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STATUTORY RULES OF NORTHERN IRELAND

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**2013 No. 246**

**HOUSING; RATES; SOCIAL SECURITY**

The Social Security (Miscellaneous Amendments  
No. 2) Regulations (Northern Ireland) 2013

Made - - - - 17th October 2013

Coming into operation 29th October 2013

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 22(5), 95(1), 122(1)(a), 123(1)(d) and (e), 131(1) and (2), 132(3) and (4) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(1), sections 5(1)(a) and (q), 165(1) and (4) to (6) of the Social Security Administration (Northern Ireland) Act 1992(2), Articles 6(5) and (12) and 36(2) of the Jobseekers (Northern Ireland) Order 1995(3), Articles 11(3) and (6) and 74(1), (3) and (4) of the Social Security (Northern Ireland) Order 1998(4), and now vested in it(5), sections 1(5)(a), 15(6)(b) and 19(1) to (3) of the State Pension Credit Act (Northern Ireland) 2002(6) and sections 2(1), 4(2), 8, 9, 17(1) and (3), 24(1), (2) and (3), 25(2) and 28(2) of, and paragraphs 4(1), 6(3) and (8) of Schedule 1 and paragraphs 1, 9 and 10 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007(7).

Regulations 9 and 10 are made with the consent of the Department of Finance and Personnel(8).

The Social Security Advisory Committee has agreed that proposals in respect of regulations 9 and 10 should not be referred to it(9).

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- (1) 1992 c. 7; section 22(5) was amended by paragraph 5 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)), section 171(1) was amended paragraph 5 of Schedule to the Tax Credits Act 2002 (c. 21) and paragraph 3(3)(b) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.))
- (2) 1992 c. 8; section 165(6) was amended by paragraphs 109(c), (d) and (e) of Schedule 7 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)).
- (3) S.I. 1995/2705; Article 36(2) was amended by paragraph 55 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)
- (4) S.I. 1998/1506 (N.I. 10); Article 74(1) was amended by paragraph 17(2) of Schedule 4 to the Tax Credits Act 2002
- (5) See Article 8(b) of S.R. 1999 No. 481
- (6) 2002 c. 14 (N.I.)
- (7) 2007 c. 2 (N.I.)
- (8) 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)); see also Article 6(b) of S.R. 1999 No. 481
- (9) See section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992

### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2013 and shall come into operation on 29th October 2013.

(2) The Interpretation Act (Northern Ireland) 1954(10) shall apply to these Regulations as it applies to an Act of the Assembly.

### Amendment of the Social Security (Credits) Regulations

2. Omit regulation 8A(4) of the Social Security (Credits) Regulations (Northern Ireland) 1975(11) (credits for unemployment).

### Amendment of the Income Support Regulations

3.—(1) The Income Support (General) Regulations (Northern Ireland) 1987(12) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 4ZA(13) (prescribed category of person) omit paragraph (3)(a)(14).

(3) In regulation 13(2)(15) (circumstances in which persons in relevant education are to be entitled to income support) omit sub-paragraph (bc)(16).

(4) In regulation 21AA(4)(17) (special cases: supplemental—persons from abroad)—

(a) for sub-paragraph (h)(18) substitute—

“(h) a person who has been granted leave or who is deemed to have been granted leave outside the rules made under section 3(2) of the Immigration Act 1971(19) where that leave is—

(i) discretionary leave to enter or remain in the United Kingdom;

(ii) leave to remain under the Destitution Domestic Violence concession (20), or

(iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005(21);”;

(b) at the end of sub-paragraph (hh) add “or”; and

(c) omit sub-paragraphs (j) and (k)(22).

(5) Omit regulation 22B(23) (period for which applicable amount is to be calculated where person not excluded from income support under section 115 of the Immigration and Asylum Act).

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(10) 1954 c.33 (N.I.)

(11) S.R. 1975 No. 113. Regulation 8A was inserted by regulation 2(6) of S.R. 1996 No. 430

(12) S.R. 1987 No. 459; relevant amending Regulations are S.R. 1989 No. 249, S.R. 1991 No. 338, S.R. 1996 No. 199, S.R. 2000 No. 71, S.R. 2006 Nos. 128, 178 and 379, S.R. 2008 No. 112, S.R. 2009 Nos. 68 and 418 and S.R. 2010 No. 6

(13) Regulation 4ZA was inserted by regulation 4 of S.R. 1996 No. 199

(14) Paragraph 3(a) was amended by regulation 5(3) of S.R. 2000 No. 71

(15) Regulation 13(2) was amended by regulation 4 of S.R. 1989 No. 249, regulation 6(a) of S.R. 1991 No. 338, regulation 2(4) (a) of S.R. 2008 No. 112 and regulation 2(1)(a) of S.R. 2009 No. 418

(16) Sub-paragraph (bc) was substituted by regulation 2(3)(b) of S.R. 2006 No. 128

(17) Regulation 21AA was inserted by regulation 2(3) of S.R. 2006 No. 178

(18) Sub-paragraph (h) was substituted by regulation 2 of S.R. 2006 No. 379

(19) 1991 c. 77

(20) The Destitution Domestic Violence concession is published by the Home Office at: <http://www.ukba.homeoffice.gov.uk/>

