



STATUTORY INSTRUMENTS.

S.I. No. 604 of 2011



SOCIAL WELFARE (CONSOLIDATED CLAIMS, PAYMENTS AND
CONTROL) (AMENDMENT) (NO. 6) (CIVIL PARTNERSHIP)
REGULATIONS 2011

(Prn. A11/2132)

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I, JOAN BURTON, Minister for Social Protection in exercise of the powers conferred on me by sections 3, 4 (amended by section 96 of the Ministers and Secretaries (Amendment) Act 2011 (No. 10 of 2011)), 109(9), 109(10), 109(15), 125(4), 125(6), 137, 138 (amended by section 11 of the Social Welfare and Pensions (No. 2) Act 2009 (No. 43 of 2009)), 149 (amended by section 19 of the Social Welfare and Pensions Act 2010 (No. 37 of 2010)), 177 (amended by section 9 of the Social Welfare and Pensions Act 2011 (No. 9 of 2011)), 178, 178A (inserted by section 10 of the Social Welfare Act 2005 (No. 30 of 2005)), 220, 230, 232(1), 242, 243, 244 (amended by section 26 of the Social Welfare and Pensions Act 2010), 244A (inserted by section 12 of the Social Welfare and Pensions Act 2011), 247 (amended by section 26 of the Social Welfare and Pensions Act 2010), 248, 249, 267, 290, 300(6) and 346(2) of, and Rules 1(2)(b)(vi) and 1(8) of Part 2 of Schedule 3 to, the Social Welfare Consolidation Act 2005 (No. 26 of 2005) and by sections 2(2), 109(8), 109(14), 125(3), 125(5), 232(2), 232(3), 241 (amended by section 26 of the Social Welfare and Pensions Act 2010) and 297 of, and Rules 1(6) and 1(7) of Part 2 of Schedule 3 to, the Social Welfare Consolidation Act 2005, with the consent of the Minister for Public Expenditure and Reform, hereby make the following Regulations:

Citation and construction.

1. (1) These Regulations may be cited as the Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 6) (Civil Partnership) Regulations 2011.

(2) These Regulations and the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 to 2011 shall be construed together as one and may be cited together as the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 to 2011.

Definitions.

2. In these Regulations—

“Principal Regulations” means the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007);

“Regulations of 2007” means the Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 5) (Assessment of Earnings) Regulations 2007 (S.I. No. 700 of 2007); and

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 25th November, 2011.*

“Regulations of 2008” means the Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 4) (Increase in Rates) Regulations 2008 (S.I. No. 601 of 2008).

Increases for qualified adults.

3. The Principal Regulations are amended by substituting the following articles for articles 6 and 7 (amended by articles 4 and 5 of the Regulations of 2007):

“Persons specified to be qualified adults.

6. Subject to sections 187 and 297, a person who is the spouse, civil partner or cohabitant of a claimant or beneficiary and is being wholly or mainly maintained by that claimant or beneficiary shall be specified to be a qualified adult in relation to that claimant or beneficiary for the purposes of section 2(2)(c) of the Principal Act if he or she is—

- (a) in employment or self-employment, or
- (b) entitled to or in receipt of disablement benefit under section 75, death benefit under section 83, a payment under section 186A, guardian’s payment (contributory), guardian’s payment (non-contributory) and to no other benefit or assistance (other than supplementary welfare allowance).

Income limit — qualified adult.

7. (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 or civil partner or a cohabitant of that person where the weekly income of that spouse, civil partner or cohabitant, as the case may be, calculated or estimated in accordance with article 8, does not exceed €100.

(2) 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 or civil partner or a cohabitant of that person.

(3) 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 or of a civil partnership who are not living together, shall be regarded as wholly or mainly maintaining his or her spouse or civil partner where that spouse or civil partner is not a cohabitant of another person and the weekly income of that spouse or civil partner, 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 or civil partner 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.

(4) 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 married couple or of a civil partnership who are not living together, shall be regarded as wholly or

mainly maintaining his or her spouse or civil partner where the spouse or civil partner is not a cohabitant of another person and the first-mentioned person is contributing towards the maintenance of his or her spouse or civil partner 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.

- (5) A person, being—
- (a) a single person,
 - (b) a widow,
 - (c) a widower,
 - (d) a married person who is not living with and is neither wholly or mainly maintaining, nor being wholly or mainly maintained by, such married person's spouse,
 - (e) a surviving civil partner, or
 - (f) a civil partner who is not living with and is neither wholly or mainly maintaining, nor being wholly or mainly maintained by, his or her civil partner,

shall be regarded as wholly or mainly maintaining another person where that other person, being over the age of 16 years and having the care of one or more than one qualified child of the first-mentioned person, resides with the first-mentioned person and his or her weekly income, calculated or estimated in accordance with article 8, does not exceed €100.

- (6) In sub-articles (1) and (2) 'couple' means—
- (a) a married couple who are living together,
 - (b) both civil partners of a civil partnership who are living together, or
 - (c) both cohabitants.”.

Reduced rate qualified adult increases and income limit for qualified child increase.

4. The Principal Regulations are amended by the substitution of the following articles for articles 9 to 12:

“Reduced rate qualified adult increase.

