1995 No. 301

SOCIAL SECURITY

The Social Security (Income Support and Claims and Payments) (Amendment) Regulations (Northern Ireland) 1995

Made . . . . . 31st July 1995

Coming into operation in accordance with regulation 1(1) and (2)

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 122(1)(*a*), 131(1), 132(4)(*b*), 133(2)(*h*) to (*j*) and 171(5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**a**) and sections 5(1)(*q*) and 13A(2) of the Social Security Administration (Northern Ireland) Act 1992(**b**) and of 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 (Income Support and Claims and Payments) (Amendment) Regulations (Northern Ireland) 1995 and shall come into operation on 2nd October 1995.

(2) These Regulations 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 and for this purpose and in paragraph 2 of Schedule 2 the expressions "claimant" and "benefit week" have the same meanings as in regulation 2(1) of the Income Support Regulations (interpretation).

(3) In these Regulations—

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

"the Claims and Payments Regulations" means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**d**).

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

(**a**) 1992 c. 7

(**b**) 1992 c. 8; section 13A was inserted by paragraph 1 of the Schedule to the Social Security (Mortgage Interest Payments) (Northern Ireland) Order 1992 (S.I. 1992/1309 (N.I. 9))

(**c**) S.R. 1987 No. 459; relevant amending regulations are S.R. 1988 Nos. 146, 318 and 431, S.R. 1989 Nos. 139 and 395, S.R. 1990 Nos. 33, 131, 297, 346 and 387, S.R. 1991 Nos. 46, 204 and 474, S.R. 1992 Nos. 85, 147, 201 and 403, S.R. 1993 Nos. 28, 120, 149, 195, 233, 311, 373 and 479, S.R. 1994 Nos. 77 and 138 and S.R. 1995 Nos. 71, 86, 101 and 162

(**d**) S.R. 1987 No. 465; relevant amending regulations are S.R. 1988 No. 67, S.R. 1991 No. 488, S.R. 1992 No. 271 and S.R. 1993 No. 375

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

Substitution of Schedule 3 to the Income Support Regulations

2. For Schedule 3 to the Income Support Regulations (housing costs) there shall be substituted the Schedule set out in Schedule 1 to these Regulations.

Amendment of Schedules 8A and 8B to the Claims and Payments Regulations

3. Schedules 8A and 8B to the Claims and Payments Regulations (deductions from benefits and direct payment to third parties and deductions of mortgage interest from benefit and payment to qualified lenders) shall be amended in accordance with Schedule 2 to these Regulations.

Amendment of Schedule 9 to the Income Support Regulations

4. Schedule 9 to the Income Support Regulations (sums to be disregarded in the calculation of income other than earnings) shall be amended in accordance with Schedule 3 to these Regulations.

Revocations and Savings

5.—(1) The Regulations specified in column (1) of Schedule 4 to these Regulations are revoked to the extent specified in column (3) of that Schedule.

(2) The revocation by paragraph (1) and Schedule 4 to these Regulations of any provision previously amended or substituted but subject to a saving for existing beneficiaries does not affect the continued operation of those savings.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 31st July 1995.

(L.S.) *W. G. Purdy*
Assistant Secretary

Schedule to be substituted for Schedule 3 to the Income Support Regulations

"SCHEDULE 3 Regulations 17(1)(*e*) and 18(1)(*f*)

Housing Costs

Housing Costs

1.—(1) Subject to paragraphs 2 to 19, the housing costs applicable to a claimant are those costs—

(*a*) which he or, where he is a member of a family, he or any member of that family is, in accordance with paragraph 2, liable to meet in respect of the dwelling occupied as the home which he or any other member of his family is treated as occupying; and

(*b*) which qualify under paragraphs 15 to 17.

(2) In this Schedule—

"housing costs" means those costs to which sub-paragraph (1) refers;

"existing housing costs" means housing costs arising under an agreement entered into before 2nd October 1995, or under an agreement entered into after 1st October 1995 ("the new agreement")—

(*a*) which replaces an existing agreement between the same parties in respect of the same property;

(*b*) where the existing agreement was entered into before 2nd October 1995; and

(*c*) which is for a loan of the same amount as or less than the amount of the loan under the agreement it replaces, and for this purpose any amount payable to a third party to arrange the new agreement and included in the loan shall be disregarded;

"new housing costs" means housing costs arising under an agreement entered into after 1st October 1995 other than an agreement referred to in the definition of "existing housing costs";

"standard rate" means the rate for the time being specified in paragraph 12.

(3) For the purposes of this Schedule a disabled person is a person—

(*a*) in respect of whom a disability premium, a disabled child premium, a pensioner premium for persons aged 75 or over or a higher pensioner premium is included in his applicable amount or the applicable amount of a person living with him; or

(*b*) who is a non-dependant but who, had he in fact been entitled to income support, would have had included in his applicable amount a disability premium, a disabled child premium, a pensioner premium for persons aged 75 or over or a higher pensioner premium.

