

2005 No. 458

HOUSING; RATES; SOCIAL SECURITY

**The Social Security (Residential Care Homes, Nursing
Homes and Independent Hospitals) Regulations
(Northern Ireland) 2005**

Made - - - - - *20th October 2005*

Coming into operation *14th November 2005*

The Department for Social Development, in exercise of the powers conferred by sections 67(2), 72(8), 122(1)(a) and (d), 129(2) and (4), 131(1) and (2), 132(2), (3) and (4), 132A(2), (3) and (4), 133(2)(h) and (i), 134(1)(a) and (2) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a), sections 1(1C), 5(1)(q) and (5) and 165(4) and (5) of the Social Security Administration (Northern Ireland) Act 1992(b), Articles 6(5) and (12), 14(1), (2) and (4)(a), 22(4) and 22B(4) of and paragraphs 1(2)(b), 8, 8A, 10(1) and (2) and 12 of Schedule 1 to, the Jobseekers (Northern Ireland) Order 1995(c) and now vested in it(d), sections 6(4)(c) and 7(4)(c) of the Social Security Fraud Act (Northern Ireland) 2001(e) and sections 2(3)(b), 6(1), 15(2) and (6)(b), 17(2)(a) and 19(1) to (3) of the State Pension Credit Act (Northern Ireland) 2002(f) and of all other powers enabling it in that behalf, with the consent of the Department of Finance and Personnel(g), in so far as regulation 4 and Schedule 2 are concerned, and after agreement by the Social Security Advisory Committee that proposals in respect of that Regulation should not be referred to it(h), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Residential Care Homes, Nursing Homes and Independent Hospitals) Regulations (Northern Ireland) 2005 and shall come into operation on 14th November 2005.

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- (a) 1992 c. 7; section 132A was inserted by paragraph 3 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14), section 134(1)(a) was substituted by Article 66(1) of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and section 171(1) was amended by paragraph 5 of Schedule 4 to, the Tax Credits Act 2002 (c. 21)
 - (b) 1992 c. 8; section 1(1C) was inserted by Article 18 of the Social Security Administration (Fraud) (Northern Ireland) Order 1997 (S.I. 1997/1182 (N.I. 11)) and section 5(5) was inserted by Article 3 of the Housing Benefit (Payment to Third Parties) (Northern Ireland) Order 1996 (S.I. 1996/2597 (N.I. 20))
 - (c) S.I. 1995/2705 (N.I. 15); Article 22B was inserted by paragraph 14 of Schedule 7 to, the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), paragraph 8A of Schedule 1 was inserted by paragraph 16(2) of Schedule 7 to, the Welfare Reform and Pensions (Northern Ireland) Order 1999, paragraph 10(1) of Schedule 1 was substituted by paragraph 16(5) of Schedule 7 to, the Welfare Reform and Pensions (Northern Ireland) Order 1999 and paragraph 10(2) of Schedule 1 was amended by paragraph 114 of Schedule 6 to, the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and paragraph 16(6) of Schedule 7 to, the Welfare Reform and Pensions (Northern Ireland) Order 1999
 - (d) See Article 8(b) and Part II of Schedule 6 to, S.R. 1999 No. 481
 - (e) 2001 c. 17 (N.I.)
 - (f) 2002 c. 14 (N.I.)
 - (g) 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 and Part II of Schedule 4 to, S.R. 1999 No. 481
 - (h) See section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992

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

Amendment of the Social Fund (Maternity and Funeral Expenses) (General) Regulations

2. In regulation 2(1A) of the Social Fund (Maternity and Funeral Expenses) (General) Regulations (Northern Ireland) 1987(b) (interpretation)—

- (a) in sub-paragraph (a) for “residential accommodation, residential care home or nursing home” there shall be substituted “residential care home, nursing home, Abbeyfield Home or independent hospital”, and
- (b) in sub-paragraph (b) and at the end of paragraph (1A) for “accommodation or home” there shall be substituted “home or hospital”.

Amendment of the Income Support (General) Regulations

3. The Income Support (General) Regulations (Northern Ireland) 1987(c) shall be amended in accordance with Schedule 1.

Amendment of the Housing Benefit (General) Regulations

4.—(1) The Housing Benefit (General) Regulations (Northern Ireland) 1987(d) shall be amended in accordance with Schedule 2.

(2) The amendments made by paragraphs 1(a)(ii), 6(a) and (b) and 8 of Schedule 2 to these Regulations are to the Housing Benefit (General) Regulations (Northern Ireland) 1987 as modified in their application to persons to whom regulation 2 of the Housing Benefit (State Pension Credit) Regulations (Northern Ireland) 2003(e) applies.

Amendment of the Social Security (Claims and Payments) Regulations

5.—(1) The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(f) shall be amended in accordance with paragraphs (2) and (3).

(2) Regulation 34B(g) (transitional provisions for persons in hostels or certain residential accommodation) shall be omitted.

(3) In Schedule 8A(h) (deductions from benefits and direct payment to third parties)—

(a) in paragraph 1 (interpretation) for the definition of “hostel”(i) there shall be substituted the following definition—

““hostel” means an establishment—

- (a) in which there is provided for persons generally, or for a class of persons, accommodation, otherwise than in separate and self-contained premises, and either board or facilities of a kind set out in paragraph 4A(1)(d) adequate to the needs of those persons; and—
- (b) which is—

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

(b) S.R. 1987 No. 150; paragraph (1A) was inserted by regulation 2(3) of S.R. 1996 No. 423 and amended by regulation 2(2)(b) of S.R. 1997 No. 155

(c) S.R. 1987 No. 459; relevant amending Regulations are S.R. 1988 Nos. 146, 193, 318 and 431, S.R. 1989 Nos. 139 and 395, S.R. 1990 No. 387, S.R. 1991 No. 345, S.R. 1992 No. 403, S.R. 1993 Nos. 149, 165 and 373, S.R. 1994 Nos. 65, 77 and 165, S.R. 1995 Nos. 86 and 301, S.R. 1996 Nos. 93, 199 and 489, S.R. 1997 No. 22, S.R. 1998 Nos. 2 and 81, S.R. 2000 Nos. 74 and 366, S.R. 2001 No. 150, S.R. 2002 No. 132 and S.R. 2003 Nos. 191, 195, 261 and 267

(d) S.R. 1987 No. 461; relevant amending Regulations are S.R. 1988 No. 314, S.R. 1991 No. 176, S.R. 1993 No. 149, S.R. 1994 No. 65, S.R. 1996 Nos. 93, 111 and 334, S.R. 1998 No. 455, S.R. 1999 No. 372, S.R. 2001 Nos. 150 and 215 and S.R. 2003 No. 197

(e) S.R. 2003 No. 197

(f) S.R. 1987 No. 465; relevant amending Regulations are S.R. 1989 No.398, S.R. 1991 No. 488, S.R. 1993 No. 149, S.R. 1996 No. 354, S.R. 1999 No. 472, S.R. 2002 No. 132 and S.R. 2003 Nos. 191 and 412

(g) Regulation 34B was inserted by regulation 5 of S.R. 1989 No. 398 and amended by Article 9(2) of S.R. 1999 No. 472 (C. 36) and regulation 13 of S.R. 2003 No. 191

(h) Schedule 8A was inserted by regulation 2(3) of, and the Schedule to, S.R. 1988 No. 67