9. Where a claimant or beneficiary of illness benefit, jobseeker's benefit, injury benefit, or incapacity supplement under Part 2 of the Principal Act or jobseeker's allowance, pre-retirement allowance, disability allowance or farm assist under Part 3 of the Principal Act would be entitled to an increase in respect of—

- (a) his or her spouse,

(b) his or her civil partner, or

(c) a cohabitant of that claimant or beneficiary,

but for the fact that the weekly income of that spouse, civil partner or cohabitant, as the case may be, calculated or estimated in accordance with article 8—

(i) exceeds the limit prescribed in article 7, and

(ii) does not exceed the highest amount specified in column (1) of Schedule 1 to these Regulations,

an increase in that benefit, allowance, assistance or supplement, as the case may be, shall be paid at the weekly rate set out in column (2) of the said Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly income.

Reduced rate qualified adult increase — State pensions.

10. Subject to articles 62(3) and 65(2), where a claimant or beneficiary of State pension (contributory) or State pension (transition) under Part 2 of the Principal Act would be entitled to an increase in respect of—

(a) his or her spouse,

(b) his or her civil partner, or

(c) a cohabitant of that claimant or beneficiary,

but for the fact that the weekly income of that spouse, civil partner or cohabitant, as the case may be, calculated or estimated in accordance with article 8—

(i) exceeds the limit prescribed in article 7, and

(ii) does not exceed the highest amount specified in column (1) of Schedule 2 or 3 to these Regulations, as appropriate,

an increase in pension shall be paid—

(I) in the case of a person to whom sections 109(18), 109(19) or 113 applies, and whose spouse, civil partner or cohabitant, as the case may be, has not attained pensionable age, at half the weekly rate set out in column (2) of Schedule 3 opposite the relevant band of income in column (1) of that Schedule that corresponds to the said weekly income,

(II) in the case of any other claimant or beneficiary whose spouse, civil partner or cohabitant, as the case may be, has not attained pensionable age, at the weekly rate set out in column (2) of Schedule 3 opposite the relevant band of income in

column (1) of that Schedule that corresponds to the said weekly income,

- (III) in the case of a person to whom sections 109(18), 109(19) or 113 applies, and whose spouse, civil partner or cohabitant, as the case may be, has attained pensionable age, at half the weekly rate set out in column (2) of Schedule 2 opposite the relevant band of income in column (1) of that Schedule that corresponds to the said weekly income,
- (IV) in the case of any other claimant or beneficiary whose spouse, civil partner or cohabitant, as the case may be, has attained pensionable age, at the weekly rate set out in column (2) of Schedule 2 opposite the relevant band of income in column (1) of that Schedule that corresponds to the said weekly income.

Reduced rate qualified adult increase — invalidity pension.

11. Where a claimant or beneficiary of invalidity pension under Part 2 of the Principal Act would be entitled to an increase in respect of—

- (a) his or her spouse,
- (b) his or her civil partner, or
- (c) a cohabitant of that claimant or beneficiary,

but for the fact that the weekly income of that spouse, civil partner or cohabitant, as the case may be, calculated or estimated in accordance with article 8—

- (i) exceeds the limit prescribed in article 7, and
- (ii) does not exceed the highest amount specified in column (1) of Schedule 4 to these Regulations,

an increase in pension shall be paid—

- (I) in the case of a claimant or beneficiary whose spouse, civil partner or cohabitant, as the case may be, has not attained pensionable age, at the weekly rate set out in column (2) of Schedule 4 opposite the relevant band of income in column (1) of that Schedule that corresponds to the said weekly income, or
- (II) in the case of a claimant or beneficiary whose spouse, civil partner or cohabitant, as the case may be, has attained pensionable age, at the weekly rate set out in column (3) of Schedule 4 opposite the relevant band of income in column (1) of that Schedule that corresponds to the said weekly income.

Income limit — qualified child increase.

12. The weekly income prescribed for the purposes of sections 43(4), 56(4), 66(4) or 76(4), as calculated or estimated in accordance with article 8 shall be €400.”.

Normal residence of qualified child.

5. Article 13 of the Principal Regulations is amended by substituting the following sub-article for sub-article (5):

“(5) Notwithstanding that a qualified child does not reside with one of his or her parents, the qualified child may be regarded as normally residing with the parent who—

- (a) has custody of the qualified child, and
- (b) is contributing substantially to the maintenance of the qualified child.”.

Partial satisfaction of contribution conditions for State pension (contributory).

6. Article 62 of the Principal Regulations is amended by substituting the following sub-articles for sub-articles (3) to (7) (amended by article 7 of the Regulations of 2008):

“(3) In the case of a person to whom sub-article (1) applies, where the yearly average is a number included in one of the bands of numbers specified in column (1) of Schedule 8 to these Regulations, the pension shall be payable at the weekly rate set out in column (2) of that Schedule opposite the relevant band of numbers in column (1) that corresponds to the yearly average for that person.

(4) Subject to sub-article (5), in the case of a person to whom sub-article (3) applies, any increase payable under section 112(1) shall be payable—

- (a) where his or her spouse or civil partner or a cohabitant of that person has not attained the age of 66 years, at the weekly rate set out in column (3) of Schedule 8 opposite the relevant band of numbers in column (1) of that Schedule that corresponds to the yearly average for that person, and
- (b) in any other case, at the weekly rate set out in column (4) of Schedule 8 opposite the relevant band of numbers in column (1) of that Schedule that corresponds to the yearly average for that person.

(5) In the case of a person to whom section 109(10) applies, the minimum rate of increase payable in accordance with sub-article (4) shall be—

- (a) €154.70 where his or her spouse or civil partner or a cohabitant of that person is over the age of 66 years, and

(b) €123.00 where his or her spouse or civil partner or a cohabitant of that person is under the age of 66 years.

