



STATUTORY INSTRUMENTS

S.I. No. 700 of 2007.

SOCIAL WELFARE (CONSOLIDATED CLAIMS, PAYMENTS AND
CONTROL) (AMENDMENT) (NO. 5) (ASSESSMENT OF EARNINGS)
REGULATIONS 2007

(Prn. A7/1815)

S.I. No. 700 of 2007.

SOCIAL WELFARE (CONSOLIDATED CLAIMS, PAYMENTS AND CONTROL) (AMENDMENT) (NO. 5) (ASSESSMENT OF EARNINGS) REGULATIONS 2007

The Minister for Social and Family Affairs, in exercise of the powers conferred on him by sections 2(2)(c), 4 and Rules 1(2), 1(2)(b)(vi) and (viii), 1(6), 1(7) and 1(8) of Part 2 of Schedule 3 to the Social Welfare Consolidation Act 2005 (No. 26 of 2005), hereby makes the following regulations:

Citation and construction

1. (1) These Regulations may be cited as the Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 5) (Assessment of Earnings) Regulations 2007.

(2) These Regulations shall be construed as one with the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007) and shall be included in the collective citation “the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007”.

Commencement

2. (1) These Regulations (other than Regulations 5, 6 and 14) come into operation on 26 September 2007.

(2) Regulations 5, 6 and 14 come into operation on 27 September 2007.

Definition

3. In these Regulations “the Principal Regulations” means the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007.

Qualified adults — Wholly or mainly maintaining

4. The Principal Regulations are amended in article 7 by substituting the following sub-articles for sub-articles (1) and (2):

“(1) Other than a person to whom sections 141(2)(d), 149(4), 210(2) and 214(2) apply, a person, being one of a couple, shall be regarded as wholly or mainly maintaining his or her spouse where that spouse’s weekly income, calculated or estimated in accordance with article 8, does not exceed €100.

(1A) In the case of a person to whom sections 141(2)(d), 149(4), 210(2) and 214(2) apply, a person, being one of a couple, shall be regarded as wholly or mainly maintaining his or her spouse.

(2) Other than a person to whom sections 141(2)(d), 149(4), 210(2) and 214(2) apply, a person, being one of a married couple who are not living together, shall be regarded as wholly or mainly maintaining his or her

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spouse where that spouse is not cohabiting with another person as husband and wife and that spouse's weekly income, calculated or estimated in accordance with article 8, does not exceed €100 and the first-mentioned person is contributing towards the maintenance of his or her spouse by a weekly amount which is equal to or in excess of the amount set down in column (3) of Part 1 of Schedule 4 to the Principal Act.

(2A) In the case of a person to whom section 141(2)(d), 149(4), 210(2) and 214(2) apply, a person, being one of a married couple who are not living together, shall be regarded as wholly or mainly maintaining his or her spouse where that spouse is not cohabiting with another person as husband and wife and the first-mentioned person is contributing towards the maintenance of his or her spouse by a weekly amount which is equal to or in excess of the amount set down in column (3) of Part 1 of Schedule 4 to the Principal Act.”.

Persons specified to be qualified adults

5. The Principal Regulations are amended by the insertion in article 6(b) after “death benefit under section 83,” of “a payment under section 186A,”.

Calculation of income limit

6. The Principal Regulations are amended by the insertion in article 8(2) after “death benefit under section 83,” of “a payment under section 186A,”.

Maintenance arrangements

7. The Principal Regulations are amended by the substitution in article 143(1) for “Rule 1(2)(b)(i) of Part 3” of “Rule 1(2)(b)(ii) of Part 3”.

Assessment of claimant's earnings — jobseeker's allowance and farm assist

8. The following article is substituted for article 145 of the Principal Regulations:

“Assessment of claimant's earnings — jobseeker's allowance and farm assist.

145. (1) For the purposes of Rules 1(5) and 1(8) of Part 2 of Schedule 3 to the Principal Act, the value of any money derived by a claimant for each week in respect of which he or she is engaged in insurable employment shall be 60 per cent of the average weekly earnings from that employment calculated in accordance with sub-article (2).

(2) For the purposes of sub-article (1), the average weekly earnings shall be determined by reference to the gross earnings received from insurable employment in the 13 weeks preceding the date of claim for jobseeker's allowance or farm assist or such other period which a deciding officer or an appeals officer considers appropriate having regard to the circumstances of the particular case, less an amount calculated in accordance with sub-article (3).