(i) The definition of “hostel” was inserted by regulation 6(7)(a)(ii) of S.R. 1991 No. 488 and amended by paragraph 3(3) of Schedule 2 to, S.R. 1993 No. 149 and regulation 3(2) of S.R. 2002 No. 132

- (i) managed by or owned by a housing association registered with the Department of the Environment in accordance with Article 124 of the Housing (Northern Ireland) Order 1981(a);
 - (ii) operated other than on a commercial basis and in respect of which funds are provided wholly or in part by a government department or public body, or
 - (iii) managed by a voluntary organisation or charity and provides care, support or supervision with a view to assisting those persons to be rehabilitated or resettled within the community;
- (c) which is not—
- (i) a residential care home;
 - (ii) a nursing home;
 - (iii) an independent hospital, or
 - (iv) an establishment run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society;
- (d) in sub-paragraph (b)(iii) a “voluntary organisation” means any association carrying on any activities otherwise than for the purpose of gain by the association or by individual members thereof, but shall not include any public body;
- (e) in sub-paragraph (c)—
- (i) “independent hospital” has the meaning assigned to it by Article 2(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;
 - (ii) “nursing home” has the meaning it has for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 by virtue of Article 11 of that Order;
 - (iii) “residential care home” has the meaning it has for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 by virtue of Article 10 of that Order;”;
- (b) in paragraph 4(b) (miscellaneous accommodation costs)—
- (i) in sub-paragraph (1)(c)—
 - (aa) in head (a) for “in a residential care home or nursing home” there shall be substituted “residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital”;
 - (bb) in head (b) sub-heads (i) and (ii) shall be omitted;
 - (ii) in sub-paragraph (2)(d) for head (a) there shall be substituted the following head—
 - “(a) in a case where a beneficiary is not in accommodation as specified in regulation 15(7)(c) of the State Pension Credit Regulations, an amount equal to the award of income support, jobseeker’s allowance, or guarantee credit payable to the claimant but excluding an amount, if any, which when added to any other income of the beneficiary as determined in accordance with regulation 28 of the Income Support Regulations, regulation 93 of the Jobseeker’s Allowance Regulations or regulation 17 of the State Pension Credit Regulations will equal the amount prescribed in respect of personal expenses in sub-paragraph (2A), and”.

(a) S.I. 1981/156 (N.I. 3)

(b) Paragraph 4 was substituted by paragraph 2(2) of Schedule 1 to, S.R. 1993 No. 149

(c) Sub-paragraph (1) was amended by regulation 8(a)(ii) of S.R. 1989 No. 398, regulation 2(26)(d)(ii) of S.R. 1996 No. 354, Article 9(2) of S.R. 1999 No. 472 (C. 36), regulation 3(3)(a) of S.R. 2002 No. 132 and regulation 2(a) to (d) of S.R. 2003 No. 412

(d) Sub-paragraph (2) was substituted by regulation 2(e) of S.R. 2003 No. 412

Amendment of the Social Fund (Cold Weather Payments) (General) Regulations

6. In regulation 1A of the Social Fund (Cold Weather Payments) (General) Regulations (Northern Ireland) 1988(a) (prescribed description of persons), for paragraph (2) there shall be substituted the following paragraphs—

- “(2) Paragraph (1)(a), (aa) and (ab) shall not apply to a person who resides in—
- (a) a residential care home or a nursing home;
 - (b) an independent hospital, or
 - (c) an establishment run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society.
- (3) In paragraph (2)—
- (a) “independent hospital” has the meaning assigned to it by Article 2(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(b);
 - (b) “nursing home” has the meaning it has for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 by virtue of Article 11 of that Order;
 - (c) “residential care home” has the meaning it has for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 by virtue of Article 10 of that Order.”

Amendment of the Social Security (Attendance Allowance) Regulations

7. In regulation 7 of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992(c) (persons in certain accommodation other than hospitals)—

- (a) in paragraph (5)(c) for “residential homes” there shall be substituted “residential care homes, nursing homes or independent hospitals”, and
- (b) after paragraph (5) there shall be added the following paragraph—

“(6) In paragraph (5)—

“independent hospital” has the meaning assigned to it by Article 2(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;

“nursing home” has the meaning it has for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 by virtue of Article 11 of that Order;

“residential care home” has the meaning it has for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 by virtue of Article 10 of that Order.”

Amendment of the Social Security (Disability Living Allowance) Regulations

8. In regulation 9 of the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(d) (persons in certain accommodation other than hospitals)—

- (a) in paragraph (8)(c) for “residential homes” there shall be substituted “residential care homes, nursing homes or independent hospitals”, and
- (b) after paragraph (8) there shall be added the following paragraph—

“(9) In paragraph (8)—

(a) S.R. 1988 No. 368; regulation 1A was inserted by regulation 2 of S.R. 1991 No. 487 and amended by regulation 3 of S.R. 1996 No. 488, regulation 25(4) to (6) of S.R. 2003 No. 191, regulation 3(2) of S.R. 2003 No. 267 and regulation 2 of S.R. 2004 No. 429

(b) S.I. 2003/431 (N.I. 9)

(c) S.R. 1992 No. 20; paragraph (5) was amended by regulation 2 of S.R. 2002 No. 31

(d) S.R. 1992 No. 32; paragraph (8) was amended by regulation 3 of S.R. 2002 No. 31

“independent hospital” has the meaning assigned to it by Article 2(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;

“nursing home” has the meaning it has for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 by virtue of Article 11 of that Order;

“residential care home” has the meaning it has for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 by virtue of Article 10 of that Order.”.

Amendment of the Jobseeker’s Allowance Regulations

9. The Jobseeker’s Allowance Regulations (Northern Ireland) 1996(a) shall be amended in accordance with Schedule 3.

Amendment of the Social Fund Winter Fuel Payment Regulations

10. In regulation 1 of the Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000(b) (citation, commencement and interpretation)—

(a) in paragraph (2)—

(i) after the definition of “the Income Support Regulations” there shall be inserted the following definition—

““independent hospital” has the meaning assigned to it by Article 2(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;”;

(ii) for the definition of “nursing home”(c) there shall be substituted the following definition—

““nursing home” has the meaning it has for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 by virtue of Article 11 of that Order;”;

(iii) the definition of “residential accommodation” shall be omitted;

(iv) after the definition of “partner” there shall be inserted the following definition—

““residential care home” has the meaning it has for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 by virtue of Article 10 of that Order;”;

(b) in paragraph (3)(d)—

(i) “Subject to paragraph (3A),” shall be omitted;

(ii) in sub-paragraph (a)(iii) for “residential accommodation” there shall be substituted “an independent hospital”;

(c) paragraph (3A)(e) shall be omitted.

Amendment of the Social Security (Loss of Benefit) Regulations

11.—(1) The Social Security (Loss of Benefit) Regulations (Northern Ireland) 2002(f) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 5(4) (meaning of “person in hardship”) for “or nursing home” there shall be substituted “, nursing home, an Abbeyfield Home or an independent hospital”.