(6) Subject to sub-article (7), in the case of a person to whom sub-article (3) applies, any increase payable in accordance with section 297 shall be payable—

(a) where his or her spouse or civil partner or a cohabitant of that person has attained the age of 66 years and the weekly income of that spouse, civil partner or cohabitant, as the case may be, calculated in accordance with article 8, does not exceed the highest amount specified in column (1) of Schedule 2 to these Regulations, at the weekly rate set out—

(i) in column (3) of that Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly income, where the yearly average of the claimant or beneficiary is 20-47,

(ii) in column (4) of that Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly income, where the yearly average of the claimant or beneficiary is 15-19,

(iii) in column (5) of that Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly income, where the yearly average of the claimant or beneficiary is 10-14, and

(iv) in column (6) of that Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly income, where the yearly average of the claimant or beneficiary is 5-9,

and

(b) where his or her spouse or civil partner or a cohabitant of that person has not attained the age of 66 years and the weekly income of that spouse, civil partner or cohabitant, as the case may be, calculated in accordance with article 8, does not exceed the highest amount specified in column (1) of Schedule 3 to these Regulations, at the weekly rate set out—

(i) in column (3) of that Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly income, where the yearly average of the claimant or beneficiary is 20-47,

(ii) in column (4) of that Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly

income, where the yearly average of the claimant or beneficiary is 15-19,

- (iii) in column (5) of that Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly income, where the yearly average of the claimant or beneficiary is 10-14, and
- (iv) in column (6) of that Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly income, where the yearly average of the claimant or beneficiary is 5-9.

(7) In the case of a person to whom section 109(10) applies, where the weekly income of his or her spouse or civil partner or a cohabitant of that person, calculated in accordance with article 8, does not exceed the highest amount specified in column (1) of Schedule 9 to these Regulations, the rate of increase payable shall be set out—

- (a) in column (2) of that Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly income, where his or her spouse or civil partner or a cohabitant of that person has attained pensionable age, and
- (b) in column (3) of that Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly income, where his or her spouse or civil partner or a cohabitant of that person has not attained pensionable age.”.

Special partial State pension (contributory).

7. Article 65 of the Principal Regulations is amended by substituting the following sub-articles for sub-articles (2) to (6) (amended by article 7 of the Regulations of 2008):

“(2) In the case of a person to whom sub-article (1) applies, where the yearly average is a number included in one of the bands of numbers specified in column (1) of Schedule 8 to these Regulations, fractions of whole numbers being disregarded, the pension shall be payable at the weekly rate set out in column (2) of that Schedule opposite the relevant band of numbers in column (1) that corresponds to the yearly average of that person.

(3) Subject to sub-article (4), in the case of a person to whom sub-article (2) applies, any increase payable under section 112(1) shall be payable—

- (a) where his or her spouse or civil partner or a cohabitant of that person has not attained the age of 66 years, at the weekly rate set out in column (3) of Schedule 8 opposite the relevant band of numbers in column (1) of that Schedule that corresponds to the yearly average for that person, and

(b) in any other case, at the weekly rate set out in column (4) of Schedule 8 opposite the relevant band of numbers in column (1) of that Schedule that corresponds to the yearly average for that person.

(4) In the case of a person who, on 5 April 2001 is entitled to or in receipt of a pension in accordance with this article which includes an increase in respect of a qualified adult, the minimum rate of increase payable in accordance with sub-article (3) shall be—

(a) €154.70 where his or her spouse or civil partner or a cohabitant of that person is over the age of 66 years, and

(b) €123.00 where his or her spouse or civil partner or a cohabitant of that person is under the age of 66 years.

(5) Subject to sub-article (6), in the case of a person to whom sub-article (2) applies, any increase payable in accordance with section 297 shall be payable—

(a) where his or her spouse or civil partner or a cohabitant of that person has attained the age of 66 years and the weekly income of that spouse, civil partner or cohabitant, as the case may be, calculated in accordance with article 8, does not exceed the highest amount specified in column (1) of Schedule 2 to these Regulations, at the weekly rate set out—

(i) in column (4) of that Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly income, where the yearly average of the claimant or beneficiary is 15-19,

(ii) in column (5) of that Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly income, where the yearly average of the claimant or beneficiary is 10-14, and

(iii) in column (6) of that Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly income, where the yearly average of the claimant or beneficiary is 5-9,

and

(b) where his or her spouse or civil partner or a cohabitant of that person has not attained the age of 66 years and the weekly income of that spouse, civil partner or cohabitant, calculated in accordance with article 8, does not exceed the highest amount specified in column (1) of Schedule 3 to these Regulations, at the weekly rate set out—

- (i) in column (4) of that Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly income, where the yearly average of the claimant or beneficiary is 15-19,
- (ii) in column (5) of that Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly income, where the yearly average of the claimant or beneficiary is 10-14, and
- (iii) in column (6) of that Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly income, where the yearly average of the claimant or beneficiary is 5-9.

(6) In the case of a person to whom section 109(10) applies, where the weekly income of his or her spouse or civil partner or a cohabitant of that person, calculated in accordance with article 8, does not exceed the highest amount specified in column (1) of Schedule 9 to these Regulations, the rate of increase payable shall be set out—

- (a) in column (2) of that Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly income, where his or her spouse has attained pensionable age, and
- (b) in column (3) of that Schedule opposite the relevant band of income in column (1) that corresponds to the said weekly income, where his or her spouse has not attained pensionable age.”.

Widow’s (contributory) pension, widower’s (contributory) pension and surviving civil partner’s (contributory) pension.

