1992 No. 148

SOCIAL SECURITY

The Family Credit (General) (Amendment) Regulations (Northern Ireland) 1992

Made	*20th March 1992*
Coming into operation . .	*7th April 1992*

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 21(6) and (12)(*d*)(*i*) and (*k*), 23(8) and (9)(*a*) and (*b*) and 52(1)(*h*) of the Social Security (Northern Ireland) Order 1986(**a**) 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 Family Credit (General) (Amendment) Regulations (Northern Ireland) 1992 and shall come into operation on 7th April 1992 immediately after the coming into operation of regulation 2 of the Family Credit (General) (Amendment) Regulations (Northern Ireland) 1991(**b**).

(2) In these regulations ''the principal regulations'' means the Family Credit (General) Regulations (Northern Ireland) 1987(**c**).

Amendment of regulation 2 of the principal regulations

2. In regulation 2(1) of the principal regulations (interpretation)—

(*a*) for the definition of ''assessment period'' there shall be substituted the following definition—

" "assessment period" means in the case of an employed earner, a period determined in accordance with regulation 14 and, in the case of a self-employed earner, a period determined in accordance with regulation 15;";

(*b*) after the definition of "partner" there shall be inserted the following definition—

" "pay period" has the meaning prescribed in regulation 14(7)(*b*)(**d**);";

(**a**) S.I. 1986/1888 (N.I. 18); Article 21(6) was amended by Schedule 5 to the Social Security (Northern Ireland) Order 1988 (S.I. 1988/594 (N.I. 2)) and paragraph 14 of Schedule 8 to the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13)) and Article 21(12)(*d*) was substituted by Article 15(2) of the Social Security (Northern Ireland) Order 1989. Article 81(1) provides for section 155(1) to (3A) of the Social Security (Northern Ireland) Act 1975 (c. 15) (extent of powers) to apply to the regulation-making powers conferred by this Order; the said section 155(3A) was inserted by Article 63(1)

(**b**) S.R. 1991 No. 326

(**c**) S.R. 1987 No. 463; relevant amending regulations are S.R. 1988 No. 131, S.R. 1990 Nos. 138 and 347 and S.R. 1991 Nos. 326 and 520

(**d**) Regulation 14 is substituted by regulation 4 of these regulations

(*c*) after the definition of "student" there shall be inserted the following definition—

" "training allowance" means an allowance (whether by way of periodical grants or otherwise) payable—

(*a*) out of public funds by a government department or by or on behalf of the Department of Economic Development;

(*b*) to a person for his maintenance or in respect of a member of his family; and

(*c*) for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, a government department or approved by such department in relation to him or so provided or approved by or on behalf of the Department of Economic Development,

but it does not include an allowance paid by any government department to, or in respect of, a person by reason of the fact that he is following a course of full-time education, other than under provision or arrangements under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945(**a**) or section 1(1) of the Employment and Training Act (Northern Ireland) 1950(**b**) or is training as a teacher;".

Substitution of regulations 4 and 5 of the principal regulations

3. For regulations 4 and 5 of the principal regulations (remunerative work and engagement in remunerative work and normal engagement) there shall be substituted the following regulation—

"*Remunerative work*

4.—(1) For the purposes of Part III of the Order as it applies to family credit, and subject to paragraph (3), a person shall be treated as engaged in remunerative work where—

(*a*) the work he undertakes is for not less than 16 hours per week;

(*b*) the work is done for payment or in expectation of payment; and

(*c*) he is employed at the date of claim and satisfies the requirements of paragraph (5).

(2) A person who does not satisfy all the requirements of paragraph (1) shall not be treated as engaged in remunerative work.

(3) A person who otherwise satisfies all the requirements of paragraph (1) shall not be treated as engaged in remunerative work if he is engaged by a charitable or voluntary body or is a volunteer where the only payment received by him, or due to be paid to him, is a payment which is to be disregarded under regulation 24(2) and paragraph 2 of Schedule 2

(**a**) 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

(**b**) 1950 c. 29 (N.I.); section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

(calculation of income other than earnings and sums to be disregarded in the calculation of income other than earnings).

(4) In determining for the purposes of paragraph (1)(*a*) whether the work a person undertakes is for not less than 16 hours per week—

(*a*) there shall be included in the calculation any time allowed for meals or refreshment but only where the person is, or expects to be, paid earnings in respect of that time; and

(*b*) if he is a person to whom regulation 14(5) (normal weekly earnings of employed earners) applies, the hours worked shall be calculated by reference to the average number of hours which his employer expects him to work in a week; or

(*c*) where sub-paragraph (*b*) does not apply and—

(i) a recognised cycle of working has been established at the date of claim, the hours worked shall be calculated by reference to the average number of hours worked in a week over the period of one complete cycle (including, where the cycle involves periods in which the person does not normally work, those periods, but disregarding any other absences), or

(ii) no recognised cycle of working has been established at the date of claim, the hours worked shall be calculated by reference to—

(*aa*) the average number of hours worked over the 5 weeks immediately preceding the week of claim, or such other longer time preceding that week as may, in the particular case, enable the person's weekly average hours of work to be determined more accurately, or

(*bb*) where he is a self-employed earner and he has worked for less than 5 weeks at the date of claim, the average number of hours he expects to work in a week.

