STATUTORY RULES OF NORTHERN IRELAND

# 1996 No. 520

# SOCIAL SECURITY

## The Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1996

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| *Made - - - -* | *5th November 1996* |
| *Coming into operation* | *25th November 1996* |

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 3(2) and (3), 80(7), 89, 112, 119 and 171(1), (3) and (4) of, and paragraph 4(6) of Schedule 7 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**), sections 5(1)(*o*) and (*s*), 69(7) and 165(4) and (5) of the Social Security Administration (Northern Ireland) Act 1992(**2**) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

## Part I

### General

**Citation and commencement**

**1.** These Regulations may be cited as the Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1996 and shall come into operation on 25th November 1996.

**Interpretation**

**2.**—(1) In these Regulations—

"the Administration Act" means the Social Security Administration (Northern Ireland) Act 1992;

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

(**1**) 1992 c. 7; section 89 was amended by paragraph 26 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I.1994/1898 (N.I. 12)) and section 112 was amended by Schedule 1 to the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16))

(**2**) 1992 c. 8

"the Employment Rights Order" means the Employment Rights (Northern Ireland) Order 1996(**3**);

"the Taxes Act" means the Income and Corporation Taxes Act 1988(**4**);

"adjudicating authority" means any person or body with responsibility under the Administration Act and regulations made thereunder, for the determination of claims for benefit and questions arising in connection with claims for, or awards of, or disqualification for receiving benefit;

"benefit week" means—

(a) any period of 7 days corresponding to the week in respect of which the relevant benefit is due to be paid and, where appropriate, in respect of payments due to be paid before that week; or

(b) the period of 7 days ending on the day before the first day of the first such week following the date of claim or any one of the consecutive periods of 7 days prior to that period;

"board and lodging accommodation" means—

(a) accommodation provided to a person or, if he is a member of a family, to him or any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of his family) and are consumed in that accommodation or associated premises; or

(b) accommodation provided to a person in a hotel, guest house, lodging house or some similar establishment,

except accommodation provided by a close relative of his or of any other member of his family, or other than on a commercial basis;

"claim" means a claim for benefit under Parts II to V of the Contributions and Benefits Act;

"claimant" means a person claiming benefit under Parts II to V of the Contributions and Benefits Act and includes a claimant's spouse or partner and any adult in respect of whom a claim for an increase in benefit is made under Part IV of that Act;

"close relative" means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister or the spouse of any of the preceding persons or, if that person is one of an unmarried couple, the other member of that couple;

"couple" means a married or an unmarried couple;

"date of claim" means the date on which the claimant makes, or is treated as making, a claim for benefit for the purposes of regulation 6 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**5**);

"dwelling occupied as the home" means the dwelling including any garage, garden and outbuildings normally occupied by the claimant as his home, together with—

(a) any agricultural land adjoining that dwelling; and

(b) any land not adjoining that dwelling which it is impracticable or unreasonable to sell separately;

"earnings" has the meaning prescribed in regulation 9 or, as the case may be, 12 and, for the purposes only of sections 80, 82 to 86A and 89 of, and paragraphs 4, 6 and 7 of Schedule 7 to,

(**3**) S.I. 1996/1919 (N.I. 16)
(**4**) 1988 c. 1
(**5**) S.R. 1987 No. 465; relevant amending regulations are S.R. 1988 No. 141, S.R. 1989 No. 398, S.R. 1990 Nos. 137 and 398, S.R. 1991 No. 488, S.R. 1992 No. 7, S.R. 1993 No. 375, S.R. 1994 No. 345 and S.R. 1996 Nos. 354 and 449

the Contributions and Benefits Act(**6**), includes payments by way of occupational or personal pension within the meaning of section 121 of that Act;

"employed earner" means a person who is in gainful employment in Northern Ireland under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E and includes—

(a) a person in any employment which would be such employment if it were in Northern Ireland; and

(b) a person in any such employment which, in accordance with the provisions of the Contributions and Benefits Act and of any regulations made thereunder, is to be disregarded in relation to liability for contributions;

"employment" includes any trade, business, profession, office or vocation;

"invalid carriage or other vehicle" means a vehicle propelled by a petrol engine or by electric power supplied for use on the road and to be controlled by the occupant;

"lone parent" means a person who has no partner and who is responsible for, and a member of the same household as, a child within the meaning of section 138 of the Contributions and Benefits Act;

"lower rate", where it relates to rates of income tax, has the same meaning as in section 832(1) of the Taxes Act(**7**);

"maternity leave" means a period during which a woman is absent from work because she is pregnant or has given birth to a child, and at the end of which she has a right to return to work either under the terms of her contract of employment or under Part IX of the Employment Rights Order;

"net earnings" means such earnings as are calculated in accordance with regulation 10(4);

"net profit" means such profit as is calculated in accordance with regulation 13(4);

"occupational pension scheme" has the same meaning as in section 1 of the Pension Schemes (Northern Ireland) Act 1993(**8**);

"partner" means where a claimant—

(a) is a member of a couple, the other member of that couple;

(b) is married polygamously to 2 or more members of his household, any such member;

"payment" includes a part of a payment;

"pay period" means the period in respect of which a claimant is, or expects to be, normally paid by his employer, being a week, a fortnight, 4 weeks, a month or such other shorter or longer period as the case may be;

"personal pension scheme" has the same meaning as in section 1 of the Pension Schemes (Northern Ireland) Act 1993 and, in the case of a self-employed earner, includes a scheme approved under Chapter IV of Part XIV of the Taxes Act;