8. Chapter 10 of Part 2 of the Principal Regulations is amended—

- (a) in article 79, by substituting the following definition for the definition of “pension”:

“ ‘pension’ means a widow’s (contributory) pension in the case of a widow, a widower’s (contributory) pension in the case of a widower and a surviving civil partner’s (contributory) pension in the case of a surviving civil partner;”, and

- (b) by substituting the following articles for articles 80 and 81:

“Partial satisfaction of contribution conditions for pension.

80. (1) Where a person would be entitled to pension but for the fact that the relevant contribution condition is not satisfied the person shall be entitled to pension, where the person’s yearly average in the relevant period is not less than 24, at a rate determined in accordance with sub-article (2).

(2) In the case of a person to whom sub-article (1) applies and who has not attained the age of 66 years, where the yearly average is a number included in one of the bands of numbers specified in column (1) of Schedule 11 to these Regulations, widow's (contributory) pension, widower's (contributory) pension or surviving civil partner's (contributory) pension shall be payable at the weekly rate set out in column (2) of that Schedule opposite the relevant band of numbers in column (1) that corresponds to the yearly average for that person, but any increase payable under section 127 shall be the same as if the contribution condition set out in section 125(1)(b)(ii) had been fully satisfied.

(3) In the case of a person to whom sub-article (1) applies and who has attained the age of 66 years, where the yearly average is a number included in one of the bands of numbers specified in column (1) of Schedule 11 to these Regulations, widow's (contributory) pension, widower's (contributory) pension or surviving civil partner's (contributory) pension shall be payable at the weekly rate set out in column (3) of that Schedule opposite the relevant band of numbers in column (1) that corresponds to the yearly average for that person, but any increase payable under section 127 shall be the same as if the contribution condition set out in section 125(1)(b)(ii) had been fully satisfied.

Special partial pension.

81. (1) In the case of a person who became an employed contributor as a consequence of the coming into operation of section 12 of the Act of 1973 having earlier ceased to be an employed contributor and where there would be entitlement to pension by virtue of the insurance record of that person or that person's spouse or civil partner but for the fact that the relevant contribution condition is not satisfied and there is no entitlement to pension under article 80, the person shall be entitled to pension, where the person's yearly average in the relevant period is not less than 5, at a rate determined in accordance with sub-article (2).

(2) In the case of a person to whom sub-article (1) applies and who has not attained the age of 66 years, where the yearly average is a number included in one of the bands of numbers specified in column (1) of Schedule 11 to these Regulations, fractions of whole numbers being disregarded, widow's (contributory) pension, widower's (contributory) pension or surviving civil partner's (contributory) pension shall be payable at the weekly rate set out in column (2) of that Schedule opposite the relevant band of numbers in column (1) that corresponds to the yearly average for that person, but any increase payable under section 127 shall be the same as if the contribution condition set out in section 125(1)(b)(ii) had been fully satisfied.

(3) In the case of a person to whom sub-article (1) applies and who has attained the age of 66 years, where the yearly average is a number included in one of the bands of numbers specified in column (1) of

Schedule 11 to these Regulations, fractions of whole numbers being disregarded, widow's (contributory) pension, widower's (contributory) pension or surviving civil partner's (contributory) pension shall be payable at the weekly rate set out in column (3) of that Schedule opposite the relevant band of numbers in column (1) that corresponds to the yearly average for that person, but any increase payable under section 127 shall be the same as if the contribution condition set out in section 125(1)(b)(ii) had been fully satisfied.”

Deserted Wife's Benefit.

9. Chapter 11 of Part 2 of the Principal Regulations is amended—

(a) in article 85 by substituting the following paragraph for paragraph (b):

“(b) she shall not be a cohabitant.”, and

(b) in article 88(1) by substituting “husband's” for “spouse's”.

Treatment benefit.

10. Chapter 12 of Part 2 of the Principal Regulations is amended—

(a) in article 91 by substituting the following definition for the definition of “dependent spouse”:

“ ‘dependent spouse or civil partner’ means—

(a) a spouse or civil partner who is a qualified adult as defined in section 2(2) and by article 6, or

(b) a spouse or civil partner who is not a qualified adult as so defined in sub-paragraph (a) by virtue of being engaged in insurable employment and who immediately prior to taking up such employment was a qualified adult entitled to treatment benefit, or

(c) a spouse or civil partner who would be a qualified adult as so defined, but for the receipt by that spouse or civil partner of carer's benefit under Chapter 14 of Part 2, State pension (non-contributory) under Chapter 4 of Part 3 or carer's allowance under Chapter 8 of Part 3 in his or her own right;”, and

(b) by substituting the following articles for articles 96 and 97:

“Treatment benefit for dependent spouse or civil partner.

96. A dependent spouse or civil partner shall be entitled to treatment benefit where the contribution conditions specified in article 94 or 95 are satisfied by his or her spouse or by his or her civil partner, as appropriate.

Continued benefit to dependent spouse or civil partner after the death of an insured person.

97. On the death of an insured person whose dependent spouse or civil partner, at the date of the death, was or would have been entitled to treatment benefit under article 96, the dependent spouse or civil partner shall continue to be entitled to treatment benefit for as long as that person remains a widow, widower or surviving civil partner, as the case may be.”.

Pre-retirement allowance.

11. Article 122 of the Principal Regulations is amended by inserting the following sub-article after sub-article (3):

“(4) A person shall be regarded as a civil partner who is not living with the other civil partner of the civil partnership for the purposes of section 149(1)(c)(iia) where he or she and his or her civil partner have lived apart from one another for a continuous period of 3 months preceding the date of his or her claim for pre-retirement allowance and continue to so live apart.”.

