1994 No. 327

SOCIAL SECURITY

The Income-Related Benefits (Miscellaneous Amendments No. 5) Regulations (Northern Ireland) 1994

Made . . . . . 22nd August 1994

Coming into operation in accordance with regulation 1(1)

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 122(1)(*a*), (*b*) and (*c*), 127(3) and (4)(*b*), 128(6) and (7)(*b*), 131(1) and (6), 132(3) and (4)(*a*), (*b*) and (*c*), 133(2)(*c*) and (*d*)(*i*) and 171(5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**a**) and sections 5(1)(*l*), 25(1) and 28(3) 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 Income-Related Benefits (Miscellaneous Amendments No. 5) Regulations (Northern Ireland) 1994 and shall come into operation—

(*a*) for the purposes of this regulation and regulation 2, on 3rd October 1994;

(*b*) for the purposes of regulations 3 and 4, on 4th October 1994.

(2) Regulation 2 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 3rd October 1994 which applies in his case.

(3) In paragraph (2) the expressions "claimant" and "benefit week" have the same meanings as in the Income Support (General) Regulations (Northern Ireland) 1987(**c**).

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

(*a*) except where sub-paragraph (*b*) applies, on 4th October 1994; or

(*b*) where a claimant has an award of disability working allowance or family credit which is current on 3rd October 1994, on the day following the expiration of that award.

(**a**) 1992 c. 7
(**b**) 1992 c. 8
(**c**) S.R. 1987 No. 459; relevant amending regulations are S.R. 1988 Nos. 146 and 318, S.R. 1990 No. 346, S.R. 1992 Nos. 6, 147 and 403, S.R. 1993 Nos. 149 and 373 and S.R. 1994 No. 77

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

Amendment of the Income Support (General) Regulations

2.—(1) The Income Support (General) Regulations (Northern Ireland) 1987 shall be amended in accordance with paragraphs (2) to (11).

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

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

'' ''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 other shorter or longer period as the case may be;'';

(*b*) for the definition of ''year of assessment'' there shall be substituted the following definition—

'' ''year of assessment'' has the meaning prescribed in section 832(1) of the Income and Corporation Taxes Act 1988(**b**);''.

(3) In regulation 6 (persons not treated as engaged in remunerative work)(**c**)—

(*a*) in paragraph (*c*) for ''voluntary body'' there shall be substituted ''voluntary organisation being 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,'';

(*b*) in paragraph (*j*)(**d**) after ''paragraph 26'' there shall be inserted ''or in accordance with paragraph 27'' and for ''that paragraph'' there shall be substituted ''those paragraphs''.

(4) In regulation 19 (persons in residential care homes and nursing homes)—

(*a*) in paragraph (1ZB)(**e**) in sub-paragraph (*a*) after head (ii) there shall be added the following head—

''(iii) was not in that week entitled to income support, but was residing with his partner as a member of a couple on the relevant date where the partner was a person to whom head (i) or (ii) applies; or'';

(*b*) after paragraph (1ZK)(**f**) there shall be inserted the following paragraphs—

''(1ZL) Where a person—

(**a**) 1954 c. 33 (N.I.)
(**b**) 1988 c. 1
(**c**) Relevant amending regulations are S.R. 1988 No. 318
(**d**) Paragraph (*j*) was added by regulation 4(3)(*c*) of S.R. 1992 No. 403
(**e**) Paragraph (1ZB) was inserted by regulation 2(5)(*b*) of S.R. 1993 No. 149
(**f**) Paragraph (1ZK) was inserted by regulation 4(2)(*b*) of S.R. 1994 No. 77

(*a*) on 31st March 1993 was a member of a couple and his partner acquired a preserved right under paragraph (1ZB)(*a*)(i);

(*b*) before 3rd October 1994 ceased to be a member of a couple; and

(*c*) between 31st March 1993 and 3rd October 1994 has been living in a residential care home or a nursing home,

he shall be treated for the purposes of this regulation as having a preserved right from and including 3rd October 1994.

(1ZM) Subject to paragraph (1ZF), where a person would have been living in a residential care home or nursing home on 31st March 1993 but for an absence which, including that day, does not exceed—

(*a*) where the person was before his absence a temporary resident in the home, 4 weeks;

(*b*) where the person was before his absence a permanent resident in the home, 13 weeks; or

(*c*) where throughout the period of absence the person was a patient, 52 weeks,

and the provisions of paragraph (1ZL) would have applied to him but for that absence, he shall be treated as having a preserved right from and including 3rd October 1994.

(1ZN) Where a person is treated as having a preserved right in accordance with paragraph (1ZI), (1ZL) or (1ZM), paragraph (1ZF) shall apply to that person as if he had acquired a preserved right under paragraph (1ZB).

(1ZO) Where a person to whom paragraph (1ZM) refers is absent from a residential care home or nursing home in the period from and including 31st March 1993 to 3rd October 1994 for a period which exceeds a period to which paragraph (1ZM) refers and which is appropriate in his case, he shall cease to be treated as having a preserved right.''.

(5) In regulations 36(3)(*b*) and 42(8)(*c*) (calculation of net earnings of employed earners and notional income) after ''claimant'' there shall be inserted ''in respect of a pay period''.

(6) In regulation 37 (earnings of self-employed earners) in paragraph (2)(**a**) for sub-paragraph (*b*) there shall be substituted the following sub-paragraph—

''(*b*) any payment to which paragraph 26 or 27 of Schedule 9 refers (sums to be disregarded in the calculation of income other than earnings).''.