(3) For the purposes of sub-article (2) the amount shall be the aggregate of—

- (a) any allowable contribution referred to in Regulations 41 and 42 of the Income Tax (Employments) (Consolidation) Regulations 2001 (S.I. No. 559 of 2001),
- (b) any contributions payable under section 13(2)(b) and regulations made under section 14 or section 21,
- (c) any contributions payable under section 5 of the Health Contributions Act 1979 (No. 4 of 1979),
- (d) any payment to a trade union, and
- (e) €20 in respect of each day of insurable employment, subject to a maximum of €60 per week.”.

Earnings disregard — disability allowance

9. The following article is substituted for article 147 of the Principal Regulations:

“Earnings disregard — disability allowance

147. (1) For the purposes of Rule 1(2)(b)(viii) of Part 2 of Schedule 3 to the Principal Act, the value of any weekly earnings derived by a claimant for each week in respect of which he or she is engaged in employment or self-employment of a rehabilitative nature, shall be

- (a) 50 per cent of the first €230 of weekly earnings from that employment or self-employment, and
- (b) all weekly earnings from that employment or self-employment in excess of €230,

calculated in accordance with sub-article (2).

(2) For the purposes of sub-article (1), the weekly earnings shall be determined by reference to the gross earnings received from employment or self-employment of a rehabilitative nature less an amount calculated in accordance with sub-article (3).

(3) For the purposes of sub-article (2) the amount shall be the aggregate of—

- (a) any allowable contribution referred to in Regulations 41 and 42 of the Income Tax (Employments) (Consolidation) Regulations 2001 (S.I. No. 559 of 2001),
- (b) any contributions payable under section 13(2)(b) and regulations made under section 14 or section 21,
- (c) any contributions payable under section 5 of the Health Contributions Act 1979 (No. 4 of 1979),
- (d) any payment to a trade union, and

(e) €120 in respect of each week of employment or self-employment of a rehabilitative nature.”.

Assessment of spouse’s earnings — jobseeker’s allowance, pre-retirement allowance, disability allowance and farm assist

10. The following articles are substituted for article 153 of the Principal Regulations:

“Assessment of spouse’s earnings — jobseeker’s allowance, pre-retirement allowance, disability allowance and farm assist

153. (1) This article applies to a person to whom article 7(1A) and (2A) apply.

(2) For the purposes of Rule 1(2)(b)(vi) of Part 2 of Schedule 3 to the Principal Act, the value of any money derived by the spouse of a claimant or beneficiary for each week in respect of which he or she is engaged in insurable employment shall be 60 per cent of the average weekly earnings from that employment calculated in accordance with sub-article (3).

(3) For the purposes of sub-article (2), the average weekly earnings shall be determined by reference to the gross earnings received from insurable employment in the 13 weeks preceding the date of claim or such other period which a deciding officer or an appeals officer considers appropriate having regard to the circumstances of the particular case, less an amount calculated in accordance with sub-article (4).

(4) For the purposes of sub-articles (3) the amount shall be the aggregate of-

- (a) any allowable contribution referred to in Regulations 41 and 42 of the Income Tax (Employments) (Consolidation) Regulations 2001 (S.I. No. 559 of 2001),
- (b) any contributions payable under section 13(2)(b) and regulations made under section 14 or section 21,
- (c) any contributions payable under section 5 of the Health Contributions Act 1979 (No. 4 of 1979),
- (d) any payment to a trade union, and
- (e) €20 in respect of each day of insurable employment, subject to a maximum of €60 per week.

Saver

153A. (1) This article applies to a person to whom article 7 applies, other than a person to whom article 7(1A) and (2A) applies.

(2) For the purposes of Rule 1(2)(b)(vi) of Part 2 of Schedule 3 to the Principal Act, the value of any money derived by the spouse of a claimant or beneficiary for each week in respect of which he or she is engaged in insurable employment shall be the average weekly earnings from that employment calculated in accordance with sub-article (3).

(3) For the purposes of sub-article (2) the average weekly earnings shall be determined by reference to the gross earnings received from that employment in the 13 weeks preceding the date of claim for jobseeker's allowance, pre-retirement allowance, disability allowance or farm assist or such other period as a deciding officer or an appeals officer considers appropriate having regard to the circumstances of the case, less an amount calculated in accordance with sub-article (4).

(4) For the purposes of sub-article (3) the amount shall be the aggregate of-

- (a) any allowable contribution referred to in Regulations 41 and 42 of the Income Tax (Employments) (Consolidation) Regulations 2001 (S.I. No. 559 of 2001),
- (b) any income tax payable under the provisions of the Income Tax Acts as defined in section 1 of the Taxes Consolidation Act 1997 (No. 39 of 1997),
- (c) any contributions payable under section 13(2)(b) and regulations made under section 14 or section 21,
- (d) any contributions payable under section 5 of the Health Contributions Act 1979 (No. 4 of 1979),
- (e) any payment to a trade union,
- (f) any health insurance contract premium,
- (g) the first €50.00, or €153.00 where the employment is outside the State or Northern Ireland, of weekly earnings together with any travel expenses necessarily incurred, where that employment is in respect of 3 days or less in the week, and
- (h) the first €100.00, or €153.00 where the employment is outside the State or Northern Ireland, of weekly earnings where that employment is in excess of 3 days in the week.”.