One-parent family payment.

12. Chapter 3 of Part 3 of the Principal Regulations is amended—

(a) by inserting the following article after article 125:

“Circumstances in which a civil partner is to be regarded as a civil partner who is not living with the other civil partner of the civil partnership.

125A. A civil partner is to be regarded for the purpose of Chapter 7 of Part 3 of the Principal Act as being a civil partner who is not living with the other civil partner of the civil partnership if—

- (a) he or she and his or her civil partner have lived apart from one another for a continuous period of at least 3 months immediately preceding the date of his or her claim for one-parent family payment and continue to so live apart, and
- (b) he or she makes and continues to make appropriate efforts, in the particular circumstances, to obtain maintenance from a liable relative.”,

(b) in article 126 by substituting the following sub-article for sub-article (1):

“(1) A person is to be regarded for the purposes of Chapter 7 of Part 3 as being an unmarried person if—

- (a) not being a married person or a party to a civil partnership, he or she is the parent of a qualified child, and

(b) he or she makes such reasonable efforts, as may be required from time to time by an officer of the Minister, to obtain maintenance from a liable relative.”, and

(c) by substituting the following article for article 127:

“Circumstances in which a person is to be regarded as being a prisoner’s spouse or civil partner.

127. (1) A person is to be regarded for the purposes of Chapter 7 of Part 3 as being a prisoner’s spouse or civil partner if he or she is the spouse or civil partner, as the case may be, of a person who—

(a) is in a prison or place of detention, and

(b) has for a period of not less than 6 months immediately preceding the date of claim been in custody by order of a Court or a responsible authority, or is committed in custody by a Court or a responsible authority for a period of not less than 6 months.

(2) For the purposes of sub-article (1), a certificate from a responsible authority shall be accepted as evidence of the duration of a period of custody.”.

Miscellaneous provisions for assessment of means.

13. Chapter 6 of Part 3 of the Principal Regulations is amended—

(a) in article 153 by substituting the following sub-article for sub-article (2):

“(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, civil partner or cohabitant, as the case may be, 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).”.

(b) in article 153A (inserted by article 10 of the Regulations of 2007) by substituting the following sub-article for sub-article (2):

“(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, civil partner or cohabitant, as the case may be, 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).”.

(c) by substituting the following article for article 154:

“Assessment of seasonal earnings of spouse, civil partner or cohabitant — jobseeker’s allowance, pre-retirement allowance, disability 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 money derived by the spouse, civil partner or cohabitant of a claimant 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.”.

Child benefit — normal residence.

14. Article 159 of the Principal Regulations is amended by substituting the following Rule for Rule 3:

“3. A qualified child who is resident with one only of the persons mentioned in Rule 1, shall be regarded as normally residing with that person and with no other person provided that, where that person is the father and he is cohabiting with a woman as husband and wife, this Rule shall not apply in respect of the child where the father so elects and, on such an election, the child shall be regarded as normally residing with the woman with whom the father is cohabiting.”.

Family income supplement.

15. Part 6 of the Principal Regulations is amended—

(a) by substituting the following article for article 172:

“Interpretation.

172. In this Part—

‘civil partner’, ‘child’, ‘family’ and ‘spouse’ have the meanings assigned to them in section 227;

‘earnings from employment’ means emoluments to which Part 5 of the Taxes Consolidation Act 1997 (No. 39 of 1997) applies.”,

(b) by substituting the following articles for articles 175 and 176:

“Persons regarded as being in remunerative full-time employment.

175. (1) For the purposes of this Part, a person shall be regarded as being engaged in remunerative full-time employment as an employee where he or she is engaged in remunerative employment which is expected to continue for a period of a minimum of 3 months and—

- (a) the number of hours worked per fortnight is not less than 38, or
- (b) the aggregate number of hours worked by him or her and his or her spouse, civil partner or cohabitant, as the case may be, is not less than 38 per fortnight.

(2) Notwithstanding sub-article (1), remunerative full-time employment shall not include employment under a scheme administered by—

- (a) An Foras Áiseanna Saothair and known as Community Employment, or
- (b) the Minister and commonly known as the Rural Social Scheme.

Increase for additional qualified child.

176. The weekly rate of family income supplement shall be increased where, in the 52 week period specified in section 230, there is an increase in the number of qualified children in the family.”.

Claims and payments — general provisions.

16. Part 7 of the Principal Regulations is amended—

(a) in article 178 by inserting the following definition between the definition of “claimant” and the definition of “qualified person”:

“ ‘public service identity’ has the meaning assigned to it by section 262(1);”,

(b) in article 179 by substituting the following sub-articles for sub-articles (2) and (3):

“(2) A claim for bereavement grant may be made by the personal representative of the deceased or, where there is no personal representative, by the spouse, civil partner or cohabitant or any of the next-of-kin of the deceased or by any other person claiming to be entitled thereto.