(21) S.I. 2005/1379

(22) Sub-paragraph (k) was added by regulation 2(b) of S.R. 2009 No. 68

(23) Regulation 22B was inserted by regulation 3(2)(c) of S.R. 2010 No. 6

### **Amendment of the Social Security (Claims and Payments) Regulations**

4.—(1) The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**24**) are amended in accordance with paragraphs (2) and (3)

(2) In regulation 5 (amendment and withdrawal of claim) for paragraph (1)(**25**) substitute—

“(1) A person who has made a claim for benefit may amend it at any time before a determination has been made on the claim by notice in writing received at an appropriate office, by telephone call to a telephone number specified by the Department or in such other manner as the Department may decide or accept.

(1A) Any claim amended in accordance with paragraph (1) may be treated as if it had been so amended in the first instance.”.

(3) In paragraph 4 (miscellaneous accommodation costs) of Schedule 8A(**26**) (deductions from benefits and direct payment to third parties)—

(a) in sub-paragraph (1)(**27**) for head (b) substitute—

“(b) in the case of state pension credit, is made to a person residing in—

- (i) a nursing home or residential care home as defined in regulation 1(2) of the State Pension Credit Regulations,
- (ii) an independent hospital as defined in regulation 1(2) of those Regulations,
- (iii) an establishment run by the Abbeyfield Society (including all bodies corporate or incorporate which are affiliated to the Society), or
- (iv) accommodation provided under Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972(**28**).”;

(b) in sub-paragraph (2)(a)(**29**) for “regulation 15(7)(c) of the State Pension Credit Regulations” substitute “sub-paragraph (1)(b)(ii)”.

### **Amendment of the Jobseeker’s Allowance Regulations**

5. In regulation 85A(4) (special cases: supplemental – persons from abroad) of the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(**30**) for sub-paragraph (h) substitute—

“(h) a person who has been granted leave or who is deemed to have been granted leave outside the rules made under section 3(2) of the Immigration Act 1971 where that leave is—

- (i) discretionary leave to enter or remain in the United Kingdom;
- (ii) leave to remain under the Destitution Domestic Violence concession, or
- (iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005;”;

(24) S.R. 1987 No. 465; relevant amending Rules are S.R. 1988 No. 67, S.R. 1989 No. 398, S.R. 1993 No. 149, S.R. 1996 No. 354, S.R. 1999 No. 472 (C. 36), S.R. 2002 No. 132, S.R. 2005 Nos. 14 and 458, S.R. 2008 No. 286 and S.R. 2009 No. 240

(25) Paragraph (1) was amended by regulation 2(3) of S.R. 2005 No. 14 and regulation 2(5) of S.R. 2009 No. 240

(26) Schedule 8A was inserted by regulation 2(3) of S.R. 1988 No. 67 and paragraph 4 was substituted by paragraph 2(2) of Schedule 1 to S.R. 1993 No. 149

(27) Sub-paragraph (1) was amended by regulation 8(a)(ii) of S.R. 1989 No. 398, paragraph 2(2) of Schedule 1 to, S.R. 1993 No. 149, regulation 2(26)(d) of S.R. 1996 No. 354, Article 9(2) of S.R. 1999 No. 472 and regulation 3(3)(a) and (b) of S.R. 2002 No. 132

(28) S.I. 1972/1265 (N.I. 14)

(29) Sub-paragraph (2)(a) was substituted by regulation 5(3)(b)(ii) of S.R. 2005 No. 458 and amended by regulation 13(18)(2)(ii) (aa) and (bb) of S.R. 2008 No. 286

(30) S.R. 1996 No. 198; regulation 85A was inserted by regulation 4(3) of S.R. 2006 No. 178 and amended by regulation 4 of S.R. 2006 No. 379, regulation 3 of S.R. 2006 No. 523, regulation 3 of S.R. 2009 No. 68 and regulation 3 of S.R. 2013 No. 167

- (a) at the end of sub-paragraph (hh) add “or”; and
- (b) omit sub-paragraphs (j) and (k)(31).

#### **Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations**

6. After paragraph 3(e) of Schedule 2C of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(32) (date from which change of circumstances takes effect where a claimant is entitled to employment and support allowance) add—

“(f) regulation 9 of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(33) (persons in care homes) applies, or ceases to apply, to the claimant for a period of less than one week.”.

#### **Amendment of the Social Security (Immigration and Asylum) Consequential Regulations**

7.—(1) The Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000(34) are amended in accordance with paragraphs (2) and (3).

(2) Omit regulation 2(8)(35) (persons not excluded from specified benefits under section 115 of the Act).

(3) Omit paragraph 1 of the Schedule (persons not excluded from certain benefits under section 115 of the Immigration and Asylum Act 1999).