(a) S.R. 1996 No. 198; relevant amending Regulations are S.R. 1996 Nos. 356, 358 and 503, S.R. 1997 No. 22, S.R. 1998 Nos. 2 and 81, S.R. 1999 No. 428 (C. 32), S.R. 2000 Nos. 350 and 366, S.R. 2001 No. 150, S.R. 2002 No. 132 and S.R. 2003 Nos. 195 and 261

(b) S.R. 2000 No. 91; relevant amending Regulations are S.R. 2000 No. 321, S.R. 2001 No. 373 and S.R. 2003 No. 267

(c) The definition of “nursing home” was amended by regulation 5(a) of S.R. 2003 No. 267

(d) Paragraph (3) was amended by regulation 2(2)(b) of S.R. 2000 No. 321 and regulation 2(2)(a) of S.R. 2001 No. 373

(e) Paragraph (3A) was substituted by regulation 5(b) of S.R. 2003 No. 267

(f) S.R. 2002 No. 79

(3) In regulation 11(5) (application of Part and meaning of “couple in hardship”) for “or nursing home” there shall be substituted “, nursing home, an Abbeyfield Home or an independent hospital”.

Amendment of the State Pension Credit Regulations

12. The State Pension Credit Regulations (Northern Ireland) 2003(a) shall be amended in accordance with Schedule 4.

Revocations

13. The regulations specified in column (1) of Schedule 5 are revoked to the extent mentioned in column (3).

Sealed with the Official Seal of the Department for Social Development on 20th October 2005.

(L.S.)

John O'Neill

A senior officer of the Department for Social Development

The Department of Finance and Personnel hereby consents to regulation 4 and Schedule 2 of the foregoing Regulations.

Sealed with the Official Seal of the Department of Finance and Personnel on 20th October 2005.

(L.S.)

Jack Layberry

A senior officer of the Department of Finance and Personnel

(a) S.R. 2003 No.28

AMENDMENT OF THE INCOME SUPPORT (GENERAL) REGULATIONS

- 1.** In regulation 2 (interpretation)—
- (a) in paragraph (1)—
- (i) after the definition of “the Registered Homes Order”(a) there shall be inserted the following definition—
- ““Abbeyfield Home” means an establishment run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society;”;
- (ii) after the definition of “housing benefit expenditure”(b) there shall be inserted the following definition—
- ““independent hospital” has the meaning assigned to it by Article 2(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;”;
- (iii) for the definition of “nursing home”(c) there shall be substituted the following definition—
- ““nursing home” has the meaning it has for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 by virtue of Article 11 of that Order;”;
- (iv) the definition of “residential accommodation”(d) shall be omitted, and
- (v) for the definition of “residential care home”(e) there shall be substituted the following definition—
- ““residential care home” has the meaning it has for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 by virtue of Article 10 of that Order;”.
- (b) in paragraph (1A)(f) for the words from “or a nursing home” to “reside in that home” there shall be substituted “, nursing home, Abbeyfield home or an independent hospital and he is temporarily absent from that home or hospital, he shall be regarded as continuing to reside in that home or hospital”.
- 2.** In regulation 6(4)(g) (persons not treated as engaged in remunerative work) for sub-paragraph (d) there shall be substituted the following sub-paragraph—
- “(d) a person who—
- (i) is in employment;
- (ii) lives in, or is temporarily absent from, a residential care home, nursing home, an Abbeyfield Home or an independent hospital, and
- (iii) requires personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, past or present mental disorder or a terminal illness.”.
- 3.** In regulation 16 (circumstances in which a person is to be treated as being or not being a member of the household)—

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- (a) The definition of “the Registered Homes Order” was inserted by regulation 2(2)(a) of S.R. 1993 No. 149
- (b) The definition of “housing benefit expenditure” was substituted by regulation 4(1) of S.R. 1997 No. 22
- (c) The definition of “nursing home” was substituted by regulation 2(1) of, and paragraph 1(a)(i) of Part I of the Schedule to S.R. 2002 No. 132
- (d) The definition of “residential accommodation” was substituted by regulation 2(c) of S.R. 1988 No. 318 and amended by paragraph 1 of Schedule 1 to S.R. 1989 No. 139 and regulation 2(1) of, and paragraph 1(a)(ii) of Part I of the Schedule to, S.R. 2002 No. 132
- (e) The definition of “residential care home” was inserted by regulation 2(2)(d) of S.R. 1993 No. 149 and substituted by regulation 2(1) of, and paragraph 1(a)(i) of Part I of the Schedule to S.R. 2002 No. 132
- (f) Paragraph (1A) was inserted by regulation 2(1) of, and paragraph 1(b) of Part I of the Schedule to, S.R. 2002 No. 132 and amended by regulation 3(2) of S.R. 2003 No. 261
- (g) Paragraph (4) was added by regulation 2(b)(iii) of S.R. 2000 No. 74 and sub-paragraph (d) was substituted by regulation 2(1) of, and paragraph 2 of Part I of the Schedule to, S.R. 2002 No. 132

- (a) in paragraph (3)(e)(a) for “in residential accommodation, a residential care home or a nursing home” there shall be substituted “residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital”;
- (b) in paragraph (5)(b)(b) the words from “provided under” to “in regulation 21(3)” shall be omitted;
- (c) in paragraph (8) before the definition of “an authority”(e) there shall be inserted the following definition—

““accommodation” means accommodation provided or arranged by the Department of Health, Social Services and Public Safety under Article 15 or 36 of the 1972 Order in a home owned or managed by a Health and Social Services Board or an HSS trust where the accommodation is provided for a person whose stay in that accommodation has become other than temporary;”.

4. In regulation 17(4)(a) (applicable amounts)(d) for head (iii) there shall be substituted the following head—

“(iii) in a residential care home, nursing home, an Abbeyfield Home or an independent hospital.”.

5. In regulation 21 (special cases)—

- (a) in paragraph (3) the definition of “residential accommodation”(e) shall be omitted, and
- (b) paragraphs (3A) to (3C)(f) and (4)(g) to (4B)(h) shall be omitted.

6. In regulation 42 (notional income) for paragraph (4A)(i) there shall be substituted the following paragraph—

“(4A) Where the claimant resides in a residential care home, nursing home, an Abbeyfield Home or an independent hospital, or is temporarily absent from such a home or hospital, any payment made by a person other than the claimant or a member of his family in respect of some or all of the cost of maintaining the claimant or his partner in that home or hospital shall be treated as possessed by the claimant or his partner.”.

7. In regulation 53 (calculation of tariff income from capital)—

- (a) in paragraph (1B)(j)—
 - (i) for sub-paragraphs (a) and (b) there shall be substituted the following sub-paragraphs—
 - “(a) a residential care home, nursing home or an independent hospital;
 - (b) an Abbeyfield Home;”;
 - (ii) sub-paragraph (c) shall be omitted.
- (b) in paragraph (1C)(k) for “accommodation” in both places where it occurs, there shall be substituted “hospital”;