(3) Where a family, as defined in section 227, comprises a person and his or her spouse, civil partner or cohabitant, both such persons shall join in any claim for family income supplement in respect of that family.”,

(c) in article 181—

- (i) by substituting the following paragraph for paragraph (o) of sub-article (1B) (inserted by article 4 of the Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 2) (Claims) Regulations 2010 (S.I. No. 661 of 2010)):

“(o) marital status or civil status,”

- (ii) by substituting the following paragraph for paragraph (q) of sub-article (1B):

“(q) gross weekly earnings of spouse, civil partner or cohabitant, if any,”

- (iii) by substituting the following sub-article for sub-article (8) (inserted by article 3 of the Social Welfare (Consolidated Claims, Payments and Control) (Amendment No. 4) (Bereavement Grant and Payments After Death) Regulations 2007 (S.I. No. 536 of 2007)):

“(8) Where, at the time of a person’s death, he or she was—

- (a) in receipt of State pension (contributory) or State pension (transition) which included an increase in respect of a qualified adult under sections 112(1) or 117(1),
- (b) in receipt of State pension (contributory) or State pension (transition) and his or her spouse or civil partner or the cohabitant of that person was in receipt of any benefit in his or her own right,
- (c) a qualified adult in respect of whom an increase of State pension (contributory) or State pension (transition) was being paid under sections 112(1) or 117(1), or
- (d) a qualified child in respect of whom an increase of State pension (contributory) or State pension (transition) was being paid under sections 112(2) or 117(2),

the prescribed information for the purposes of section 300(6) shall be—

- (i) a copy of an entry in respect of the deceased person in the register of deaths under the Civil Registration Act 2004 (No. 3 of 2004) provided to the Minister by An tArd-Chlaraitheoir, or

(ii) a copy of the death certificate issued in respect of the deceased person in pursuance of the Civil Registration Act 2004 submitted in respect of the deceased person.”,

(d) in article 182 by substituting the following paragraph for paragraph (c) (amended by article 2 of the Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 5) (Prescribed Time) Regulations 2009 (S.I. No. 240 of 2009)):

“(c) in the case of widow’s (contributory) pension, widower’s (contributory) pension, surviving civil partner’s (contributory) pension, guardian’s payment (contributory), guardian’s payment (non-contributory), one-parent family payment and family income supplement, the period of 3 months from the day on which, apart from satisfying the condition of making a claim, the claimant becomes entitled thereto,”,

(e) in article 185 by substituting the following sub-article for sub-article (1):

“(1) Notwithstanding the provisions of section 241(2), where a claim in respect of State pension (contributory), State pension (transition), widow’s (contributory) pension, widower’s (contributory) pension, surviving civil partner’s (contributory) pension or guardian’s payment (contributory) is made by or on behalf of a claimant in respect of any period more than 12 months before the date on which the claim is made, the period in respect of which payment is made under section 241(2) shall be extended where it is shown to the satisfaction of a deciding officer or appeals officer that the person was entitled to the said pension or allowance.”,

(f) in sub-article (2) of article 189 by substituting the following paragraphs for paragraphs (h) and (i):

“(h) marital status or civil status,

(i) date of marriage or registration of civil partnership,”,

(g) in sub-article (1) of article 196 by substituting the following paragraphs for paragraphs (b) and (c):

“(b) in the case of carer’s benefit, State pension (transition), invalidity pension, deserted wife’s benefit, deserted wife’s allowance or prisoner’s wife’s allowance by virtue of section 178, one-parent family payment (other than one-parent family payment payable in respect of a widow, a widower or a surviving civil partner) and carer’s allowance, weekly in advance on the Thursday of each week,

- (c) in the case of State pension (contributory), widow’s (contributory) pension, widower’s (contributory) pension, surviving civil partner’s (contributory) pension, guardian’s payment (contributory), State pension (non-contributory), blind pension, widow’s (non-contributory) pension, widower’s (non-contributory) pension, surviving civil partner’s (non-contributory) pension, guardian’s payment (non-contributory) and one-parent family payment payable in respect of a widow, a widower or a surviving civil partner, weekly in advance on the Friday of each week,”
- (h) in sub-article (3) of article 202 by substituting the following paragraph for paragraph (a):
- “(a) the spouse or civil partner (within the meaning of section 3(10) of the Principal Act) of the claimant or beneficiary;”,
- (i) in sub-article (1) of article 203—
- (i) by substituting the following paragraph for paragraph (f):
- “(f) widow’s (contributory) pension, widower’s (contributory) pension or surviving civil partner’s (contributory) pension, by virtue of section 127(1),”,
- (ii) by substituting the following sub-paragraph for sub-paragraph (i) of paragraph (i):
- “(i) subject to sub-paragraph (ii), so much of the pension as is payable in respect of a qualified child together with any increase for a spouse, civil partner or cohabitant, as the case may be,”
- (j) in article 204 by substituting “qualified adult, spouse, civil partner or cohabitant, as the case may be” for “qualified adult or spouse” in each place where it occurs,
- (k) in sub-article (1) of article 208 (amended by article 12 of the Regulations of 2007) by substituting the following definition for the definition of “related person”:
- “ ‘related person’ means the person—
- (a) in respect of whom the deceased beneficiary was receiving an increase in respect of a qualified adult, or in respect of whom such an increase would have been payable but for the receipt by the spouse, civil partner or cohabitant of the deceased beneficiary of State pension (non-contributory), blind pension, carer’s benefit or carer’s allowance in his or her own right, or

(b) in respect of whom the deceased beneficiary was receiving an increase under section 157(1)(a) or section 161C(a).”,

(l) in article 217 by substituting the following paragraph for paragraph (a):

“(a) State pension (contributory), widow’s (contributory) pension, widower’s (contributory) pension, surviving civil partner’s (contributory) pension, guardian’s payment (contributory) or bereavement grant, (including any increase thereof), by reason only of the person being absent from the State.”,

(m) in article 218—

(i) by substituting the following paragraph for paragraph (a) of sub-article (1):