#### **Amendment of the State Pension Credit Regulations**

8. In regulation 2(4) of the State Pension Credit Regulations (Northern Ireland) 2003(36) (persons not in Northern Ireland)—

- (a) for sub-paragraph (h)(37) substitute—

“(h) a person who has been granted leave or who is deemed to have been granted leave outside the rules made under section 3(2) of the Immigration Act 1971 where that leave is—

- (i) discretionary leave to enter or remain in the United Kingdom,
- (ii) leave to remain under the Destitution Domestic Violence concession, or
- (iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005;”;

- (b) at the end of sub-paragraph (hh) add “or”; and
- (c) omit sub-paragraphs (j) and (k)(38).

#### **Amendment of the Housing Benefit Regulations**

9.—(1) The Housing Benefit Regulations (Northern Ireland) 2006(39) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 10 (persons from abroad)—

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(31) Sub-paragraph (k) was added by regulation 3(b) of [S.R. 2009 No. 68](#)  
(32) [S.R. 1999 No. 162](#). Schedule 2C was inserted by regulation 22(14) of [S.R. 2008 No. 286](#)  
(33) [S.R. 1992 No. 32](#); regulation 9 was substituted by regulation 3(2) of [S.R. 2007 No. 431](#)  
(34) [S.R. 2000 No. 71](#); relevant amending Regulations are [S.R. 2003 No. 421](#) and [S.R. 2010 No. 6](#)  
(35) Paragraph (8) was added by regulation 6(c) of [S.R. 2003 No. 421](#) and amended by regulation 3(5)(b) of [S.R. 2010 No. 6](#)  
(36) [S.R. 2003 No. 28](#); regulation 2 was substituted by regulation 5 of [S.R. 2006 No. 178](#)  
(37) Sub-paragraph (h) was substituted by regulation 5 of [S.R. 2006 No. 379](#)  
(38) Sub-paragraph (k) was added by regulation 4(b) of [S.R. 2009 No. 68](#)  
(39) [S.R. 2006 No. 405](#); relevant amending Regulations are [S.R. 2006 No. 462](#), [S.R. 2008 No. 371](#) and [S.R. 2009 No. 68](#)

- (a) for paragraph (5)(h) substitute—
    - “(h) a person who has been granted leave or who is deemed to have been granted leave outside the rules made under section 3(2) of the Immigration Act 1971 where that leave is—
      - (i) discretionary leave to enter or remain in the United Kingdom;
      - (ii) leave to remain under the Destitution Domestic Violence concession, or
      - (iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005;”;
  - (b) at the end of paragraph (5)(j) add “or”; and
  - (c) omit paragraphs (5)(k) and (kk)(40) and (6).
- (3) In regulation 83(41) (amendment and withdrawal of claim)—
- (a) for paragraph (1) substitute—
    - “(1) A person who has made a claim for benefit may amend it at any time before a determination has been made on the claim by notice in writing received at the designated office, by telephone call to a telephone number specified by the relevant authority under regulation 81(4A)(42) (time and manner in which claims are to be made) or by the Department under regulation 81(4AA)(43) or in such other manner as the Department may decide or accept.”;
  - (b) omit paragraph (2); and
  - (c) in paragraph (3) omit “or (2)”.

#### **Amendment of the Housing Benefit Regulations (Persons who have attained the qualifying age for state pension credit) Regulations**

**10.**—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(44) are amended in accordance with paragraphs (2) and (3).

- (2) In regulation 10 (persons from abroad)—
  - (a) for paragraph (5)(h) substitute—
    - “(h) a person who has been granted leave or who is deemed to have been granted leave outside the rules made under section 3(2) of the Immigration Act 1971 where that leave is—
      - (i) discretionary leave to enter or remain in the United Kingdom;
      - (ii) leave to remain under the Destitution Domestic Violence concession, or
      - (iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005;”;
  - (b) at the end of paragraph (5)(j) add “or”; and
  - (c) omit paragraphs (5)(k) and (kk)(45) and (6).
- (3) In regulation 64(46) (amendment and withdrawal of claim)—

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(40) Paragraph (5)(kk) was inserted by regulation 5 of [S.R. 2009 No. 68](#)

(41) Regulation 83 was substituted by regulation 2(3) of [S.R. 2008 No. 371](#)

(42) Paragraph (4A) was inserted by regulation 2(2)(c) of [S.R. 2006 No. 462](#)

(43) Paragraph (4AA) was inserted by regulation 2(2)(b) of [S.R. 2008 No. 371](#)

(44) [S.R. 2006 No. 406](#); relevant amending Regulations are [S.R. 2006 No. 462](#), [S.R. 2008 No. 371](#) and [S.R. 2009 No. 68](#)

(45) Paragraph (5)(kk) was inserted by regulation 6 of [S.R. 2009 No. 68](#)

(46) Regulation 64 was substituted by regulation 3(3) of [S.R. 2008 No. 371](#)

- (a) for paragraph (1) substitute—

“(1) A person who has made a claim for benefit may amend it at any time before a determination has been made on the claim by notice in writing received at the designated office, by telephone call to a telephone number specified by the relevant authority under regulation 62(5A)(47) (time and manner in which claims are to be made) or by the Department under regulation 62(5B) or in such other manner as the Department may decide or accept.”;

- (b) omit paragraph (2); and  
(c) in paragraph (3) omit “or (2)”.