(4) For the purposes of sub-paragraph (3), a person shall not cease to be a disabled person on account of his being disqualified for receiving benefit or treated as capable of work by virtue of the operation of section 167E of the Contributions and Benefits Act (incapacity for work, disqualification etc.)(**a**).

(a) Section 167E was inserted by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

Circumstances in which a person is liable to meet housing costs

2.—(1) A person is liable to meet housing costs where—

(*a*) the liability falls upon him or his partner but not where the liability is to a member of the same household as the person on whom the liability falls;

(*b*) because the person liable to meet the housing costs is not meeting them, the claimant has to meet those costs in order to continue to live in the dwelling occupied as the home and it is reasonable in all the circumstances to treat the claimant as liable to meet those costs;

(*c*) he in practice shares the housing costs with other members of the household none of whom are close relatives either of the claimant or his partner, and—

(i) one or more of those members is liable to meet those costs, and

(ii) it is reasonable in the circumstances to treat him as sharing responsibility.

(2) Where any one or more, but not all, members of the claimant's family are affected by a trade dispute, the housing costs shall be treated as wholly the responsibility of those members of the family not so affected.

Circumstances in which a person is to be treated as occupying a dwelling as his home

3.—(1) Subject to sub-paragraphs (2) to (13), a person shall be treated as occupying as his home the dwelling normally occupied as his home by himself or, if he is a member of a family, by himself and his family and he shall not be treated as occupying any other dwelling as his home.

(2) In determining whether a dwelling is the dwelling normally occupied as the claimant's home for the purposes of sub-paragraph (1) regard shall be had to any other dwelling occupied by the claimant or by him and his family whether or not that other dwelling is in Northern Ireland.

(3) Subject to sub-paragraph (4), where a single claimant or a lone parent is a student or is on a training course and is liable to make payments (including payments of mortgage interest or analogous payments) in respect of either (but not both) the dwelling which he occupies for the purpose of attending his course of study or his training course or, as the case may be, the dwelling which he occupies when not attending his course, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make payments.

(4) A full-time student shall not be treated as occupying a dwelling as his home for any week of absence from it, other than an absence occasioned by the need to enter hospital for treatment, outside the period of study, if the main purpose of his occupation during the period of study would be to facilitate attendance on his course.

(5) Where a claimant has been required to move into temporary accommodation by reason of essential repairs being carried out to the dwelling normally occupied as his home and he is liable to make payments (including payments of mortgage interest or analogous payments) in respect of either (but not both) the dwelling normally occupied or the temporary accommodation, he shall be treated as occupying as his home the dwelling in respect of which he is liable to make those payments.

(6) Where a person is liable to make payments in respect of 2 (but not more than 2) dwellings, he shall be treated as occupying both dwellings as his home only—

(*a*) where he has left and remains absent from the former dwelling occupied as the home through fear of violence in that dwelling or by a former member of his family and it is reasonable that housing costs should be met in respect of both his former dwelling and his present dwelling occupied as the home;

(*b*) in the case of a couple or a member of a polygamous marriage where a partner is a student or is on a training course and it is unavoidable that he or they should occupy 2 separate dwellings and reasonable that housing costs should be met in respect of both dwellings; or

(*c*) in the case where a person has moved into a new dwelling occupied as the home, except where sub-paragraph (5) applies, for a period not exceeding 4 benefit weeks if his liability to make payments in respect of 2 dwellings is unavoidable.

(7) Where —

(*a*) a person has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in;

(*b*) he had claimed income support before moving in and either that claim has not yet been determined or it has been determined but an amount has not been included under this Schedule and if the claim has been refused a further claim has been made within 4 weeks of the date on which the claimant moved into the new dwelling occupied as the home; and

(*c*) the delay in moving into the dwelling in respect of which there was liability to make payments before moving in was reasonable and—

(i) that delay was necessary in order to adapt the dwelling to meet the disablement needs of the claimant or any member of his family,

(ii) the move was delayed pending the outcome of an application under Part VIII of the Contributions and Benefits Act for a social fund payment to meet a need arising out of the move or in connection with setting up the home in the dwelling and either a member of the claimant's family is aged 5 or under or the claimant's applicable amount includes a premium under paragraph 9, 9A, 10, 11, 13 or 14 of Schedule 2(**a**), or

(iii) the person became liable to make payments in respect of the dwelling while he was a patient or was in residential accommodation, he shall be treated as occupying the dwelling as his home for any period not exceeding 4 weeks immediately prior to the date on which he moved into the dwelling and in respect of which he was liable to make payments.

(8) This sub-paragraph applies to a person who enters residential accommodation—

(*a*) for the purpose of ascertaining whether the accommodation suits his needs; and

(*b*) with the intention of returning to the dwelling which he normally occupies as his home should, in the event, the residential accommodation prove not to suit his needs,

and while in the accommodation, the part of the dwelling which he normally occupies as his home is not let or, as the case may be, sub-let to another person.

(**a**) Paragraphs 9 and 9A were substituted by regulation 5(*a*) of S.R. 1989 No. 139