(5) Subject to paragraph (6), the requirements of this paragraph are that the person—

(*a*) worked not less than 16 hours in—

(i) the week of claim, or

(ii) either of the 2 weeks immediately preceding the week of claim;

(*b*) is expected by his employer to work or, where he is a self-employed earner he expects to work, not less than 16 hours in the week next following the week of claim; or

(*c*) cannot satisfy the requirements of either sub-paragraph (*a*) or (*b*) and at the date of claim he is absent from work by reason of a recognised, customary or other holiday but he is expected by his employer to work or, where he is a self-employed earner he expects to work, not less than 16 hours in the week following his return to work from that holiday,

and for the purposes of calculating the number of hours worked,

paragraph (4)(*a*) shall apply to this paragraph as it applies to paragraph (1)(*a*).

(6) For the purposes of paragraph (5), work which a person does only qualifies if—

(*a*) it is the work he normally does; and

(*b*) it is likely to last for a period of 5 weeks or more beginning with the week of claim.

(7) Where a person is treated as engaged in remunerative work in accordance with paragraphs (1) to (6), he shall also be treated as normally engaged in remunerative work.".

Substitution of regulation 14 of the principal regulations

4. For regulation 14 of the principal regulations (normal weekly earnings of employed earners) there shall be substituted the following regulation—

"14.—(1) Subject to paragraphs (3) to (6), where a claimant's income consists of earnings from employment as an employed earner, his normal weekly earnings from that employment shall be determined by reference to his weekly earnings from that employment over the assessment period relevant to his case.

(2) Subject to paragraphs (3) to (6), a claimant's assessment period shall be, in respect of a claimant whose pay period is—

(*a*) a week or a fortnight, a period of 6 consecutive weeks or, as the case may be, 3 consecutive fortnights, in the 7 weeks immediately preceding the week of claim;

(*b*) 4 weeks or a month, a period of 12 consecutive weeks or, as the case may be, 3 consecutive months, immediately preceding the week of claim;

(*c*) any period of less than one month (a shorter period), other than one to which sub-paragraph (*a*) or (*b*) refers, 6 consecutive shorter periods immediately preceding the week of claim; or

(*d*) any period of more than one month (a longer period), a period of one year ending immediately before the week of claim.

(3) Where during a claimant's assessment period his earnings are reduced because of his involvement in a trade dispute at his place of employment, that assessment period shall be varied in that—

(*a*) any pay period during which his earnings are so reduced shall be omitted from it;

(*b*) subject to sub-paragraph (*c*), his assessment period shall commence one pay period earlier (the extra period) for each period so omitted; or

(*c*) where any extra period under sub-paragraph (*b*) is one in which his earnings are reduced because of his involvement in a trade dispute at his place of employment, that extra period shall also be omitted from his assessment period and his assessment period shall commence one pay period earlier, for each extra period so omitted,

but so that his assessment period remains a period equal in length to the assessment period which would otherwise apply in his case under paragraph (2) but as if the words "consecutive" and "immediately" were omitted from that paragraph on each occasion where they appear.

(4) Where a claimant's earnings, whether during his assessment period or not, include a bonus or commission which is paid within 52 weeks preceding the week of claim and that bonus or commission is paid separately from his other earnings or is paid in respect of a period longer than the pay period relating to the other earnings with which it is paid, his normal weekly earnings shall be treated as including an amount in respect of that bonus or commission calculated in accordance with regulation 20A(**a**) (calculation of bonus or commission).

(5) Where at the date of claim—

(*a*) the claimant—

(i) has been in his employment,

(ii) has resumed his employment after a continuous period of interruption exceeding 4 weeks, or

(iii) has changed the number of hours for which he is contracted to work; and

(*b*) the period of his employment or the period since he resumed his employment or the period since the change in the number of hours took place, as the case may be, is less than the assessment period in paragraph (2) appropriate in his case,

his normal weekly earnings shall be determined in accordance with paragraph (6).

(6) In a case to which this paragraph applies, the Department shall require the claimant's employer to furnish it with an estimate of the claimant's likely earnings for the pay period for which he is or will normally be paid and the claimant's normal earnings shall be determined by reference to that estimate.

(7) For the purposes of this regulation—

(*a*) the claimant's earnings shall be calculated in accordance with Chapter III of this Part;

(*b*) "pay period" means the period in respect of which a claimant is, or expects to be regularly paid by his employer, being a week, a fortnight, 4 weeks, a month, or other shorter or longer period, as the case may be.".

Substitution of regulation 17 of the principal regulations

5. For regulation 17 of the principal regulations (periods to be disregarded) there shall be substituted the following regulation—

"17. Where a claimant is a self-employed earner—

(*a*) there shall be disregarded any week or period of weeks in his assessment period during which no activities have been carried out for the purposes of the business; and

(a) Regulation 20A is amended by regulation 8 of these regulations