### **Amendment of the Employment and Support Allowance Regulations**

**11.**—(1) The Employment and Support Allowance Regulations (Northern Ireland) 2008(48) are amended in accordance with paragraphs (2) to (3).

- (2) In regulation 2 (interpretation)—

- (a) in paragraph (1)—

- (i) omit the definition of “relevant disease”(49), and  
(ii) omit the definition of “service user group”(50);

- (b) after paragraph (7)(51) add—

“(8) References in these Regulations to a person or claimant participating as a service user are to—

- (a) a person who is being consulted by or on behalf of—

- (i) a body which has a statutory duty to provide services in the field of health, social care or social housing, or  
(ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such services,

in their capacity as a user, potential user, carer of a user or person otherwise affected by the provisions of those services; or

- (b) the carer of a person consulted under sub-paragraph (a).”.

- (3) In regulation 4 (the end of the assessment phase)—

- (a) in paragraph (1)(52) for “paragraph (2)” substitute “paragraphs (2) and (3)”; and  
(b) for paragraph (2) substitute—

“(2) Where paragraph (3) applies, the assessment phase is to end when it is determined whether the claimant has limited capability for work.

(3) This paragraph applies where, at the end of the 13 week period referred to in paragraph (1)—

- (a) the claimant has not been assessed in accordance with a limited capability for work assessment; and

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(47) Regulation 62(5A) and (5B) was inserted by regulation 3(2)(c) of [S.R. 2006 No. 462](#)

(48) [S.R. 2008 No. 280](#); relevant amending Regulations are; [S.R. 2008 No. 413](#), [S.R. 2009 Nos. 68 and 338](#), [S.R. 2010 No. 200](#), [S.R. 2011 Nos. 76, 135, 357 and 368](#) and [S.R. 2013 No. 2](#)

(49) The definition of “relevant disease” was amended by regulation 21(2)(c) of [S.R. 2011 No. 357](#)

(50) The definition of “service user group” was inserted by regulation 8(2)(b) of [S.R. 2009 No. 338](#)

(51) Paragraph (7) was added by regulation 5(2)(b) of [S.R. 2011 No. 368](#)

(52) Paragraph (1) was amended by regulation 9(3) of [S.R. 2010 No. 200](#)

- (b) the claimant has not been treated as having limited capability for work in accordance with regulations 20, 25, 26, 29 or 33(2) (persons to be treated as having limited capability for work).”.
- (4) In regulation 5 (the assessment phase – previous claimants)—
  - (a) in paragraph (1)(b)(53) for “paragraphs (3) and (4)” substitute “paragraphs (3), (3A) and (4)”;
  - (b) for paragraph (3) substitute—
    - “(3) Where paragraph (3A) applies, the assessment phase is to end when it is determined whether the claimant has limited capability for work.
    - (3A) This paragraph applies where on the day referred to in paragraph (1)(b)—
      - (a) the claimant has not been assessed in accordance with a limited capability for work assessment; and
      - (b) the claimant has not been treated as having limited capability for work in accordance with regulations 20, 25, 26, 29 or 33(2).”;
  - (c) in paragraph (4)(a)(54) for “paragraph (3) does” substitute “paragraphs (3) and (3A) do”.
- (5) In the definition of “advanced education” in regulation 9(5) (condition relating to youth – claimants aged 20 or over but under 25)—
  - (a) in paragraph (a) for “Technician” substitute “Technology”; and
  - (b) in paragraph (b) for “Technician” substitute “Technology”.
- (6) In regulation 19 (determination of limited capability for work)—
  - (a) in paragraph (3)—
    - (i) for “any descriptor” substitute “each descriptor”, and
    - (ii) after “listed in that Schedule” insert “which applies in the claimant’s case”;
  - (b) in paragraph (5)(c)(i)(55) after “disablement;” insert “or”; and
  - (c) in paragraph (6) for “apply” substitute “applies”.
- (7) In regulation 20 (certain claimants to be treated as having limited capability for work)—
  - (a) renumber the existing provision as paragraph (1);
  - (b) in that paragraph (1)(c)(56)(i)—
    - (i) omit “, or from work of such a kind,”, and
    - (ii) after “made” insert “or given”;
  - (c) in paragraph (1)(e)(i) after “period” insert “(which has the meaning it has in section 35(2) of the Contributions and Benefits Act)”;
  - (d) in paragraph (1)(g)(57)—
    - (i) insert “the claimant meets” at the beginning of the paragraph, and
    - (ii) for “apply to the claimant” substitute “in accordance with regulation 34(2), (3) and (6)(58) where applicable”; and
  - (e) after paragraph (1) insert—

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(53) Paragraph (1)(b) was amended by regulation 9(4)(a) of [S.R. 2010 No. 200](#)

(54) Paragraph (4)(a) was added by regulation 9(4)(c) of [S.R. 2010 No. 200](#)

(55) Paragraph (5) was substituted by regulation 3(2)(b) of [S.R. 2013 No. 2](#)