Assessment of spouse's seasonal earnings — jobseeker's allowance, pre-retirement allowance and farm assist

11. The following article is substituted for article 154 of the Principal Regulations:

“Assessment of spouse’s seasonal earnings — jobseeker’s allowance, pre-retirement allowance and farm assist

154. (1) For the purposes of Rules 1(2), 1(7) and 1(8) of Part 2 of Schedule 3 to the Principal Act, the value of any moneys derived by the claimant’s spouse from insurable employment of a seasonal nature shall be 60 per cent of the average weekly earnings from such employment calculated in accordance with sub-articles (2) and (3).

(2) For the purposes of sub-article (1) the average weekly earnings shall be calculated by reference to the gross earnings which he or she may reasonably expect to receive during the period of seasonal employment less an amount calculated in accordance with article 153(3) or 153A(4) as the case may be.

(3) For the purposes of sub-article (1), in the absence of any other means of obtaining it, the average weekly earnings may be determined by reference to the gross earnings received from insurable employment of a seasonal nature in the preceding year less an amount calculated in accordance with article 153(3) or 153A(4) as the case may be.”.

Payment to appointed person living together with applicant

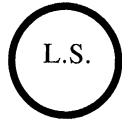
12. Article 204 of the Principal Regulations is amended by substituting “qualified adult or spouse” for “qualified adult” where it occurs.

Payment on account of qualified adult and qualified child

13. Article 226(1) of the Principal Regulations is amended by substituting “qualified adult or spouse” for “qualified adult” where it occurs.

Revocation

14. Article 221 of the Principal Regulations is hereby revoked.



GIVEN under the Official Seal of the Minister for Social and Family Affairs,
26 September 2007

MARTIN CULLEN.
Minister for Social and Family Affairs.

The Minister for Finance hereby consents to the making of the foregoing Regulations.



GIVEN under the Official Seal of the Minister for Finance,
26 September 2007

BRIAN COWEN.
Minister for Finance.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These regulations provide for the amendment of the provisions governing the means test for the purposes of Jobseeker's Allowance, Pre-Retirement Allowance, Disability Allowance and Farm Assist and the provisions governing the payment of a partial rate Carer's Allowance to carers who are qualified adults.

The regulations remove the current provision whereby a recipient of Jobseeker's Allowance, Pre-Retirement Allowance, Farm Assist and Disability Allowance, shall only be regarded as wholly or mainly maintaining his or her spouse where the spouse's weekly income does not exceed €100 per week. These regulations also provide for the retention, in certain circumstances, of the current provisions of these schemes in relation to wholly or mainly maintaining a spouse.

The regulations introduce an earnings disregard of €20 per day where a recipient of Jobseeker's Allowance or Farm Assist engages in insurable employment and is also in receipt of an increase in relation to a qualified child. The current disregard of €12.70 per day where a recipient of these schemes is engaged in insurable employment and is not in receipt of an increase in respect of a qualified child is increased to €20 per week

These regulations also provide for the disregard of superannuation contributions, social insurance contributions, health contributions and trade union contributions from the assessment of weekly earnings from employment or self-employment of a rehabilitative nature for the purposes of Disability Allowance.

In the case of Jobseeker's Allowance, Pre-Retirement Allowance, Farm Assist and Disability Allowance, Social Welfare legislation currently provides for the disregard of €100 per week, where the spouse works in insurable employment for more than 3 days in the week and of €50 per week, where the spouse works 3 days or less in the week. Earnings in excess of these amounts, as appropriate, are assessed in full.

These regulations provide for the introduction of an earnings disregard of €20 per day, subject to a maximum of €60 per week, where the spouse of a recipient of Jobseeker's Allowance, Pre-Retirement Allowance, Farm Assist and Disability Allowance engages in insurable employment. 60 per cent of earnings in excess of the amount disregarded are assessed.

These regulations also provide for the retention of the current assessment provisions in relation to the insurable earnings of a spouse subject to certain conditions.

These regulations allow for carers in receipt of a payment under section 186A of the Principal Act to satisfy the definition of qualified adult and ensure that a payment received under section 186A is disregarded in calculating the income limit for qualified adults.

The regulation also provides for a technical amendment to the Principal Regulations.

The regulations provide for the revocation of Article 221 as the provisions of that article have been subsumed into Section 247 of the Principal Act.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
51 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
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