1995 No. 367

HOUSING; RATES; SOCIAL SECURITY

The Income-Related Benefits and Social Security (Claims and Payments) (Miscellaneous Amendments) Regulations (Northern Ireland) 1995

Made . . . . . 20th September 1995

Coming into operation in accordance with regulation 1

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 122(1), 123(1)(*d*)(i), 128(3), 131(1), 132(1), (3) and (4)(*a*) and (*b*), 133(2)(*b*) and (*d*)(ii) and 171(5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**a**) and sections 5(1)(*h*) and (*j*) of the Social Security Administration (Northern Ireland) Act 1992(**b**) and of all other powers enabling it in that behalf, with the consent of the Department of the Environment for Northern Ireland(**c**) in so far as its consent is required in relation to regulations 3 and 8 of these Regulations, and after agreement by the Social Security Advisory Committee that proposals to make these Regulations should not be referred to it(**d**), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Income-Related Benefits and Social Security (Claims and Payments) (Miscellaneous Amendments) Regulations (Northern Ireland) 1995 and shall come into operation as follows—

(*a*) for the purposes of this regulation and regulations 2, 3, 5, 7 and 8 on 2nd October 1995, and

(*b*) for the purposes of regulations 4 and 6 on 3rd October 1995.

(2) In the case of a person who was entitled to housing benefit in respect of 1st October 1995, regulation 3(4)(*b*) and (7) shall have effect—

(*a*) on the day immediately following the day on which the person's benefit period, which includes 1st October 1995, ends, and

(*b*) on any day thereafter.

(3) Regulations 4 and 6 shall have effect in relation to any particular claimant—

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

(*a*) except where sub-paragraph (*b*) applies on 3rd October 1995;

(*b*) where a claimant has an award of disability working allowance or family credit which is current on 2nd October 1995, on the day following the expiration of that award.

(4) Subject to paragraph (5), regulations 2 and 7 shall have effect in relation to any particular claimant at the beginning of the first benefit week to commence for that claimant on or after 2nd October 1995 which applies in his case.

(5) Regulation 2(4)(*b*) shall have effect—

(*a*) in the case of a claimant who was in receipt of income support on 1st October 1995 and in respect of whom no further claim for income support has been made, on—

(i) the date when the claimant's circumstances are first reviewed by an adjudication officer in consequence of an application for a review by the Department made under section 24 of the Social Security Administration (Northern Ireland) Act 1992, following the receipt of information provided by the claimant in response to an enquiry by the Department as to his current circumstances, or

(ii) 1st October 1998 if this is sooner, or

(*b*) in any other case, on the date of any claim for income support.

(6) For the purposes of this Regulation—

"adjudication officer" means an adjudication officer appointed under section 36 of the Social Security Administration (Northern Ireland) Act 1992;

"benefit week" has the same meaning as in the Income Support Regulations;

"claimant" means a claimant for disability working allowance, family credit or, as the case may be, for income support.

(7) In these Regulations "the Income Support Regulations" means the Income Support (General) Regulations (Northern Ireland) 1987(**a**).

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

Amendment of the Income Support Regulations

2.—(1) The Income Support Regulations shall be amended in accordance with paragraphs (2) to (10).

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

(*a*) after the definition of "pay period"(**c**) there shall be inserted the following definition—

(**a**) S.R. 1987 No. 459; relevant amending regulations are S.R. 1988 Nos. 146 and 318, S.R. 1991 No. 338, S.R. 1992 Nos. 147 and 435, S.R. 1993 Nos. 149 and 373, S.R. 1994 Nos. 77 and 327 and S.R. 1995 No. 67

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

(**c**) Definition inserted by regulation 2(2)(*a*) of S.R. 1994 No. 327

" "pension fund holder" means with respect to a personal pension scheme or retirement annuity contract, the trustees, managers or scheme administrators, as the case may be, of the scheme or contract concerned;";

(*b*) in the definition of "personal pension scheme"(**a**) for "Article 2(2) of the Order" there shall be substituted "section 1 of the Pension Schemes (Northern Ireland) Act 1993(**b**)";

(*c*) after the definition of "residential care home"(**c**) there shall be inserted the following definition—

" "retirement annuity contract" means a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988(**d**);".

(3) In regulation 38 (calculation of net profit of self-employed earners) paragraph (12)(**e**) shall be omitted.

(4) In regulation 42 (notional income)—

(*a*) in paragraph (2) after sub-paragraph (*f*)(**f**) there shall be added the following sub-paragraph—

"(*g*) a personal pension scheme or retirement annuity contract where the claimant is aged under 60,";

(*b*) after paragraph (2) there shall be inserted the following paragraphs—

"(2A) Where a person, aged not less than 60, is a member of, or a person deriving entitlement to a pension under, 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 a 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.