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- (a) Paragraph 3(e) was amended by paragraph 6(3) of Schedule 2 to, S.R. 1993 No. 149
 - (b) Paragraph 5(b) was amended by regulation 8(d) of S.R. 1988 No. 146, regulation 3 and 10 of, and paragraph 3 of Schedule 1 to, S.R. 1989 No. 139 and regulation 8(a) of S.R. 1996 No. 199
 - (c) The definition of “an authority” was inserted by regulation 2(3)(c)(i) of S.R. 1998 No. 2
 - (d) Paragraph (4)(a)(iii) was added by regulation 2 of S.R. 1988 No. 193 and amended by paragraph 6(4) of Schedule 2 to, S.R. 1993 No. 149 and regulation 2(1) of, and paragraph 3 of Part I of the Schedule to, S.R. 2002 No. 132
 - (e) The definition of “residential accommodation” was amended by paragraph 1(4)(a) of Schedule 1 to, S.R. 1993 No. 149 and paragraph 1(f) of Schedule 12 to, S.R. 1994 No. 65
 - (f) Paragraph (3A) was inserted by regulation 2(b) of S.R. 1991 No. 345 and amended by paragraph 6(6) of Schedule 2 to, S.R. 1993 No. 149, regulation 2 of S.R. 1996 No. 489 and regulation 2(1) and paragraph 6(c) of the Schedule to, S.R. 2002 No. 132, paragraph (3B) was inserted by regulation 4(3)(a) of S.R. 1993 No. 165 and paragraph 1(g) of Schedule 12 to, S.R. 1994 No. 165 and paragraph (3C) was inserted by regulation 4(3)(a) of S.R. 1993 No. 165
 - (g) Paragraph (4) was substituted by paragraph 1(4)(b) of Schedule 1 to, S.R. 1993 No. 149 and amended by regulation 2(6)(b) of S.R. 1995 No. 86
 - (h) Paragraph (4A) was inserted by regulation 4(5)(b) of S.R. 1992 No. 403 and amended by paragraph 1(4)(c) of Schedule 1 to, S.R. 1993 No. 149 and paragraph (4B) was inserted by regulation 4(3)(b) of S.R. 1993 No. 165
 - (i) Paragraph (4A) was inserted by regulation 4(4)(b) of S.R. 1994 No. 77 and amended by paragraph 10(h) of Schedule 1 to, S.R. 2003 No. 195
 - (j) Paragraph (1B) was inserted by regulation 11(1)(b)(ii) of S.R. 1996 No. 93 and amended by regulation 8(a) and (b) of S.R. 1997 No. 22
 - (k) Paragraph (1C) was inserted by regulation 11(1)(b)(ii) of S.R. 1996 No. 93

(c) paragraph (4)(a) shall be omitted.

8. In Schedule 3 (housing costs)(b)—

(a) in paragraph 3(13) (circumstances in which a person is to be treated as occupying a dwelling as his home) for head (c) there shall be substituted the following head—

“(c) “residential accommodation” means accommodation which is a residential care home, a nursing home, an Abbeyfield Home, or an independent hospital;”;

(b) in paragraph 4(1) (housing costs not met), in head (b) for “in accommodation which is a residential care home or a nursing home except where he is in such accommodation” there shall be substituted “living in a residential care home, nursing home, an Abbeyfield Home or an independent hospital except where he is living in such a home or hospital”.

9. In Schedule 3A(c) (protected sum), in paragraph 7 (protected persons), for sub-paragraph (4)(d) there shall be substituted the following sub-paragraph—

“(4) Paragraph 6(b) shall not apply to a protected person if—

(a) he moves to accommodation where he—

(i) satisfies condition (i) or (iii) of sub-paragraph (1)(b);

(ii) is receiving both board and personal care other than in a residential care home, nursing home or an independent hospital;

(b) he becomes a patient within the meaning of regulation 21(3);

(c) on his ceasing to be a patient within the meaning of regulation 21(3) either—

(i) he returns to the accommodation which he occupied immediately before he became a patient, or

(ii) he moves to other accommodation where he—

(aa) satisfies condition (i) or (iii) of sub-paragraph (1)(b), or

(bb) is receiving both board and personal care other than in a residential care home, nursing home or an independent hospital, or

(d) in a case to which sub-paragraph (6) applies, on his becoming re-entitled to income support, he is in—

(i) the accommodation which he occupied immediately before he ceased to be entitled to income support, or

(ii) accommodation where he—

(aa) satisfies condition (i) or (iii) of sub-paragraph (1)(b), or

(bb) is receiving both board and personal care other than in a residential care home, nursing home or an independent hospital.”.

10. In Schedule 7 (applicable amounts in special cases)—

(a) in paragraph 9(e) (specified cases of temporarily separated couples) at column (1)—

(i) in sub-paragraph (a) for heads (i) and (ii) there shall be substituted the following head—

“(i) not a patient but is residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital, or”;

(ii) in sub-paragraph (b) for heads (iii) and (iv) there shall be substituted the following head—

“or,

(iii) residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital.”;

(a) Paragraph (4) was added by regulation 11(1)(b)(iv) of S.R. 1996 No. 93

(b) Schedule 3 was substituted by regulation 2 of S.R. 1995 No. 301

(c) Schedule 3A was inserted by paragraph 16 of Schedule 1 and schedule 2 to, S.R. 1988 No. 318

(d) Sub-paragraph (4) was amended by regulation 17(f) of S.R. 1988 No. 431

(e) Paragraph 9 was amended by regulation 22 of S.R. 1988 No. 318, regulation 11(a) of S.R. 1989 No. 395, regulation 3(7)(a) of S.R. 1990 No. 387 and regulation 7 and paragraph 6(13)(a) of Schedule 2 to, S.R. 1993 No. 149

(b) in paragraph 10(a) (polygamous marriages where one or more partners are temporarily separated) at column (1) for sub-paragraphs (a) and (b) there shall be substituted the following sub-paragraph—

“(a) not a patient but is residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital;”.

11. In Schedule 8 (sums to be disregarded in the calculation of earnings), in paragraph 4(2)(b), 4(3)(a)(ii) and 4(4)(a) “or in residential accommodation” shall be omitted.

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

(a) in paragraph 15A(c)—

(i) in sub-paragraph (1) for “or nursing home by the Department” there shall be substituted “, nursing home, an Abbeyfield Home or an independent hospital by the Department of Health, Social Services and Public Safety”;

(ii) in sub-paragraph (2)—

(aa) in head (a) for “or nursing home by the Department” there shall be substituted “, nursing home, Abbeyfield Home or independent hospital by the Department of Health, Social Services and Public Safety” and after “the home” there shall be inserted “or hospital”;

(bb) for head (b), there shall be substituted the following head—

“(b) the cost of the accommodation was in excess of what the Department of Health, Social Services and Public Safety would normally expect to pay having regard to the needs of the claimant as assessed by that Department.”;

(iii) in sub-paragraph (4) for “the Department and the cost the” there shall be substituted “the Department of Health, Social Services and Public Safety and the cost that”;

(b) in paragraph 30A(d)—

(i) in sub-paragraph (1) for “in a residential care home or nursing home” there shall be substituted “residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital” and after “in that home” there shall be added “or hospital”;

(ii) in sub-paragraph (2) for “or nursing home is provided by the Department” there shall be substituted “, nursing home, an Abbeyfield Home or an independent hospital is provided by the Department of Health, Social Services and Public Safety”;

(c) in paragraph 62(e) for “in a residential care or nursing home” there shall be substituted “residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital”.

13. In Schedule 10 (capital to be disregarded), in paragraph 59(5)(f) for “being in residential accommodation, a residential care home or a nursing home” there shall be substituted “residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital”.

