation 4(3) of S.R. 2003 No. 191

(a) in paragraph (3) the words "or other office designated by the Department for accepting claims for state pension credit" shall be omitted;

(b) after paragraph (3) there shall be inserted the following paragraph –

"(3A) A claim made in writing may also be made at an office designated by the Department for accepting claims for state pension credit.";

(c) for paragraph (5) there shall be substituted the following paragraph –

"(5) Where a claim is made in accordance with paragraph (4), the relevant authority or other specified person –

(a) shall forward the claim to the Department as soon as reasonably practicable;

(b) may receive information or evidence relating to the claim supplied by the person making, or who has made, the claim or another person, and shall forward it to the Department as soon as reasonably practicable;

(c) may obtain information or evidence relating to the claim from the person who has made the claim and shall forward it to the Department as soon as reasonably practicable;

(d) may record information or evidence relating to the claim supplied or obtained in accordance with sub-paragraph (b) or (c) and may hold the information or evidence (whether as supplied or obtained or as recorded) for the purpose of forwarding it to the Department; and

(e) may give information and advice with respect to the claim to the person who makes, or has made, the claim."; and

(d) after paragraph (5) there shall be inserted the following paragraph –

"(5A) Paragraph (5)(b) to (e) applies in respect of information, evidence and advice relating to any claim for state pension credit, whether it is made in accordance with paragraph (4) or otherwise.".

(4) In regulation 6 (date of claim) –

(a) in paragraph (20)(**14**) for "or appeal" there shall be substituted ", appeal or termination of an award for a fixed period";

(b) in paragraph (21)(b) for "or appeal" there shall be substituted ", appeal or further claim when an award for a fixed period expires, whether benefit is re-awarded when the further claim is decided or following a revision of, or an appeal against, such a decision"; and

(c) in paragraph (22) –

(i) in the definition of "relevant benefit" after paragraph (e) there shall be added the following paragraph –

"(f) state pension credit;", and

(ii) in the definition of "family"(**15**) at the end there shall be added ", and in the case of state pension credit "member of his family" means the other member of a couple where the claimant is a member of a married or unmarried couple".

(5) In regulation 13C(**16**) for the heading and paragraph (1) there shall be substituted –

(**14**) Paragraphs (20) to (22) were substituted by regulation 3(2)(a) of S.R. 2000 No. 215

(**15**) The definition of "family" was added by regulation 2(2)(f)(iii) of S.R. 2002 No. 67

(**16**) Regulation 13C was inserted by regulation 8 of S.R. 1992 No. 7 and amended by Article 5(5) of S.R. 1999 No. 428 (C. 32)

"**Further claim for and award of disability living allowance or attendance allowance**

**13C.**—(1) A person entitled to an award of disability living allowance or attendance allowance may make a further claim for disability living allowance or attendance allowance, as the case may be, during the period of 6 months immediately before the existing award expires.".

(6) In regulation 30(1) (payments on death) at the end there shall be added "and any related issue of revision, supersession or appeal".

(7) In regulation 33 (persons unable to act) –

(a) after paragraph (1) there shall be inserted the following paragraph –

"(1A) Where a person has been appointed under regulation 71(3) of the Housing Benefit (General) Regulations (Northern Ireland) 1987 by a relevant authority within the meaning of those Regulations to act on behalf of another in relation to a benefit claim or award, the Department may, if that person agrees, treat him as if it had appointed him under paragraph (1).."; and

(b) in paragraph (2) after "an appointment" there shall be inserted ", or treated an appointment as made,".

(8) In regulation 37(1)(**17**) (extinguishment of right to payment of sums by way of benefit where payment is not obtained within the prescribed period) –

(a) after sub-paragraph (b) there shall be inserted the following sub-paragraph –

"(bb) in relation to any such sum which the person entitled to it and the Department have arranged to be paid by means of direct credit transfer into a bank or other account, on the due date for payment of the sum;"; and

(b) in sub-paragraph (c) for "or (b)" there shall be substituted ", (b) or (bb)".

(9) In regulation 42 (children) –

(a) in paragraph (2)(b) after "18" there shall be inserted "or, if the person is a parent of the child and living with him, be over the age of 16"; and

(b) in paragraph (9) after the definition of "HSS trust"(**18**) there shall be inserted the following definition –

""child" means a person under the age of 16;".