“(a) Section 249 shall not operate so as to disqualify a person for receiving illness benefit, maternity benefit, jobseeker’s benefit, State pension (contributory), State pension (transition), invalidity pension, widow’s (contributory) pension, widower’s (contributory) pension, surviving civil partner’s (contributory) pension, bereavement grant or guardian’s payment (contributory), (including in each case, subject to paragraph (b), any increase thereof), in respect of any period during which the person is detained (other than in the case of a person found not guilty by reason of insanity under the provisions of the Criminal Law (Insanity) Act 2006 (No. 11 of 2006)) in any institution for the treatment of mental illness or infectious disease.”,

(ii) by substituting the following paragraphs for paragraphs (b) and (c) of sub-article (2):

“(b) for receiving illness benefit, invalidity pension, State pension (transition), widow’s (contributory) pension, widower’s (contributory) pension, surviving civil partner’s (contributory) pension, one-parent family payment, a payment by virtue of section 178, State pension (contributory), widow’s (non-contributory) pension, widower’s (non-contributory) pension or surviving civil partner’s (non-contributory) pension (including, in each case, any increase thereof) if—

(i) the detention is in respect of his or her being charged with a criminal offence, and

- (ii) the charge is subsequently withdrawn or he or she is acquitted of the offence, and
 - (iii) in the case of illness benefit, immediately before the detention he or she was entitled to the said benefit or would, but for section 40(2) have been so entitled,
- (c) for receiving invalidity pension, State pension (transition), widow's (contributory) pension, widower's (contributory) pension, surviving civil partner's (contributory) pension, one-parent family payment, a payment by virtue of section 178, State pension (contributory), widow's (non-contributory) pension, widower's (non-contributory) pension or surviving civil partner's (non-contributory) pension (including, in each case, any increase thereof) if, in a case of imprisonment, the imprisonment is undergone as the alternative to payment of a fine.”,
- (iii) by substituting the following paragraph for paragraph (a) of sub-article (4):
- “(a) Subject to paragraph (b) and notwithstanding that a person, by reason of undergoing a period of penal servitude, imprisonment or detention in legal custody is disqualified by virtue of section 249 for receiving illness benefit, invalidity pension, State pension (transition), widow's (contributory) pension, widower's (contributory) pension, surviving civil partner's (contributory) pension, one-parent family payment, a payment by virtue of section 178, State pension (contributory), widow's (non-contributory) pension, widower's (non-contributory) pension, surviving civil partner's (non-contributory) pension (including, in each case, any increase in respect of a qualified adult or qualified child), the increase shall be paid to any person appointed by the Minister to receive and deal with any sums payable on account of such increase for the benefit of the person or persons in respect of whom the increase is payable, and the receipt of any person so appointed shall be a good discharge to the Minister and the Social Insurance Fund, where appropriate, for any sum so paid.”,
- (n) in article 219 by substituting the following sub-articles for sub-articles (2) and (3):
- “(2) Bereavement grant, invalidity pension, State pension (transition), widow's (contributory) pension, widower's (contributory) pension, surviving civil partner's (contributory) pension, one-parent family

payment, a payment by virtue of section 178, State pension (contributory), guardian's payment (contributory), widow's (non-contributory) pension, widower's (non-contributory) pension or surviving civil partner's (non-contributory) pension to which sub-article (1) applies may be paid during any such period to any person appointed by the Minister to receive and deal with any sums payable on behalf of the beneficiary, and the receipt of any person so appointed shall be a good discharge to the Minister and the Social Insurance Fund, where appropriate, for any sum so paid.

(3) Where by virtue of sub-article (1) payment of invalidity pension, State pension (transition), widow's (contributory) pension, widower's (contributory) pension, surviving civil partner's (contributory) pension, one-parent family payment, a payment by virtue of section 178, State pension (contributory), guardian's payment (contributory), widow's (non-contributory) pension, widower's (non-contributory) pension or surviving civil partner's (non-contributory) pension, is suspended for any period, the period of suspension shall not be taken into account in calculating any period under article 113.”,

(o) in sub-article (3) of article 222—

(i) by substituting the following paragraphs for paragraphs (h) and (i):

“(h) death benefit by way of widow's pension, widower's pension or surviving civil partner's pension,

(i) widow's (contributory) pension, widower's (contributory) pension and surviving civil partner's (contributory) pension,”,

(ii) by substituting the following paragraph for paragraph (k):

“(k) widow's (non-contributory) pension, widower's (non-contributory) pension and surviving civil partner's (non-contributory) pension,”,

(p) in article 223—

(i) by substituting the following paragraph for paragraph (a) in sub-article (3):

“(a) widow's (contributory) pension, widower's (contributory) pension, surviving civil partner's (contributory) pension or deserted wife's benefit by virtue of section 178 at a rate less than that specified in Part 1 of Schedule 2 to the Principal Act, or”,

(ii) by substituting the following sub-article for sub-article (5):

“(5) In sub-article (4) “scheduled rate” means the rate of widow’s (contributory) pension, widower’s (contributory) pension, surviving civil partner’s (contributory) pension or deserted wife’s benefit by virtue of section 178, appropriate to the family size, as set out in Part 1 of Schedule 2 to the Principal Act, or the rate of widow’s (non-contributory) pension, widower’s (non-contributory) pension, surviving civil partner’s (non-contributory) pension, deserted wife’s allowance or prisoner’s wife’s allowance by virtue of section 178 or one-parent family payment appropriate to the family size, as set out in Part 1 of Schedule 4 to the Principal Act, as the case may be.”,

(iii) by substituting the following sub-article for sub-article (7):

“(7) The following payments are specified for the purposes of this article—

(a) death benefit by way of widow’s pension, widower’s pension or surviving civil partner’s pension,