(56) Paragraph 1(c) was amended by regulation 21(4) of [S.R. 2011 No. 357](#)

(57) Paragraph (1)(g) was inserted by regulation 3(2)(b) of [S.R. 2011 No. 76](#)

(58) Paragraph (3) was substituted by regulation 4(2)(a) of [S.R. 2013 No. 2](#) and paragraph (6) is inserted by regulation 11(16)(c) of these Regulations

- “(2) In this regulation, “relevant disease” means an infectious disease to which—
- (a) section 15(1) of the Public Health Act (Northern Ireland) 1967<sup>(59)</sup> (power to require person in contact with infectious disease to discontinue employment and compensation therefor.) applies;
  - (b) regulations 8 and 9 of the Public Health (Ships) Regulations (Northern Ireland) 2008<sup>(60)</sup> (examination etc., of persons on ships and powers in respect of persons leaving ships) apply; or
  - (c) regulations 7 and 8 of the Public Health (Aircraft) Regulations (Northern Ireland) 2008<sup>(61)</sup> (examination etc., of persons on aircraft and powers in respect of persons leaving aircraft) apply.”.
- (8) In regulation 21(2) (information required for determining capability for work) for “shall” substitute “must”.
- (9) In regulation 22 (failure to provide information in relation to limited capability for work)—
- (a) for paragraph (2)(a)<sup>(62)</sup> substitute—
    - “(a) the claimant was sent a further request at least 3 weeks after the date of the first request;” and
    - (b) in paragraph (2)(b)<sup>(63)</sup> omit from “the claimant” to “request, and”.
- (10) In regulation 23 (claimant may be called for a medical examination to determine whether the claimant has limited capability for work)—
- (a) in paragraph (2) for “listed” substitute “mentioned”; and
  - (b) for paragraph (3) substitute—
    - “(3) Paragraph (2) does not apply unless—
      - (a) written notice of the date, time and place for the examination was sent to the claimant at least 7 days in advance; or
      - (b) that claimant agreed to accept a shorter period of notice whether given in writing or otherwise.”.
- (11) In regulation 26(1)<sup>(64)</sup> (claimants receiving certain regular treatment) after “engaged in” insert “receiving”.
- (12) After regulation 29(3)<sup>(65)</sup> (exceptional circumstances) add—
- “(4) In this regulation “medical evidence” means—
    - (a) evidence from a health care professional approved by the Department; and
    - (b) evidence (if any) from any health care professional or a hospital or similar institution,
 or such part of such evidence as constitutes the most reliable evidence available in the circumstances.”.
- (13) In regulation 30 (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made)—

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<sup>(59)</sup> 1967 c. 36; section 15(1) was amended by paragraph 75(c) of Schedule 16 to the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N. I. 14)) and Article 32(1) and (2)(c) of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1))

<sup>(60)</sup> S.R. 2008 No. 333

<sup>(61)</sup> S.R. 2008 No. 436

<sup>(62)</sup> Paragraph (2)(a) was amended by regulation 21(5)(a) of S.R. 2011 No. 357

<sup>(63)</sup> Paragraph (2)(b) was amended by regulation 21(6)(a) and (b) of S.R. 2011 No. 357

<sup>(64)</sup> Paragraph (1) was amended by regulation 3(5) of S.R. 2013 No. 2

<sup>(65)</sup> Paragraph (3) was added by regulation 3(6)(b) of S.R. 2013 No.2



- (a) in paragraph (2)(b)—
    - (i) after “claim” insert “for employment and support allowance”, and
    - (ii) for “unless” to the end substitute “unless paragraph (4) applies.”;
  - (b) omit paragraph (2)(c)(66); and
  - (c) after paragraph (3) add—
    - “(4) This paragraph applies where—
      - (a) the claimant is suffering from some specific disease or bodily or mental disablement from which the claimant was not suffering at the time of that determination;
      - (b) a disease or bodily or mental disablement from which the claimant was suffering at the time of that determination has significantly worsened; or
      - (c) in the case of a claimant who was treated as not having limited capability for work under regulation 22 (failure to provide information in relation to limited capability for work), the claimant has since provided the information requested under that regulation.”.
- (14) In regulation 32(1)(67) (certain claimants to be treated as not having limited capability for work) omit “for Defence”.
- (15) In regulation 32A(1)(68) (certain claimants to be treated as not having limited capability for work at the end of the period covered by medical evidence) omit “then”.
- (16) In regulation 34 (determination of limited capability for work-related activity)—
- (a) in paragraph (1)—
    - (i) for “claimant’s”, the second time it occurs, substitute “claimant has limited”,
    - (ii) omit “shall be limited”, and
    - (iii) after “limitation” for “shall” substitute “must”;
  - (b) omit paragraph (3A)(69); and
  - (c) after paragraph (5) add—
    - “(6) In assessing the extent of a claimant’s capability to perform any activity listed in Schedule 3, it is a condition that the claimant’s incapability to perform the action arises—
      - (a) in respect of descriptors 1 to 8, 15(a) and (b) and 16(a) and (b)—
        - (i) from a specific bodily disease or disablement, or
        - (ii) as a direct result of treatment provided by a registered medical practitioner for a specific physical disease or disablement; or
      - (b) in respect of descriptors 9 to 14, 15(c) and (d) and 16(c) and (d)—
        - (i) from a specific mental illness or disablement, or
        - (ii) as a direct result of treatment provided by a registered medical practitioner for a specific mental illness or disablement.”.
- (17) In regulation 36(2) (information required for determining capability for work-related activity) for “shall” substitute “must”.