(a) Paragraph 10 was amended by regulation 34(a) of S.R. 1988 No. 146, regulation 3(7)(b) of S.R. 1990 No. 387, paragraph 6(13)(b) and Schedule 2 to, S.R. 1993 No. 149 and regulation 2(8)(a) of S.R. 2003 No. 267

(b) Paragraph 4 was substituted by regulation 9 of S.R. 1989 No. 139 and amended by regulation 3 of S.R. 2000 No. 366, paragraph 16(a) and Part I of the Schedule to, S.R. 2002 No. 132 and regulation 24(7)(c) of S.R. 2003 No. 191

(c) Paragraph 15A was inserted by regulation 4(5)(c) of S.R. 1993 No. 165 and amended by regulation 2(1) of, and paragraph 17(c) of Part I of the Schedule to, S.R. 2002 No. 132 and regulation 2(9) of S.R. 2003 No. 267

(d) Paragraph 30A was inserted by regulation 4(22)(e) of S.R. 1993 No. 373 and amended by regulation 2(1) of, and paragraph 17(f) of Part I of the Schedule to, S.R. 2002 No. 132

(e) Paragraph 62 was added by regulation 9(1)(c)(ii) of S.R. 1998 No. 81

(f) Paragraph 59 was inserted by regulation 2(1) of S.R. 2001 No. 150

AMENDMENT OF THE HOUSING BENEFIT (GENERAL) REGULATIONS

- 1.** In regulation 2 (interpretation)—
- (a) in paragraph (1)—
- (i) after the definition of “the Registered Homes Order”(a) there shall be inserted the following definition—
- ““Abbeyfield Home” means an establishment run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society;”;
- (ii) for the definition of “hostel”(b) substitute—
- ““hostel” means a building—
- (a) in which there is provided for persons generally or for a class of persons, domestic accommodation, otherwise than in separate and self-contained premises, and either board or facilities for the preparation of food adequate to the needs of those persons, or both and—
- (b) which is—
- (i) managed or owned by a registered housing association, or
- (ii) operated other than on a commercial basis and in respect of which funds are provided wholly or in part by a government department or agency, the Executive or a Health and Social Services Board or HSS trust, or
- (iii) managed by a voluntary organisation or charity and provides care, support or supervision with a view to assisting those persons to be rehabilitated or resettled within the community, and
- (c) which is not—
- (i) a residential care home;
- (ii) a nursing home;
- (iii) an independent hospital, or
- (iv) an Abbeyfield Home;”;
- (iii) after the definition of “an income-based jobseeker’s allowance”(c) there shall be inserted the following definition—
- ““independent hospital” has the meaning assigned to it by Article 2(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;”;
- (iv) after the definition of “the normal regional rate”(d) there shall be inserted the following definition—
- ““nursing home” has the meaning it has for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 by virtue of Article 11 of that Order;”;
- (v) after the definition of “rent” there shall be inserted the following definition—
- ““residential care home” has the meaning it has for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 by virtue of Article 10 of that Order;”.
- 2.** In regulation 5(9) (circumstances in which a person is or is not to be treated as occupying a dwelling as his home), for the definition of “residential accommodation”(e) there shall be substituted the following definition—

(a) The definition of “the Registered Homes Order” was inserted by regulation 3(2) of S.R. 1993 No. 149

(b) The definition of “hostel” was inserted by regulation 3 of S.R. 1999 No. 372

(c) The definition of “an income-based jobseeker’s allowance” was inserted by regulation 2(a)(iii) of S.R. 1996 No. 334

(d) The definition of “the normal regional rate” was inserted by regulation 2 of S.R. 1991 No. 176

(e) The definition of “residential accommodation” was substituted by regulation 3(3) of S.R. 1993 No. 149 and amended by paragraph 1(c) of Schedule 13 to, S.R. 1994 No. 65

““residential accommodation” means accommodation which is provided in—

- (a) a residential care home;
- (b) a nursing home;
- (c) an independent hospital;
- (d) an Abbeyfield Home, or
- (e) an establishment managed or provided by a body incorporated by Royal Charter or constituted by a statutory provision;”.

3. In regulation 7 (circumstances in which a person is to be treated as not liable to make payments in respect of a dwelling)—

- (a) in paragraph (1)(k)(a), “except where paragraph (2) applies,” shall be omitted;
- (b) paragraph (2)(b) shall be omitted;
- (c) for paragraph (3)(c) there shall be substituted the following paragraph—
 - “(3) In this regulation “residential accommodation” means accommodation which is provided in—
 - (a) a residential care home;
 - (b) a nursing home, or
 - (c) an independent hospital.”;
- (d) paragraphs (4) to (14)(d) shall be omitted.

4. In regulation 8 (eligible housing costs), for paragraph (2)(e) there shall be substituted the following paragraph—

“(2) Subject to paragraph (3), housing benefit shall not be payable in respect of payments made by a person on income support or an income-based jobseeker’s allowance whose applicable amount for that benefit includes an amount in respect of those payments.”.

5. In regulation 12A(5)(f) (pre-tenancy decisions), the definitions of “nursing home” and “residential care home” shall be omitted.

6. In regulation 25(5)(g) (meaning of income)—

- (a) for sub-paragraph (a) there shall be substituted the following sub-paragraph—
 - “(a) in an Abbeyfield Home;”;
- (b) for sub-paragraph (c) there shall be substituted the following sub-paragraph—
 - “(c) in a residential care home or a nursing home;”;
- (c) for sub-paragraph (e) there shall be substituted the following sub-paragraph—
 - “(e) in an independent hospital;”.

7. In regulation 45 (calculation of tariff income from capital)—

- (a) for paragraph (1B)(h) there shall be substituted the following paragraph—
 - “(1B) For the purposes of paragraph (1A), the prescribed circumstances are that the claimant—
 - (a) occupies residential accommodation as his home, or
 - (b) is a person—

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- (a) Paragraph (1) was substituted by regulation 3 of S.R. 1998 No. 455
 - (b) Paragraph (2) was amended by regulation 3(4)(b) of S.R. 1993 No. 149
 - (c) Paragraph (3) was substituted by paragraph 5 of Schedule 2 to, S.R. 1993 No. 149
 - (d) Paragraphs (4) to (14) were added by regulation 3(4)(c) of S.R. 1993 No. 149
 - (e) Paragraph (2) was amended by regulation 3(a) of S.R. 1988 No. 314, regulation 3(5) of S.R. 1993 No. 149 and regulation 5 of S.R. 1996 No. 334
 - (f) Regulation 12A was inserted by regulation 9 of S.R. 1996 No. 111 and amended by regulation 3 of S.R. 1999 No. 372 and regulation 4(d) and (e) of S.R. 2001 No. 215
 - (g) Regulation 25 was substituted, in relation to any person who has attained the qualifying age for state pension credit, by regulation 8 of S.R. 2003 No. 197
 - (h) Paragraph (1B) was inserted by regulation 11(2)(b)(ii) of S.R. 1996 No. 93

