1990 No. 138

SOCIAL SECURITY

The Family Credit (General) (Amendment) Regulations (Northern Ireland) 1990

Made	*30th March 1990*
Coming into operation—	
regulations 1, 2, 14(f) and 15(a)	*3rd April 1990*
regulations 3 to 13, 14(a) to (e) and 15(b)	*10th April 1990*

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 21(5)(*c*) and (12)(*c*) and (*d*), 23(8) and (9) 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) 1990 and shall, subject to paragraph (2), come into operation as follows—

(*a*) regulations 1, 2, 14(*f*) and 15(*a*) on 3rd April 1990;

(*b*) regulations 3 to 13, 14(*a*) to (*e*) and 15(*b*) on 10th April 1990.

(2) In any case in which these regulations and the Social Security Benefits Up-rating Order (Northern Ireland) 1990(**b**) come into operation on the same day, these regulations shall come into operation immediately after that order.

(3) 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) after the definition of "close relative" there shall be inserted the following definition—

" "community charge benefit" means community charge benefit under Part II of the Social Security Act 1986(**d**);".

(**a**) S.I. 1986/1888 (N.I.18); Article 21(12)(*d*) was substituted by Article 15(2) of the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I.13)). 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. 1990 No. 70

(**c**) S.R. 1987 No. 463; relevant amending regulations are S.R. 1988 Nos. 131, 303 and 423

(**d**) 1986 c. 50; relevant amending provision is Schedule 10 to the Local Government Finance Act 1988 (c. 41)

Amendment of regulation 4 of the principal regulations

3. In regulation 4 of the principal regulations (remunerative work) after paragraph (3) there shall be added the following paragraph—

"(4) For the purposes of this regulation, in determining the number of hours for which a person is engaged in work, that number shall include any time allowed to that person by his employer for a meal or for refreshment, but only where that person is, or expects to be, paid earnings in respect of that time.".

Amendment of regulation 5 of the principal regulations

4. In regulation 5 of the principal regulations (engagement in remunerative work and normal engagement)—

(*a*) in paragraph (1) for "paragraph (3)" there shall be substituted "paragraphs (3) and (4)";

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

"(2) Subject to paragraph (3), a person shall be treated, for the purposes of Article 21(5)(*b*) of the Order, as normally engaged in remunerative work if—

(*a*) the remunerative work in which he is engaged in the period specified in paragraph (1)(*a*) or (*b*) is work in which he is normally engaged; and

(*b*) he is likely to be engaged in that work over a period commencing in the week in which the date of claim falls and being a period of 5 weeks or more.";

(*c*) after paragraph (3) there shall be added the following paragraph—

"(4) In determining the number of hours for which a person carries out activities in the course of his work, that number shall include any time allowed to that person by his employer for a meal or for refreshment, but only where that person is, or expects to be, paid earnings in respect of that time.".

Amendment of regulation 6 of the principal regulations

5. In regulation 6 of the principal regulations (persons of a prescribed description) for paragraph (2) there shall be substituted the following paragraph—

"(2) Paragraph (1) shall not apply to a person—

(*a*) who is entitled to income support or would, but for Article 21(9) of the Order (provision against dual entitlement of members of family), be so entitled;

(*b*) who is receiving advanced education within the meaning of regulation 1(2) of the Child Benefit (General) Regulations (Northern Ireland) 1979(**a**) (interpretation); or

(*c*) who has ceased to receive full-time education but is to continue to be treated as a child by virtue of regulation 7 of those regulations.".

(a) S.R. 1979 No. 5; relevant amending regulations are S.R. 1980 No. 261, S.R. 1982 No. 114, S.R. 1987 No. 130 and S.R. 1988 No. 273

Amendment of regulation 14 of the principal regulations

6. In regulation 14 of the principal regulations (normal weekly earnings of employed earners)—

(*a*) in paragraph (1)—

(i) after "Subject to" there shall be inserted "paragraph (1A) and",

(ii) for sub-paragraph (*a*) there shall be substituted the following sub-paragraphs—

"(*a*) if he is paid weekly—

(i) except where head (ii) applies, over a period of 5 consecutive weeks in the period of 6 weeks immediately preceding the week in which the date of claim falls, or

(ii) if, at the date of claim, there is a trade dispute or a period of short-time working at his place of employment, over a period immediately preceding the date of the start of that dispute or period of short-time working and being a period of 5 weeks;

(*aa*) if he is paid monthly—

(i) except where head (ii) applies, over a period of 2 months immediately preceding the week in which the date of claim falls, or

(ii) if, at the date of claim, there is a trade dispute or a period of short-time working at his place of employment, over a period immediately preceding the date of the start of that dispute or period of short-time working, and being a period of 2 months; or";

(iii) in sub-paragraph (*b*) for "sub-paragraph (*a*)(i) or (ii)" there shall be substituted "sub-paragraph (*a*) or (*aa*)";

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

"(1A) Where a claimant's earnings include a bonus or commission which is paid within 52 weeks preceding the week in which the date of claim falls, and the bonus or commission is paid separately or relates to a period longer than the period relating to the other earnings with which it is paid, his normal weekly earnings shall be treated as including an amount calculated in accordance with regulation 20A(**a**) (calculation of bonus or commission).";

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

"(2) Where—

(*a*) the claimant—

(i) has been in his employment,

(ii) after a continuous period of interruption exceeding 13 weeks, has resumed his employment, or

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

(a) Inserted by regulation 9 of these regulations

(*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 period specified in paragraph (1)(*a*) or (*aa*),

his normal weekly earnings shall be determined, if he has received any earnings for the period that he has been in that employment or for the period after his resumption or for the period after his change in hours and those earnings are likely to represent his weekly earnings from that employment, by reference to those earnings and in any other case in accordance with paragraph (2A).

(2A) In a case to which this paragraph applies, the Department shall require the claimant's employer to furnish an estimate of the claimant's likely earnings over a period of—

(*a*) 5 weeks, if he is paid weekly;

(*b*) 2 months, if he is paid monthly; or

(*c*) whether or not sub-paragraph (*a*) or (*b*) applies, such other period as may, in any particular case, enable his normal weekly earnings to be determined more accurately,

and the claimant's normal weekly earnings shall be determined by reference to that estimate.".

Amendment of regulation 17 of the principal regulations

7. In regulation 17 of the principal regulations (periods to be disregarded) for paragraph (*a*) there shall be substituted the following paragraph—

"(*a*) for the purposes of regulation 14(1) (normal weekly earnings of employed earners), in the case of an employed earner—

(i) any period in the assessment period where the earnings of the claimant are irregular or unusual,

(ii) any period in the assessment period in which a bonus or commission to which regulation 14(1A) applies is paid where that bonus or commission is in respect of a period longer than the period relating to the other earnings with which it is paid;".

Amendment of regulation 20 of the principal regulations

8. In regulation 20(4) of the principal regulations (calculation of net earnings of employed earners) for "paragraph (2)(*b*) of regulation 14" there shall be substituted "regulation 14(2A)".

Insertion of regulation 20A in the principal regulations

9. After regulation 20 of the principal regulations (calculation of net earnings of employed earners) there shall be inserted the following regulation—

"*Calculation of bonus or commission*

20A. Where a claimant's earnings include a bonus or commission to which regulation 14(1A) (normal weekly earnings of employed earners)