(**a**) Definition inserted by regulation 4(2)(*d*) of S.R. 1993 No. 373
(**b**) 1993 c. 49
(**c**) Definition inserted by regulation 2(2)(*d*) of S.R. 1993 No. 149
(**d**) 1988 c. 1
(**e**) Paragraph (12) was substituted by regulation 4(12)(*b*) of S.R. 1993 No. 373
(**f**) Sub-paragraph (*f*) was added by regulation 5(*c*) of S.R. 1992 No. 147

(2B) The amount of any income foregone in a case to which either head (2A)(*a*)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the adjudication officer who shall take account of information provided by the pension fund holder in accordance with regulation 7(5) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 (evidence and information)(**a**).

(2C) The amount of any income foregone in a case to which either head (2A)(*a*)(iii) or sub-paragraph (2A)(*b*) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant personal pension scheme or retirement annuity contract been held under a personal pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (2B).".

(5) In regulation 51(2) (notional capital) after sub-paragraph (*c*) there shall be added "or" and the following sub-paragraph—

"(*d*) a personal pension scheme or retirement annuity contract,".

(6) In regulation 52 (capital jointly held)—

(*a*) in paragraph (1)(**b**) for words from "to the whole beneficial interest" to the end there shall be substituted—

"to an equal share of the whole beneficial interest therein; and the value of that equal share shall be calculated by taking the value of the whole beneficial interest calculated in accordance with the foregoing provisions of this Chapter, as though—

(*a*) that interest is solely owned by the claimant, and

(*b*) in the case of a dwelling, none of the other joint owners occupies the dwelling concerned,

and dividing the same by the number of persons who have a beneficial interest in the capital in question";

(*b*) for paragraph (2)(**c**) there shall be substituted the following paragraph—

"(2) Any premises or land not wholly owned by the claimant shall be disregarded for such period as is reasonable in the circumstances to enable the collection of such information as is necessary to determine the treatment of capital in accordance with paragraph (1).".

(7) In Schedule 1 (persons not required to be available for employment) in paragraph 5(**d**) (persons incapable of work) after sub-paragraph (*a*) there shall be inserted the following sub-paragraph—

"(*aa*) is treated as incapable of work by virtue of regulations made under section 167D of the Contributions and Benefits Act (incapacity for work: persons to be treated as incapable or capable of work)(**e**); or".

(**a**) Paragraph (5) is inserted by regulation 5(3) of these regulations
(**b**) Paragraph (1) was amended by regulation 52 of S.R. 1988 No. 318
(**c**) Paragraph (2) was amended by regulation 23 of S.R. 1988 No. 146
(**d**) Paragraph 5 was substituted by regulation 2(11)(*a*) of S.R. 1995 No. 67
(**e**) Section 167D was inserted by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

(8) In Schedule 2 (applicable amounts)—

(*a*) in paragraph 12(1)(*b*)(i) (additional condition for the higher pension and disability premiums)(**a**) for "is incapable of work" there shall be substituted "is, or is treated as, incapable of work,";

(*b*) in paragraph 12(1)(*b*)(ii) after "or so incapable" there shall be inserted ", or has been treated as so incapable,".

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

(*a*) paragraph 14 shall be omitted;

(*b*) in paragraph 53(**b**)—

(i) after "Benefits Act" there shall be inserted "or pension under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983(**c**)";

(ii) after "that Act" there shall be inserted "or the rate of that pension under that Order".

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

(*a*) for paragraph 5(**d**) there shall be substituted the following paragraph—

"**5.** Any future interest in property of any kind, other than land or premises in respect of which the claimant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.";

(*b*) after paragraph 23(**e**) there shall be inserted the following paragraph—

"**23A.** The value of any funds held under a personal pension scheme or retirement annuity contract.";

(*c*) in paragraph 24(**f**) at the end there shall be added "except where the claimant has a reversionary interest in the property in respect of which rent is due".

Amendment of the Housing Benefit (General) Regulations

3.—(1) The Housing Benefit (General) Regulations (Northern Ireland) 1987(**g**) shall be amended in accordance with paragraphs (2) to (10).

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

(*a*) after the definition of "payment" there shall be inserted the following definition—

" "pension fund holder" means with respect to a personal pension scheme or retirement annuity contract, the trustees, managers or

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(**a**) Paragraph 12(1)(*b*) was substituted by regulation 2(12)(*a*)(ii) of S.R. 1995 No. 67
(**b**) Paragraph 53 was added by regulation 4(9)(*d*) of S.R. 1994 No. 77
(**c**) S.I. 1983/883
(**d**) Paragraph 5 was substituted by regulation 5 of S.R. 1992 No. 435
(**e**) Paragraph 23 was added by regulation 37(*e*) of S.R. 1988 No. 146
(**f**) Paragraph 24 was added by regulation 37(*e*) of S.R. 1988 No. 146
(**g**) S.R. 1987 No. 461; relevant amending regulations are S.R. 1988 Nos. 117 and 424, S.R. 1990 No. 136, S.R. 1991 No. 337, S.R. 1992 Nos. 201, 404 and 435, S.R. 1993 Nos. 195 and 233, S.R. 1994 No. 88 and S.R. 1995 No. 129