(b) widow’s (contributory) pension, widower’s (contributory) pension or surviving civil partner’s (contributory) pension,

(c) a relevant payment by virtue of section 178,

(d) widow’s (non-contributory) pension, widower’s (non-contributory) pension or surviving civil partner’s (non-contributory) pension, or

(e) one-parent family payment.”,

(q) in article 226—

(i) by substituting the following sub-article for sub-article (1) (amended by article 13 of the Regulations of 2007):

“(1) Where in respect of any period a person is in receipt of any benefit or assistance, which includes an increase in respect of a qualified adult or a spouse, civil partner or cohabitant, as the case may be, and in that period that qualified adult, spouse, civil partner or cohabitant becomes entitled in his or her own right to any benefit or assistance, any such increase shall be regarded as payment on account of the said benefit or assistance payable to that qualified adult, spouse, civil partner or cohabitant in respect of the said period.”,

(ii) by substituting the following sub-article for sub-article (3):

“(3) Where in respect of any period a person is in receipt of any benefit or assistance, which includes an increase in respect of a qualified child, and in that period the spouse, civil partner or a cohabitant of that person becomes entitled in his or her own right to any benefit or assistance which also includes an increase in respect of that qualified child, half of any sums paid to that person in that period in respect of that qualified child shall be regarded as payment on account of the said benefit or assistance.”,

(r) in article 227 by substituting the following sub-article for sub-article (1):

“(1) Any arrears of a relevant payment payable to or in respect of a person, which the Minister, by virtue of section 204, may reduce by the amount of the excess, shall include any such arrears payable to or in respect of the spouse, civil partner or a cohabitant of that person.”,

(s) by deleting article 229,

(t) in article 232 by substituting the following definition for the definition of “benefit”:

“ ‘benefit’ means jobseeker’s benefit under Chapter 12 of Part 2, invalidity pension under Chapter 17 of Part 2, widow’s (contributory) pension, widower’s (contributory) pension or surviving civil partner’s (contributory) pension under Chapter 18 of Part 2 or a relevant payment in accordance with paragraph (a) in the definition of “relevant payment” in section 178(1);”, and

(u) by deleting Chapter 8.

Liable relatives.

17. Part 10 of the Principal Regulations is amended—

(a) in sub-article (1)(b) of article 251 by substituting the following sub-paragraphs for sub-paragraphs (v) and (vi):

“(v) any maintenance payments being paid by the liable relative in respect of his or her spouse or civil partner, as the case may be, and in respect of his or her child or children, where such maintenance payments have been taken into account in deciding the amount of allowance payable to the said spouse, civil partner or parent of his or her children,

(vi) an amount, not exceeding €4,952 per annum, of any rent or repayment of a loan entered into solely for the purpose of defraying money employed in the purchase, repair or essential improvement of the residence in which the liable relative

is residing, but where the liable relative is married, has entered into a civil partnership or is a cohabitant and his or her spouse, civil partner or cohabitant, as the case may be, is in employment or self-employment, the amount allowed shall be one-half of the rent or repayment, not exceeding €2,476 per annum.”, and

(b) in sub-article (1) of article 253—

(i) by substituting “Subject to sub-article (2), the weekly amount paid by the liable relative shall be —” for “Subject to sub-article (2), the weekly amount paid by the liable relative shall be either —”, and

(ii) by substituting the following paragraph for paragraph (c):

“(c) in the case of the qualified child of a person who is not married or is not a civil partner, an amount not exceeding the maximum amount set out in section 23 of the Family Law Maintenance of Spouses and Children Act 1976 (inserted by the Courts Act 1981 (No. 11 of 1981) and amended by the Courts Act 1991 (No. 20 of 1991)) in respect of each qualified child.”.

Amendments to Schedules to Principal Regulations.

18. The Principal Regulations are amended—

- (a) in Schedule 2 (amended by article 7 of the Regulations of 2008) by substituting “Earnings of Qualified Adult” for “Spouse’s earnings:” in the heading to column (1),
- (b) in Schedule 3 (amended by article 7 of the Regulations of 2008) by substituting “Earnings of Qualified Adult” for “Spouse’s earnings:” in the heading to column (1),
- (c) in Schedule 9 (amended by article 7 of the Regulations of 2008) by substituting “Earnings of Qualified Adult” for “Spouse’s earnings:” in the heading to column (1), and
- (d) by substituting “Widow’s (Contributory) Pension, Widower’s (Contributory) Pension, Surviving Civil Partner’s (Contributory) Pension” for “Widow’s (Contributory) Pension, Widower’s (Contributory) Pension” in the title to the Table contained in Schedule 11 (amended by article 6 of the Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 3) (Changes in Rates) Regulations 2010 (S.I. No. 681 of 2010)).

The Minister for Public Expenditure and Reform consents to the foregoing Regulations.



GIVEN under my Official Seal,
17 November 2011.

BRENDAN HOWLIN,
Minister for Public Expenditure and Reform.



GIVEN under my Official Seal,
21 November 2011.

JOAN BURTON,
Minister for Social Protection.

EXPLANATORY NOTE

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

Following the enactment of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act in July 2010, the Social Welfare and Pensions Act 2010 provided for a range of amendments to the Social Welfare Consolidation Act 2005 to comply with the new civil partnership legislation. These amendments to the Social Welfare Consolidation Act took effect from 1 January 2011.

These Regulations make the necessary amendments to the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 to ensure compliance with the civil partnership legislation by extending to civil partners, and to cohabitants in certain circumstances, the various rights and obligations that currently apply to spouses.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
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