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(66) Paragraph (2)(c) was added by regulation 9(8) of [S.R. 2010 No. 200](#)

(67) Regulation 32 was substituted by regulation 3(5) of [S.R. 2008 No. 413](#)

(68) Regulation 32A was inserted by regulation 9(9) of [S.R. 2010 No. 200](#) and paragraph (1) was amended by regulation 14(3)(a) of [S.R. 2011 No. 135](#)

(69) Paragraph (3A) was inserted by regulation 4(2)(b) of [S.R. 2013 No. 2](#)

- (18) In regulation 37(2) (failure to provide information in relation to work-related activity)—
- (a) for sub-paragraph (a)(70) substitute—
    - “(a) the claimant was sent a further request at least 3 weeks after the date of the first request; and”; and
    - (b) in sub-paragraph (b)(71) omit from “the claimant” to “, and”.
- (19) In regulation 38 (claimant may be called for a medical examination to determine whether the claimant has limited capability for work-related activity)—
- (a) in paragraph (2) for “referred to” substitute “mentioned”; and
  - (b) for paragraph (3) substitute—
    - “(3) Paragraph (2) does not apply unless—
    - (a) written notice of the date, time and place for the examination was sent to the claimant at least 7 days in advance; or
    - (b) the claimant agreed to accept a shorter period of notice whether given in writing or otherwise.”.
- (20) In regulation 40(2)(d) (a claimant who works to be treated as not entitled to an employment and support allowance) after “earnings” insert “or”.
- (21) In regulation 45 (exempt work)—
- (a) for paragraph (4)(b) substitute—
    - “(b) is done by a claimant who has or is treated as having limited capability for work-related activity.”; and
    - (b) after paragraph (4)(b) insert—
      - “(4A) For the purposes of paragraph (4)(a), a period of specified work begins on the first day on which any specified work is undertaken and continues for a period of 52 weeks, whether or not any further specified work is undertaken during that period.”.
- (22) In regulation 70(4)(72) (special cases: supplemental – persons from abroad)—
- (a) for sub-paragraph (h) substitute—
    - “(h) a person who has been granted leave or who is deemed to have been granted leave outside the rules made under section 3(2) of the Immigration Act 1971 where that leave is—
    - (i) discretionary leave to enter or remain in the United Kingdom;
    - (ii) leave to remain under the Destitution Domestic Violence concession, or
    - (iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005;”;
  - (b) at the end of sub-paragraph (i) add “or”; and
  - (c) omit sub-paragraphs (k) and (l)(73).
- (23) In regulation 76(1)(74) (deductions for councillor’s allowance) for “person” substitute “claimant”.
- (24) In regulation 95 (earnings of employed earners)—

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(70) Sub-paragraph (a) was amended by regulation 21(5)(b) of [S.R. 2011 No. 357](#)

(71) Sub-paragraph (b) was amended by regulation 21(6)(b) of [S.R. 2011 No. 357](#)

(72) Regulation 70(4) was amended by regulation 7 of [S.R. 2013 No. 167](#)

(73) Sub-paragraph (k) was amended by regulation 7(a) of, and sub-paragraph (l) was added by regulation 7(b) of [S.R. 2009 No. 68](#)

(74) Regulation 76(1) was amended by regulation 14(5)(a) of [S.R. 2011 No. 135](#)

- (a) in paragraph (2)(f)(75) for “claimant’s participation in a service user group” substitute “claimant participating as a service user.”; and
  - (b) in paragraph (4)(b) for “(e)” substitute “(f)”.
- (25) In regulation 106(9)(76) (notional income – deprivation and income on application) for “claimant’s participation in a service user group” substitute “claimant participating as a service user”.
- (26) In regulation 107(8)(77) (notional income – income due to be paid or income paid to or in respect of a third party) for “claimant’s participation in a service user group” substitute “claimant participating as a service user”.
- (27) In regulation 108(4)(78) (notional income – other income) for “claimant’s participation in a service user group” substitute “claimant participating as a service user”.
- (28) For regulation 168 (reduction in certain cases) substitute—