"polygamous marriage" means any marriage during the subsistence of which a party to it is married to more than one person and the ceremony of marriage took place under the law of a country which permits polygamy;

(**6**) Section 80 was amended by Article 4(3) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and Article 8 of S.R. 1996 No. 73; section 82 was amended by paragraph 7 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)); section 84 was amended by paragraph 8 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995; section 85 was amended by paragraph 18(10) of Schedule 2 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)); section 86A was inserted by Article 4(4) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and section 89 was amended by paragraph 26 of Schedule 1 to that Order

(**7**) The definition of "lower rate" was inserted by section 9(9) of the Finance Act 1992 (c. 20)

(**8**) 1993 c. 49

"relevant earnings limit" means the amount of a claimant's earnings in excess of which the benefit or increase in question is not payable;

"retirement annuity contract" means a contract or trust scheme approved under Chapter III of Part XIV of the Taxes Act;

"self-employed earner" means a person who is in gainful employment in Northern Ireland otherwise than as an employed earner and includes—

(a) a person in any employment which would be such employment if it were in Northern Ireland; and

(b) a person in any such employment which, in accordance with the provisions of the Contribution and Benefits Act and of any regulations made thereunder, is to be disregarded in relation to liability for contributions;

"voluntary organisation" means any association carrying on or proposing to carry on any activities otherwise than for the purpose of gain by the association or by individual members of the association;

"week" means a period of 7 days and, for the purposes of section 80 of, and paragraph 4(6) of Schedule 7 to, the Contributions and Benefits Act, a period of 7 days being the relevant benefit week;

"year of assessment" has the same meaning as in section 832(1) of the Taxes Act.

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

### Calculation of earnings

**3.**—(1) For the purposes of Parts II to V of the Contributions and Benefits Act (other than those of Schedule 8) and of any regulations made thereunder which relate to benefit under those Parts of that Act or regulations, the earnings of a claimant shall be calculated by determining in accordance with these Regulations the weekly amount of his earnings.

(2) The amount of a claimant's earnings for any period shall be the whole of his earnings (including any earnings which he is treated as possessing under regulation 4 (notional earnings)) except in so far as regulations 10 and 13 provide that certain sums shall be disregarded or deducted as appropriate.

### Notional earnings

**4.**—(1) Where a claimant's earnings are not ascertainable at the date of the determination of the claim or of any subsequent review, the adjudicating authority shall treat the claimant as possessing such earnings as is reasonable in the circumstances of the case having regard to the number of hours worked and the earnings paid for comparable employment in the area.

(2) Where—

(a) a claimant performs a service for another person; and

(b) that other person makes no payment of earnings or pays less than that paid for a comparable employment in the area,

the adjudicating authority shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies the adjudicating authority that the means of that person are insufficient for him to pay or to pay more for the service; but this paragraph shall not apply to a claimant who is engaged by a charitable or voluntary organisation or is a volunteer where

(**9**) 1954 c. 33 (N.I.)

the adjudicating authority is satisfied in any of those cases that it is reasonable for him to provide his services free of charge.

(3) Where a claimant is treated as possessing any earnings under paragraph (1) or (2), these Regulations shall apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess except that regulation 10(4) (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account the earnings which he is treated as possessing, less—

(a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the lower rate or, as the case may be, the lower rate and the basic rate of tax in the year of assessment less only the personal relief to which the claimant is entitled under sections 257(1), 257A(1) and 259 of the Taxes Act(**10**) as is appropriate to his circumstances; but, if the period over which those earnings are to be taken into account is less than a year, the earnings to which the lower rate of tax is to be applied and the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro rata basis;

(b) where the weekly amount of those earnings equals or exceeds the lower earnings limit, an amount representing primary Class 1 contributions under the Contributions and Benefits Act, calculated by applying to those earnings the initial and main primary percentages in accordance with section 8(1)(*a*) and (*b*) of that Act(**11**); and

(c) one half of any sum payable by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

(4) Where the claimant is an employed earner in the Republic of Ireland the amounts to be deducted for income tax and primary Class 1 contributions under this regulation shall be such amounts as, in the opinion of the adjudicating authority, would have been deducted had the claimant been employed in Northern Ireland.

### Rounding of fractions

**5.** Where any calculation under these Regulations results in a fraction of a penny, that fraction shall, if it would be to the claimant's advantage, be treated as a penny, otherwise it shall be disregarded.

## Part II

## Employed Earners

### Calculation of earnings of employed earners

**6.**—(1) Earnings derived from employment as an employed earner shall be calculated or estimated over a period determined in accordance with the following paragraphs and at a weekly amount determined in accordance with regulation 8 (calculation of weekly amount of earnings).

(2) Subject to paragraphs (3) and (5) to (8), the period over which earnings are to be taken into account shall be—

(a) in a case where they are payable in respect of a period, a period equal to a benefit week or such number of benefit weeks as comprise the period commencing on the date on which

(**10**) Sections 257 to 257F were substituted for section 257 by section 33 of the Finance Act 1988 (c. 39); section 257A(1) was amended by section 77(2) of the Finance Act 1994 (c. 9); section 259 was amended by section 30 of, and paragraph 5 of Schedule 3, to the Finance Act 1988, paragraph 5 of Schedule 5 to the Finance (No. 2) Act 1992 (c. 48) and section 77(3) of, and paragraph 6 of Schedule 8 to, the Finance Act 1994

(**11**) Section 8(1) was amended by paragraph 28 of Schedule 7 to the Pension Schemes (Northern Ireland) Act 1993