(7) In regulation 38(1)(*b*)(ii) and (3)(*c*) (calculation of net profit of self-employed earners)(**b**) after ''paid'' there shall be inserted ''in the period that is relevant under regulation 30''.

(**a**) Regulation 37(2) was substituted by regulation 4(6) of S.R. 1992 No. 403
(**b**) Regulation 38 was amended by regulation 4(12)(*a*) of S.R. 1993 No. 373

(8) In regulations 39(1) and 42(8)(*a*) (deduction of tax and contributions for self-employed earners and notional income)(**a**) "and, if appropriate, the basic rate" shall be omitted.

(9) In Schedule 2 (applicable amounts)—

(*a*) in paragraph 12(1)(**b**)—

(i) in head (*a*)(i) for the words from "section 15" to "of that Act" there shall be substituted "Part II of the Contributions and Benefits Act or severe disablement allowance under Part III of that Act",

(ii) in head (*c*)(i) for "section 15 of the principal Act" there shall be substituted "Part II of the Contributions and Benefits Act" and for "the principal Act" in the second place it appears there shall be substituted "that Act";

(*b*) in paragraph 13 after sub-paragraph (3) there shall be inserted the following sub-paragraph—

"(3ZA) For the purposes of sub-paragraph (2)(*a*)(iii) and (*b*), no account shall be taken of an award of invalid care allowance to the extent that payment of such an award is backdated for a period before the date on which the award is made.".

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

(*a*) in paragraph 17 for head (i) there shall be substituted the following head—

"(i) where, or insofar as, section 369 of the Income and Corporation Taxes Act 1988 (mortgage interest payable under deduction of tax) applies to the payments of interest on the loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the applicable percentage of income tax within the meaning of section 369(1A) of that Act(**c**);";

(*b*) after paragraph 53(**d**) there shall be added the following paragraphs—

"**54.** Any supplementary pension under Article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows)(**e**).

55. In the case of a pension awarded at the supplementary rate under Article 27(3) of the Personal Injuries (Civilians) Scheme 1983 (pensions to widows)(**f**), the sum specified in paragraph 1(*c*) of Schedule 4 to that Scheme.

56.—(1) Any payment which is—

(*a*) made under any of the Dispensing Instruments to a widow of a person—

(**a**) Regulations 39(1) and 42(8)(*a*) were amended by regulation 4(7) and (8) of S.R. 1992 No. 403
(**b**) Relevant amending regulations are S.R. 1988 No. 146 and S.R. 1992 No. 6
(**c**) Section 369(1A) was inserted by section 81(3) of the Finance Act 1994 (c. 9)
(**d**) Paragraph 53 was added by regulation 4(9)(*d*) of S.R. 1994 No. 77
(**e**) S.I. 1983/883; relevant amending instrument is S.I. 1994/1906
(**f**) S.I. 1983/686; relevant amending instruments are S.I. 1994/715 and 2021

(i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown, and

(ii) whose service in such capacity terminated before 31st March 1973, and

(*b*) equal to the amount specified in Article 29(1A) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (pensions to widows).

(2) In this paragraph "the Dispensing Instruments" means the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 14th January 1922 (exceptional grants of pay, non-effective pay and allowances)(**a**).".

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

(*a*) in paragraph 41(**b**) after "income other than earnings)" there shall be inserted "or of any amount which is disregarded under paragraph 54, 55 or 56 of that Schedule";

(*b*) after paragraph 42(**c**) there shall be added the following paragraph—

"**43.** Any sum of capital administered on behalf of a person under the age of 18 by the High Court under the provisions of Order 80 or 109 of the Rules of the Supreme Court (Northern Ireland) 1980(**d**) or by the county court under Order 44 of the County Court Rules (Northern Ireland) 1981(**e**) or Article 21 of the County Courts (Northern Ireland) Order 1980(**f**), where such sum derives from—

(*a*) an award of damages for a personal injury to that person; or

(*b*) compensation for the death of one or both parents.".

Amendment of the Family Credit (General) Regulations

3.—(1) The Family Credit (General) Regulations (Northern Ireland) 1987(**g**) shall be amended in accordance with paragraphs (2) to (12).

(2) In regulation 4 (remunerative work)(**h**)—

(*a*) for paragraph (3) there shall be substituted the following paragraph—

"(3) A person who otherwise satisfies all the requirements of paragraph (1) shall not be treated as engaged in remunerative work insofar as—

(**a**) Copies of the Dispensing Instruments are available from the Department of Health and Social Services, Social Security Policy and Legislation Division, Castle Buildings, Stormont, Belfast, BT4 3SQ

(**b**) Paragraph 41 was added by regulation 9(*d*) of S.R. 1990 No. 346

(**c**) Paragraph 42 was added by regulation 14(*b*) of S.R. 1992 No. 147

(**d**) S.R. 1980 No. 346; Order 109 was added by S.R. 1986 No. 184

(**e**) S.R. 1981 No. 225

(**f**) S.I. 1980/397 (N.I. 3)

(**g**) S.R. 1987 No. 463; relevant amending regulations are S.R. 1988 No. 423, S.R. 1990 Nos. 138, 347 and 387, S.R. 1992 Nos. 148 and 403 and S.R. 1994 No. 77

(**h**) Regulation 4 was substituted by regulation 3 of S.R. 1992 No. 148