**“Reduction in certain cases**

- 168.**—(1) Where a disqualification is to be made in accordance with regulation 157 in respect of a part-week, the amount referred to in paragraph (2) is to be payable by way of an employment and support allowance in respect of that part-week.
- (2) The amount mentioned in paragraph (1) is—
- (a) one seventh of the employment and support allowance which would have been paid for the part-week if—
    - (i) there was no disqualification under regulation 157, and
    - (ii) it was not a part-week; multiplied by
  - (b) the number of days in the part-week in respect of which no disqualification is to be made in accordance with regulation 157.”.
- (29) In Part 1 (physical disabilities) of Schedule 2(79) (assessment of whether a claimant has limited capability for work)—
- (a) in column 2, opposite the entry for paragraph 1 in column 1(80) (activity)—
    - (i) in paragraphs 1(a), (c) and (d) after “cannot” insert “unaided by another person”,
    - (ii) in paragraph (1)(b)—
      - (aa) after “cannot” insert “unaided by another person”; and
      - (bb) after “steps” omit “unaided by another person”, and
    - (iii) in paragraph 1(e) for “apply” substitute “applies”;
  - (b) in column 2, opposite the entry for paragraph 5 in column 1—
    - (i) for paragraph 5(a) substitute—
      - “(a) cannot press a button (such as a telephone keypad) with either hand or cannot turn the pages of a book with either hand.”;
    - (ii) in paragraph 5(c) after “mark” insert “with either hand”, and
    - (iii) in paragraph 5(e) for “apply” substitute “applies”;
  - (c) in column 2, opposite the entry for paragraph 7 in column 1(81)—

(75) Paragraph (2)(f) was added by regulation 8(6) of [S.R. 2009 No. 338](#)

(76) Regulation 106(9) was added by regulation 8(8)(b) of [S.R. 2009 No. 338](#)

(77) Regulation 107(8) added by regulation 8(9) of [S.R. 2009 No. 338](#)

(78) Regulation 108(4) added by regulation 8(10) of [S.R. 2009 No. 338](#)

(79) Schedule 2 was substituted by regulation 3(5) of and Schedule 1 to [S.R. 2011 No. 76](#)

(80) The wording in paragraph 1 was substituted by regulation 5(1)(a) of [S.R. 2013 No. 2](#)

(81) The wording in column 1 was substituted by regulation 5(1)(e) of [S.R. 2013 No. 2](#)

- (i) in paragraph 7(a)—
    - (aa) after “message” insert “, such as the location of a fire escape,”; and
    - (bb) after “impairment,” omit the words to the end of the sentence,
  - (ii) in paragraph 7(d) for “apply” substitute “applies”; and
  - (d) in column 2, opposite the entry for paragraph 9 in column 1(**82**), in paragraph 9(c) for “None of the above apply” substitute “Neither of the above applies”.
- (30) In Part 2 (mental, cognitive and intellectual function assessment) of Schedule 2—
- (a) in column 2, opposite the entry for paragraph 12 in column 1—
    - (i) in paragraph 12(a) for “they require” substitute “the claimant requires”,
    - (ii) in paragraph 12(b) for “they frequently require” substitute “the claimant frequently requires”, and
    - (iii) in paragraph 12(c) for “they occasionally require” substitute “the claimant occasionally requires”;
  - (b) in column 2, opposite the entry for paragraph 13 in column 1—
    - (i) in paragraph 13(b) after “2” insert “sequential”,
    - (ii) in paragraph 13(c) after “2” insert “sequential”, and
    - (iii) in paragraph 13(d) for “apply” substitute “applies”; and
  - (c) in column 2, opposite the entry for paragraph 16 in column 1—
    - (i) in paragraph 16(a), (b) and (c) for “individual” substitute “claimant”, and
    - (ii) in paragraph 16(d) for “apply” substitute “applies”.
- (31) In Schedule 3 (assessment of whether a claimant has limited capability for work-related activity)—
- (a) in column 2, opposite the entry for paragraph 5 in column 1, for paragraph 5 substitute—
 

“5. Cannot press a button (such as a telephone keypad) with either hand or cannot turn the pages of a book with either hand.”;
  - (b) in column 2, opposite the entry for paragraph 7 in column 1(**83**)—
    - (i) after “message” insert “, such as the location of a fire escape,”, and
    - (ii) after “impairment” omit the words to the end of the sentence;
  - (c) in column 2, opposite the entry for paragraph 10 in column 1, for “they require” substitute “the claimant requires”;
  - (d) in column 2, opposite the entry for paragraph 13 in column 1, for “individual” substitute “claimant”; and
  - (e) in column 2, opposite the entry for paragraph 15 in column 1, in paragraph 15(b) for “stopping,” substitute “stopping or”.
- (32) In column 1 of paragraph 13(**84**) of Part 2 (amounts prescribed for the purposes of sections 2(1) and 4(2) of the Act) of Schedule 5 (special cases) for “the other” substitute “each”.
- (33) In paragraph 2A(**85**) of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) for “claimant’s participation in a service user group” substitute “claimant participating as a service user”.