(10) In regulation 43(3) (payment of disability living allowance on behalf of a beneficiary) –

(a) the word "original", in each place where it occurs, shall be omitted;

(b) in sub-paragraph (b) after "term of hire" there shall be added ", other than where sub-paragraph (d) applies,"; and

(c) after sub-paragraph (c) there shall be added – "or

(d) where the original term of hire is extended by an agreed variation of the agreement, the period of the extended term.".

(11) In paragraph 2(c) of Schedule 7(**19**) (manner and time of payment and commencement of entitlement in income support cases) the words "registering or required to register as available for work or" shall be omitted.

(**17**) Regulation 37(1) was amended by regulation 6(2) and (3) of S.R. 1989 No. 398 and regulation 2(5) of S.R. 1996 No. 85
(**18**) The definition of "HSS trust" was inserted by paragraph 1(d) of Schedule 15 to S.R. 1994 No. 65
(**19**) Paragraph 2(c) was amended by regulation 10(7)(a) of S.R. 2001 No. 108

**Amendment of the Social Security (Payments on account, Overpayments and Recovery) Regulations**

**6.**—(1) The Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988(**20**) shall be amended in accordance with paragraphs (2) to (5).

(2) In regulation 2 (making of interim payments) –

(a) in paragraph (1)(**21**) –

(i) after "may be entitled" there shall be inserted "or, where sub-paragraph (a) applies, entitled apart from satisfying the condition of making a claim", and

(ii) in sub-paragraph (a) at the end there shall be added ", including where it is impracticable to satisfy immediately the national insurance number requirements in section 1(1A) and (1B) of the Administration Act"; and

(b) for paragraph (1A)(**22**) there shall be substituted the following paragraph –

"(1A) Paragraph (1) shall not apply pending the determination of an appeal.".

(3) In regulation 8(1) (duplication and prescribed payments) after sub-paragraph (h)(**23**) there shall be added the following sub-paragraph –

"(i) any contribution-based jobseeker's allowance within the meaning of Article 3(4) of the Jobseekers (Northern Ireland) Order 1995.".

(4) In regulation 12(**24**) (circumstances in which determination need not be reversed, varied, revised or superseded) for "Article 54(4) of the Order" there shall be substituted "Section 69(5) or (5A) of the Administration Act".

(5) In regulation 16(3) (limitations on deductions from prescribed benefits) for "regulation 36(1) of the Claims and Payments Regulations (suspension of payments)" there shall be substituted "regulation 20 of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 (making of payments which have been suspended)".

**Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations**

**7.**—(1) The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(**25**) shall be amended in accordance with paragraphs (2) to (20).

(2) In regulation 3 (revision of decisions) –

(a) after paragraph (7)(**26**) there shall be inserted the following paragraph –

"(7ZA) Where –

(a) the Department makes a decision under Article 9 or 11 awarding income support or state pension credit to a claimant ("the original award");

(b) the claimant has a non-dependant within the meaning of regulation 3 of the Income Support Regulations or a person residing with him within the meaning of paragraph 1(1)(a)(ii), (b)(ii) or (c)(iii) of Schedule 1 to the State Pension Credit Regulations ("the non-dependant");

(c) but for the non-dependant –

(**20**) S.R. 1988 No. 142; relevant amending regulations are S.R. 1996 No. 11, S.R. 1999 No. 472 (C. 36) and S.R. 2001 No. 108
(**21**) Paragraph (1) was amended by regulation 7(a) of S.R. 1996 No. 11
(**22**) Paragraph (1A) was inserted by regulation 7(b) of S.R. 1996 No. 11
(**23**) Sub-paragraph (h) was added by regulation 11(3) of S.R. 2001 No. 108
(**24**) Regulation 12 was amended by Article 11(7) of S.R. 1999 No. 472 (C. 36)
(**25**) S.R. 1999 No. 162; relevant amending regulations are S.R. 1999 No. 408, S.R. 2000 No. 215, S.R. 2002 Nos. 67, 164 and 189 and S.R. 2003 Nos. 224 and 421
(**26**) Paragraph (7) was substituted by regulation 3(2) of S.R. 2002 No. 67