- (i) to whom on 13th November 2005, paragraph (2) of regulation 7 as in operation on that date applied, or
 - (ii) to whom on 13th November 2005, paragraph (5) or paragraph (7) of regulation 7 as in operation on that date applied and continues to apply;”;
- (b) in paragraph (4)(a)—
- (i) for sub-paragraph (c), there shall be substituted the following sub-paragraph—
“(c) which is an Abbeyfield Home,”;
 - (ii) for “and in this definition, “board” has the same meaning as in regulation 8(2)(b)” there shall be substituted the following—
“and in this definition “board” refers to the availability to the claimant in the home in which his accommodation is provided of cooked or prepared food, where the food is made available to him in consequence solely of his paying the charge for the accommodation or any other charge which he is required to pay as a condition of occupying the accommodation, or both those charges and is made available for his consumption without any further charge to him.”;
- (c) for paragraph (5)(b) there shall be substituted the following paragraph—
“(5) Paragraph (4) shall not apply to residential accommodation of the type referred to in sub-paragraphs (a) to (c) of paragraph (4) where such accommodation is residential accommodation for the purpose of regulation 7 unless the claimant is a person to whom paragraphs 10, 11 or 12 of Schedule 2 to the Social Security (Residential Care Homes, Nursing Homes and Independent Hospitals) Regulations (Northern Ireland) 2005 apply.”.
- 8.** In Schedule 5 (capital to be disregarded), paragraph 61(c)—
- (a) in sub-paragraph (5) for “being in residential accommodation, a residential care home or a nursing home” there shall be substituted “residing in a residential care home, a nursing home, an Abbeyfield Home or an independent hospital”;
 - (b) in sub-paragraph (6) the definition of “residential accommodation”, “residential care home” and “nursing home” shall be omitted.
- 9.** In Schedule 5ZA(d) (capital to be disregarded), paragraph 14—
- (a) in sub-paragraph (5), for “being in residential accommodation, a residential care home or a nursing home.” there shall be substituted “residing in a residential care home, a nursing home or an independent hospital.”;
 - (b) in sub-paragraph (6), the definition of “residential accommodation”, “residential care home” and “nursing home” shall be omitted.

Transitional arrangements and savings for Housing Benefit

10.—(1) Sub-paragraph (2) shall apply to a person who, on 13th November 2005, was a person to whom paragraph (2) of regulation 7 of the Housing Benefit Regulations as in operation on that date applied.

- (2) Where this sub-paragraph applies—
- (a) paragraph (2) of regulation 7 of those Regulations shall continue to have effect as if paragraphs 3(a) and (b) of Schedule 2 to these Regulations had not been made;
 - (b) paragraph (3) of regulation 7 of those Regulations shall continue to have effect as if sub-paragraph 3(c) of Schedule 2 to these Regulations had not been made;
 - (c) sub-paragraph (1B)(b) of regulation 45 of those Regulations shall continue to have effect as if paragraph 7(a) of Schedule 2 to these Regulations had not been made;

(a) Paragraph (4) was added by regulation 11(2)(b)(iv) of S.R. 1996 No. 93

(b) Paragraph (5) was added by regulation 11(2)(b)(iv) of S.R. 1996 No. 93

(c) Paragraph 61 was added by regulation 2(2) of S.R. 2001 No. 150

(d) Schedule 5ZA was inserted, in relation to any person who has attained the qualifying age for state pension credit, by paragraph 1(c) of Schedule 2 to, S.R. 2003 No. 197

(d) sub-paragraph (5) of regulation 45 of those Regulations shall continue to have effect as if paragraph 7(c) of Schedule 2 to these Regulations had not been made.

(3) In this paragraph and in paragraphs 11 and 12 of this Schedule, the “Housing Benefit Regulations” means the Housing Benefit (General) Regulations (Northern Ireland) 1987.

11.—(1) Sub-paragraph (2) shall apply to a person who, on 13th November 2005, was a person to whom paragraph (5) of regulation 7 of the Housing Benefit Regulations as in operation on that date applied.

(2) Where this sub-paragraph applies—

(a) paragraphs (4), (5), (8), (9), (10), (11) and (12) of regulation 7 of the Housing Benefit Regulations shall continue to have effect as if paragraph 3(d) of Schedule 2 to these Regulations had not been made;

(b) paragraph (3) of regulation 7 of those Regulations shall continue to have effect as if sub-paragraph 3(c) of Schedule 2 to these Regulations had not been made;

(c) sub-paragraph (1B)(b) of regulation 45 of those Regulations shall continue to have effect as if paragraph 7(a) of Schedule 2 to these Regulations had not been made;

(d) sub-paragraph (5) of regulation 45 of those Regulations shall continue to have effect as if paragraph 7(c) of Schedule 2 to these Regulations had not been made.

12.—(1) Sub-paragraph (2) shall apply to a person who, on 13th November 2005, was a person to whom paragraph (7) of regulation 7 of the Housing Benefit Regulations as in operation on that date applied.

(2) Where this sub-paragraph applies—

(a) paragraphs (6) to (14) of regulation 7 of those Regulations shall continue to have effect as if paragraph 3(d) of Schedule 2 to these Regulations had not been made;

(b) paragraph (3) of regulation 7 of those Regulations shall continue to have effect as if sub-paragraph 3(c) of Schedule 2 to these Regulations had not been made;

(c) sub-paragraph (1B)(b) of regulation 45 of those Regulations shall continue to have effect as if paragraph 7(a) of Schedule 2 to these Regulations had not been made;

(d) sub-paragraph (5) of regulation 45 of those Regulations shall continue to have effect as if paragraph 7(c) of Schedule 2 to these Regulations had not been made.

SCHEDULE 3

Regulation 9

AMENDMENT OF THE JOBSEEKER’S ALLOWANCE REGULATIONS

1. In regulation 1 (citation, commencement and interpretation)—

(a) in paragraph (2)—

(i) after the definition of “the 1998 Order”(a) there shall be inserted the following definition—

““Abbeyfield Home” means an establishment run by the Abbeyfield Society including all bodies corporate or incorporate which are affiliated to that Society;”;

(ii) after the definition of “the Income Support Regulations” there shall be inserted the following definition—

““independent hospital” has the meaning assigned to it by Article 2(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(b);”;

(iii) for the definition of “nursing home” there shall be inserted the following definition—

(a) The definition of “the 1998 Order” was inserted by Article 9(2)(a) of S.R. 1999 No. 428 (C. 32)

(b) S.I. 2003/431 (N.I. 9)

““nursing home” has the meaning it has for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 by virtue of Article 11 of that Order;”;

- (iv) the definition of “residential accommodation” shall be omitted, and
- (v) for the definition of “residential care home” there shall be inserted the following definition—

““residential care home” has the meaning it has for the purposes of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 by virtue of Article 10 of that Order;”.

- (b) in paragraph (2F)(a) for the words from “or a nursing home” to “reside in that home” there shall be substituted “, nursing home, an Abbeyfield Home or an independent hospital and he is temporarily absent from that home or hospital, he shall be regarded as continuing to reside in that home or hospital”.

2. In regulation 53 (persons treated as not engaged in remunerative work) for paragraph (c)(b) there shall be substituted the following paragraph—

- “(c) a person who—
- (i) is in employment;
 - (ii) lives in, or is temporarily absent from a residential care home, nursing home, an Abbeyfield Home or an independent hospital, and
 - (iii) requires personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, past or present mental disorder or a terminal illness.”.

3. In regulation 78 (circumstances in which a person is to be treated as being or not being a member of the household)—

- (a) in paragraph (3)(d)(c) for “in residential accommodation or a residential care home or a nursing home” there shall be substituted “residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital”;
- (b) in paragraph (5)(c) the words from “provided under” to “in regulation 85(4)” shall be omitted;
- (c) in paragraph (9) before the definition of “an authority”(d) there shall be inserted the following definition—

““accommodation” means accommodation provided or arranged by the Department of Health, Social Services and Public Safety under Article 15 or 36 of the 1972 Order in a home owned or managed by a Health and Social Services Board or an HSS trust where the accommodation is provided for a person whose stay in that accommodation has become other than temporary;”.