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(82) The wording in column 1 was substituted by regulation 5(1)(g)(i) of S.R. 2013 No. 2

(83) The wording in column 1 was substituted by regulation 6(c) of S.R. 2013 No. 2

(84) Paragraph 13 was amended by regulation 5(4)(b) of S.R. 2010 No. 58

(85) Paragraph 2A was inserted by regulation 8(18)(a) of S.R. 2009 No. 338

## **Revocations**

**12.** The provisions specified in column (1) of the Schedule are revoked to the extent specified in column (3).

Sealed with the Official Seal of the Department for Social Development on 17th October 2013

*Anne McCleary*  
A senior officer of the Department for Social  
Development

The Department of Finance and Personnel consents to regulations 9 and 10.  
Sealed with the Official Seal of the Department of Finance and Personnel on 17th October 2013

*John McKibbin*  
A senior officer of the Department of Finance  
and Personnel

## SCHEDULE

Regulation 12

## Revocations

<i>Column (1) Citation</i>	<i>Column (2) Reference</i>	<i>Column (3) Extent of revocation</i>
The Social Security (Immigration and Asylum ) Consequential Amendments Regulations (Northern Ireland) 2000	<a href="#">S.R. 2000 No. 71</a>	Regulation 5(3)
The Social Security (Claims and Payments and Payments on account, Overpayments and Recovery) (Amendment) Regulations (Northern Ireland) 2005	<a href="#">S.R. 2005 No. 14</a>	Regulation 2(3)
The Employment and Support Allowance (Consequential Provisions) Regulations (Northern Ireland) 2008	<a href="#">S.R. 2008 No. 286</a>	Regulation 19(9)(b)
The Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2009	<a href="#">S.R. 2009 No. 92</a>	Regulation 4(6)
The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2009	<a href="#">S.R. 2009 No. 240</a>	Regulation 2(5)
The Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2009	<a href="#">S.R. 2009 No.338</a>	Regulation 8(2)(b) and (6)
The Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2010	<a href="#">S.R. 2010 No. 6</a>	Regulation 3(2)(c) and (5)(b)
The Social Security (Miscellaneous Amendments No. 4) Regulations (Northern Ireland) 2010	<a href="#">S.R. 2010 No. 200</a>	Regulation 9(3) and (8)
The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2011	<a href="#">S.R. 2011 No. 357</a>	Regulation 21(2)(c), (5) and (6)(b)(i)
The Employment and Support Allowance (Amendment) Regulations (Northern Ireland) 2013	<a href="#">S.R. 2013 No. 2</a>	Regulation 4(2)(b)

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend a number of different regulations relating to social security.

Regulation 2 amends the Social Security (Credits) Regulations (Northern Ireland) 1975 so as to omit a provision which no longer has any effect.

Regulations 3(4), 5, 8, 9(2), 10(2) and 11(22) amend the Income Support (General) Regulations (Northern Ireland) 1987, the Jobseeker's Allowance Regulations (Northern Ireland) 1996, the State Pension Credit Regulations (Northern Ireland) 2003 ("the State Pension Credit Regulations"), the Housing Benefit Regulations (Northern Ireland) 2006 ("the Housing Benefit Regulations"), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 ("the Housing Benefit SPC Regulations"), and the Employment and Support Allowance Regulations (Northern Ireland) 2008 ("the Employment and Support Allowance Regulations") respectively. The amendments update the categories of persons who are exempt from the habitual residence test to omit some obsolete categories and include a person who has been granted leave or who is deemed to have been granted leave, in certain circumstances, outside the rules made under section 3(2) of the Immigration Act 1971.

Regulation 4(2) amends the Claims and Payments Regulations (Northern Ireland) 1987 ("the Claims and Payments Regulations") and regulations 9(3) and 10(3) amend the Housing Benefit and the Housing Benefit SPC Regulations respectively to give a claimant more options about how to notify a change to their claim before it is determined. The changes allow a change to be made by telephone, in writing or by any other means that the Department may decide or accept, regardless of how the original claim was made.

Regulation 4(3) amends paragraph 4 of Schedule 8A to the Claims and Payments Regulations following the revocation of regulation 15(7) of the State Pension Credit Regulations. It omits references to that provision and substitutes an equivalent definition of the accommodation in respect of which costs may be paid by the Department directly to the person to whom those costs are payable.

Regulation 6 amends the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 to provide for part week payments of severe disability premium to employment and support allowance claimants who become resident or leave residence in a care home. This aligns the treatment of employment and support allowance claimants with that of income support and jobseeker's allowance claimants.

Regulation 7 amends the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 so as to omit a provision for certain people not to be excluded from entitlement to income-related benefits under section 115 of the Immigration and Asylum Act who would otherwise be excluded. Regulation 3(2), (3) and (5) make amendments consequential to this.

Regulation 11 amends the Employment and Support Allowance Regulations in order to update and ensure clarity and consistency in the relevant regulations.

Regulation 12 makes consequential revocations.

In so far as these Regulations are required, for the purposes of regulations 9 and 10, to be referred to the Social Security Advisory Committee under section 149(2) of the Social Security Administration (Northern Ireland) Act 1992, after agreement by the Social Security Advisory

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*Status: This is the original version (as it was originally made). Northern Ireland Statutory Rules are not carried in their revised form on this site.*

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Committee, they have not been so referred by virtue of section 150(1)(b) of that Act. Otherwise they make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, that Act, are not subject to the requirement of section 149(2) or, as the case may be, (2A) of that section for prior reference to the Social Security Advisory Committee or the Industrial Injuries Advisory Council.