4. In regulation 85 (special cases)—

- (a) in paragraph (3)(e) for “paragraphs 1 and 17 (persons in residential care or nursing homes who become patients) there shall be substituted “paragraph 1”;
- (b) in paragraph (4) the definition of “residential accommodation” shall be omitted, and
- (c) paragraphs (5)(f) and (6) shall be omitted.

5. In regulation 105 (notional income), for paragraph (11)(g) there shall be substituted the following paragraph—

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- (a) Paragraph (2F) was inserted by regulation 2(2) of, and paragraph 1(b) of Part II of the Schedule to, S.R. 2002 No. 132 and amended by regulation 5(2) of S.R. 2003 No. 261
 - (b) Paragraph (c) was substituted by regulation 2(2) of, and paragraph 2 of Part II of the Schedule to, S.R. 2002 No. 132.
 - (c) Paragraph (3) was amended by regulation 18 of S.R. 1996 No. 358 and regulation 2(5) of, and paragraph 33(c) of Schedule 2 to, S.R. 2000 No. 350
 - (d) The definition of “an authority” was inserted by regulation 8(4)(c) of S.R. 1998 No. 2
 - (e) Paragraph (3) was amended by regulation 3 and paragraph 8(b) of Schedule 2 to, S.R. 2003 No. 195
 - (f) Paragraph (5) was substituted by regulation 2(9)(c) of S.R. 1996 No. 503
 - (g) Paragraph (11) was amended by regulation 3 of, and paragraph 10(f) of Schedule 2 to, S.R. 2003 No. 195

“(11) Where the claimant resides in a residential care home, nursing home, an Abbeyfield Home or an independent hospital, or is temporarily absent from such a home or hospital, any payment made by a person other than the claimant or a member of his family in respect of some or all of the cost of maintaining the claimant or his partner in that home or hospital shall be treated as possessed by the claimant or his partner.”.

6. In regulation 116 (calculation of tariff income from capital)—

(a) in paragraph (1B)(a)—

(i) for sub-paragraphs (a) and (b) there shall be substituted the following sub-paragraphs—

“(a) a residential care home, nursing home or an independent hospital;

(b) an Abbeyfield Home.”;

(ii) sub-paragraph (c) shall be omitted;

(b) in paragraph (1C)(b) for “accommodation” in both places where it occurs, there shall be substituted “hospital”;

(c) paragraph (4)(c) shall be omitted.

7. In regulation 140 (meaning of “person in hardship”), in paragraph (4) for “or nursing home” there shall be substituted “, nursing home, an Abbeyfield Home or an independent hospital”.

8. In regulation 146A(d) (meaning of “couple in hardship”), in paragraph (4) for “or nursing home” there shall be substituted “home, nursing home, an Abbeyfield Home or an independent hospital”.

9. In Schedule 2 (housing costs)—

(a) in paragraph 3(13) (circumstances in which a person is to be treated as occupying a dwelling as his home) for head (c) there shall be substituted the following head—

“(c) “residential accommodation” means accommodation which is a residential care home, a nursing home, an Abbeyfield Home, or an independent hospital.”;

(b) in paragraph 4(1) (housing costs not met), in head (b)(e) for “in accommodation which is a residential care home or a nursing home except where he is in such accommodation” there shall be substituted “living in a residential care home, nursing home, an Abbeyfield Home or an independent hospital except where he is living in such a home or hospital”.

10. In Schedule 4 (applicable amounts in special cases)—

(a) in paragraph 5 (specified cases of temporarily separated couples) at column (1)—

(i) in sub-paragraph (a) for heads (i) and (ii) there shall be substituted the following head—

“(i) not a patient but is residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital, or”;

(ii) in sub-paragraph (b) for heads (iii) and (iv) there shall be substituted the following head—

“or

(iii) residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital.”;

(b) in paragraph 6 (polygamous marriages where one or more partners are temporarily separated) at column (1) for sub-paragraphs (a) and (b) there shall be substituted the following sub-paragraph—

(a) Paragraph (1B) was inserted by regulation 10(b) of S.R. 1996 No. 356 and amended by regulation 8 of S.R. 1997 No. 22

(b) Paragraph (1C) was inserted by regulation 10(b) of S.R. 1996 No. 356

(c) Paragraph (4) was added by regulation 10(c) of S.R. 1996 No. 356

(d) Regulation 146A was inserted by regulation 2(3) of S.R. 2000 No. 350

(e) Head (b) was amended by regulation 2(5) of, and paragraph 54(4)(a) of Schedule 2 to, S.R. 2000 No. 350

“(a) not a patient but is residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital;”.

11. In Schedule 4A(a) (applicable amounts of joint-claim couples in special cases)—

(a) in paragraph 4 (specified cases of temporarily separated joint-claim couples) at column (1)—

(i) in sub-paragraph (a) for heads (i) and (ii) there shall be substituted the following head—

“(i) not a patient but is residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital, or”;

(ii) in sub-paragraph (b) for heads (iii) and (iv) there shall be substituted the following head—

“or

(iii) residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital.”;

(b) in paragraph 5 (polygamous marriages where one or more members are temporarily separated) at column (1) for sub-paragraphs (a) and (b) there shall be substituted the following sub-paragraph—

“(a) not a patient but is residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital;”.

12. In Schedule 5 (sums to be disregarded in the calculation of earnings), in paragraph 5(2)(b), 5(3)(a)(ii) and 5(4)(a) “or in residential accommodation” shall be omitted.

13. In Schedule 5A(c) (sums to be disregarded in the calculation of earnings of members of joint-claim couples), in paragraph 1(2)(d), 1(3)(a)(ii) and 1(4)(a) “or in residential accommodation” shall be omitted.

14. In Schedule 6 (sums to be disregarded in the calculation of income other than earnings)—

(a) in paragraph 16(e)—

(i) in sub-paragraph (1) for “or nursing home by the Department” there shall be substituted “, nursing home, an Abbeyfield Home or independent hospital by the Department of Health, Social Services and Public Safety”;

(ii) in sub-paragraph (2)—

(aa) in head (a) for “or nursing home by the Department” there shall be substituted “, nursing home, Abbeyfield Home or independent hospital by the Department of Health, Social Services and Public Safety” and after “the home” insert “or hospital”;

(bb) for head (b) there shall be substituted the following head—

“(b) the cost of the accommodation was in excess of what the Department of Health, Social Services and Public Safety would normally expect to pay having regard to the needs of the claimant assessed by that Department”;

(iii) in sub-paragraph (4) for “the Department and the cost the” there shall be substituted “the Department of Health, Social Services and Public Safety and the cost that”;

(b) in paragraph 32(f)—

(a) Schedule 4A was inserted by paragraph 57 of Schedule 2 to, S.R. 2000 No. 350

(b) Paragraph 5 was amended by regulation 3 of, and paragraph 3(b) of the Schedule to, S.R. 2000 No. 366 and regulation 2(2) of, and paragraph 21(a) of Part II of the Schedule to, S.R. 2002 No. 132

(c) Schedule 5A was inserted by regulation 58 of S.R. 2000 No. 350

(d) Paragraph 1 was amended by regulation 3 of, and paragraph 3(c) of the Schedule to, S.R. 2000 No. 366 and regulation 2(2) of, and paragraph 22 of Part II of the Schedule to, S.R. 2002 No. 132

(e) Paragraph 16 was amended by regulation 2(2) of, and paragraph 23(c) and (d) of Part II of the Schedule to, S.R. 2002 No. 132

(f) Paragraph 32 was amended by regulation 2(2) of, and paragraph 23(f) of Part II of the Schedule to, S.R. 2002 No. 132

- (i) in sub-paragraph (1) for “in a residential care home or nursing home” there shall be substituted “residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital” and after “in that home” there shall be added “or hospital”;
- (ii) in sub-paragraph (2) for “or nursing home is provided by the Department” there shall be substituted “, nursing home, an Abbeyfield Home or an independent hospital is provided by the Department of Health, Social Services and Public Safety”;
- (c) in paragraph 60(a) for “in a residential care or nursing home” there shall be substituted “residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital”.

15. In Schedule 7 (capital to be disregarded) in paragraph 52(5)(b) for “being in residential accommodation, a residential care home or a nursing home” there shall be substituted “residing in a residential care home, nursing home, an Abbeyfield Home or an independent hospital”.

SCHEDULE 4

Regulation 12

AMENDMENT OF THE STATE PENSION CREDIT REGULATIONS

1. In regulation 1(2) (citation, commencement and interpretation), after the definition of “the Income Support Regulations” there shall be inserted the following definition—

““independent hospital” has the meaning assigned to it by Article 2(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;”.

2. In regulation 5(1) (persons treated as being or not being members of the same household), in sub-paragraph (b) for “or nursing home” there shall be substituted “, nursing home or an independent hospital”.

3. In regulation 12(c) (end of assessed income period) for “or nursing home” there shall be substituted “, nursing home or an independent hospital”.

4. In regulation 15(7) (income for purposes of the Act), for sub-paragraph (c) there shall be substituted the following sub-paragraph—

“(c) in an independent hospital.”.

5. In Schedule 2 (housing costs)—

(a) in paragraph 4 (circumstances in which a person is to be treated as occupying a dwelling as his home)—

(i) in sub-paragraph (7), in head (c)(iii) for “or nursing home” there shall be substituted “, nursing home or an independent hospital”;

(ii) for sub-paragraph (8) there shall be substituted the following sub-paragraph—

“(8) This sub-paragraph applies to a person who enters a residential care home, nursing home or an independent hospital—

(a) for the purpose of ascertaining whether that residential care home, nursing home or independent hospital suits his needs, and

(b) with the intention of returning to the dwelling which he normally occupies as his home should, in the event that, the residential care home, nursing home or independent hospital prove not to suit his needs,

(a) Paragraph 60 was added by regulation 9(2)(b) of S.R. 1998 No. 81

(b) Paragraph 52 was inserted by regulation 2(1) of S.R. 2001 No. 150

and while in the residential care home, nursing home or independent hospital, 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.”.

- (iii) in sub-paragraph (9) for “accommodation” in both places where it occurs, there shall be substituted “residential care home, nursing home or independent hospital”;
- (iv) in sub-paragraph (11), in head (c)(iii), (c)(vii) and (c)(ix) for “or nursing home” there shall be substituted “, nursing home or an independent hospital”;
- (b) in paragraph 5(1), in head (b) for “or nursing home” there shall be substituted “, nursing home or an independent hospital”.

6. In Schedule 5 (capital disregarded for the purpose of calculating income), in paragraph 13(5) for “being in a residential care home or nursing home.” there shall be substituted “residing in a residential care home, nursing home or an independent hospital.”.

REGULATIONS REVOKED

Column (1) <i>Citation</i>	Column (2) <i>Reference</i>	Column (3) <i>Extent of revocation</i>
The Social Security (Claims and Payments) (Amendment No.2) Regulations (Northern Ireland) 1989	S.R. 1989 No. 398	Regulation 5
The Social Security (Miscellaneous Provisions) (Amendment) Regulations (Northern Ireland) 1991	S.R. 1991 No. 488	Regulation 6(7)(a)(ii)
The Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations (Northern Ireland) 1993	S.R. 1993 No. 149	Paragraph 3 of Schedule 2
The Income Support and Jobseeker's Allowance (Amounts for Persons in Residential Care and Nursing Homes) Regulations (Northern Ireland) 2001	S.R. 2001 No. 227	The whole of the Regulations
The Social Security (Amendment) (Residential Care and Nursing Homes) Regulations (Northern Ireland) 2002	S.R. 2002 No. 132	Regulation 3(2)
The State Pension Credit (Consequential, Transitional and Miscellaneous Provisions) Regulations (Northern Ireland) 2003	S.R. 2003 No. 191	Regulation 13

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make amendments to social security legislation that are consequential upon the introduction of a new regulatory system in Northern Ireland of “residential care homes”, “nursing homes” and “independent hospitals” by the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003. This has replaced the previous system of regulation of residential care homes and nursing homes, as provided for by the Registered Homes (Northern Ireland) Order 1992. The new system also requires the registration of Health and Social Service Trust homes and small homes, which were previously unregulated.

The Regulations therefore replace references in social security legislation to terms describing these establishments, which were based on the old regulatory system, with new terms in line with the current regulatory system.

These Regulations make amendments to the following sets of regulations—

- (i) The Social Fund (Maternity and Funeral Expenses) (General) Regulations (Northern Ireland) 1987 (at regulation 2);
- (ii) The Income Support (General) Regulations (Northern Ireland) 1987 (at regulation 3 and Schedule 1);
- (iii) The Housing Benefit (General) Regulations (Northern Ireland) 1987 (at regulation 4 and Schedule 2);
- (iv) The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 (at regulation 5);
- (v) The Social Fund (Cold Weather Payments) (General) Regulations (Northern Ireland) 1988 (at regulation 6);
- (vi) The Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992 (at regulation 7);
- (vii) The Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 (at regulation 8);
- (viii) The Jobseeker’s Allowance Regulations (Northern Ireland) 1996 (at regulation 9 and Schedule 3);
- (ix) The Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000 (at regulation 10);
- (x) The Social Security (Loss of Benefit) Regulations (Northern Ireland) 2002 (at regulation 11).
- (xi) The State Pension Credit Regulations (Northern Ireland) 2003 (at regulation 12 and Schedule 4).

Paragraphs 10 to 12 of Schedule 2 to the Regulations make transitional provision to preserve the existing transitional protection provided to a closed category of housing benefit claimants in certain types of residential accommodation.

Regulation 13 makes consequential revocations as set out in Schedule 5. It also revokes the Income Support and Jobseeker’s Allowance (Amounts for Persons in Residential Care and Nursing Homes) Regulations (Northern Ireland) 2001, which, due to the amendments made by the Social Security (Amendment) (Residential Care and Nursing Homes) Regulations (Northern Ireland) 2002, are obsolete.

In so far as these Regulations are required, for the purposes of regulation 4 and Schedule 2, to be referred to the Social Security Advisory Committee under section 149(2) of the Social Security Administration (Northern Ireland) Act 1992, (“the 1992 Act”), after agreement by the Social Security Advisory 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, the 1992 Act, are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.

These Regulations do not impose a charge on business.