

EXPLANATORY MEMORANDUM TO

The Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2011

SR 2011 No. 135

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under powers conferred by the Social Security Contributions and Benefits (Northern Ireland) Act 1992, the Social Security Administration (Northern Ireland) Act 1992, the Jobseekers (Northern Ireland) Order 1995, the Social Security (Northern Ireland) Order 1998 and the Welfare Reform Act (Northern Ireland) 2007 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Statutory Rule will amend the following Regulations: the Income Support (General) Regulations (Northern Ireland) 1987 (“the Income Support Regulations”); the Jobseeker's Allowance Regulations (Northern Ireland) 1996 (“the Jobseeker’s Allowance Regulations”); the Housing Benefit Regulations (Northern Ireland) 2006 (“the Housing Benefit Regulations”); the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 (“the Housing Benefit SPC Regulations”); and the Employment and Support Allowance Regulations (Northern Ireland) 2008, (“the Employment and Support Allowance Regulations”). For simplicity these Regulations are referred to in this memorandum as the income-related benefits Regulations.
- 2.2. The Regulations also make minor amendments to the Social Security (General Benefit) Regulations (Northern Ireland) 1984 (“the General Benefit Regulations”); the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987, “the Claims and Payments Regulations”; the Social Security (Incapacity Benefit) Regulations (Northern Ireland) 1994; the Social Security (Incapacity Benefit for Work) Regulations (Northern Ireland) 1995; the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 (“the Decisions and Appeals Regulations”); the Social Security (Work-focused Interviews for Lone Parents) Regulations (Northern Ireland) 2001; the Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendments) Regulations (Northern Ireland) 2003 and the Social Security (Work-focused Interviews) Regulations (Northern Ireland) 2003.

3. Background

- 3.1. Twice a year the Department puts forward a package of miscellaneous and non-controversial amendments to the income-related benefits Regulations.

- 3.2. The main purpose of these regulations is to correct, clarify, align or update various social security Statutory Rules (listed at paragraph 2.1. and 2.2) and further explained at paragraphs 3.4 to 3.16.
- 3.3. The more substantive changes will:
- (i) remove a £10.50 a week disregard of Child Benefit for Income Support and Jobseeker's Allowance customers still being paid child allowances and premiums who have a child under the age of one year;
 - (ii) provide that changes of circumstances for State Pension Credit customers who are paid in arrears take effect from the beginning of the week in which the change happens;
 - (iii) provide the higher earnings limit for permitted work within Employment and Support Allowance and Incapacity Benefit increases automatically when the national minimum wage increases; and
 - (iv) allow jobseekers to remain on Jobseeker's Allowance if they have a short period of sickness within 12 weeks of the end of previous entitlement to Employment and Support Allowance.
- 3.4. Child Benefit disregard for a child under the age of one:
Child allowances and premiums are no longer paid for children in most income-related benefits. Financial support for children is provided through Child Benefit and Child Tax Credit which currently includes an additional "baby element" for families with children under the age of one year. In cases where payment for children in Income Support and income-based Jobseeker's Allowance continues, Child Benefit is taken into account as income. To ensure fair treatment between these claimants and those who receive Child Tax Credit, £10.50 a week of a claimant's Child Benefit is disregarded where they have a child under the age of one year to reflect the "baby element". In the June 2010 Budget statement the Chancellor announced that the "baby element" in Child Tax Credit will cease from 6 April 2011. It is necessary to ensure that claimants who continue to be paid Income Support or Jobseeker's Allowance for their children do not have an advantage over those receiving Child Tax Credit who will be losing the "baby element". These regulations remove the £10.50 a week Child Benefit disregard from the Income Support and Jobseeker's Allowance provisions to align with Child Tax Credit "baby element" ceasing.
- 3.5. State Pension Credit: Date changes of circumstances take effect:
Changes to benefit paydays and payment periods meant that from April 2010 all new State Pension Credit claimants have their benefit paid in arrears, rather than in advance. As a result, legislation that determines the date changes of circumstances take effect from needs to be amended. The intention is that changes for State Pension Credit claims paid in arrears take effect from the beginning of the week in which the change happens. This is consistent with how changes are dealt with in working age benefits. A rule dealing with a change in a claimant's circumstances which results in the end of an award of State Pension Credit also needs to be removed to ensure that the claim is ended in the week the change occurs, rather than from the following week, unless the change is the death of the claimant, in which case it will take effect from the first day of the following benefit week. This returns the policy to its original position and maintains similar

treatment between claimants paid in advance and arrears. These regulations ensure that changes of circumstances for State Pension Credit claimants paid in arrears take effect from the correct date.

- 3.6. Permitted work earnings limit:
The permitted work rules allow people with health conditions who receive Employment and Support Allowance or Incapacity Benefit to do some paid work and continue to receive benefit, so long as their earnings do not exceed a specified limit. The permitted work higher earnings limit has been linked to the national minimum wage for several years. The link to the national minimum wage also applies to the earnings limit for councillors, where benefit is reduced if the allowances paid to a councillor exceed the limit. The annual earnings limit for payment of Unemployability Supplement in the Industrial Injuries Disablement Benefit scheme is also set at an equivalent level. Regulations are currently amended each year to increase these limits in line with changes to the national minimum wage. Including a simple formula in the regulations will mean that in future, there will be no need for the regulations to be amended each time the national minimum wage increases. These regulations ensure earnings limits which are in practice linked to the national minimum wage are now expressed as a multiple of the national minimum wage.
- 3.7. Jobseeker's Allowance short periods of sickness:
As a result of the reassessment of Incapacity Benefit claimants for Employment and Support Allowance, it is anticipated that claimants who may be found fit for work will move to Jobseeker's Allowance, many of whom will still be managing a health condition or disability. Current rules mean that Jobseeker's Allowance claimants who experience a period of sickness within 12 weeks of the end of a previous Employment and Support Allowance award are disallowed and have to reclaim Employment and Support Allowance. Many of these claimants cannot receive Employment and Support Allowance if their previous claim was disallowed because of a work capability assessment, unless there is a new or significant change in the original condition. The intention is that most claimants should be able to stay on Jobseeker's Allowance during short periods of sickness. These regulations ensure jobseekers are not automatically disallowed Jobseeker's Allowance if they have a short period of sickness within 12 weeks of the end of a previous award of Employment and Support Allowance.
- 3.8. Treatment of Working Tax Credit in income-related benefits:
The rules for deciding when a payment of Working Tax Credit should be treated as paid are complex and outdated. There are also different rules for the treatment of Working Tax Credit and Working Tax Credit Run-on, which when applied consecutively, result in a one week overlap. This means that two payments of Working Tax Credit could be taken into account in the same benefit week, which is not the intention. These regulations simplify the income-related benefit rules by removing the overlap and ensuring that the date Working Tax Credit income is treated as paid is determined in the same way as for other types of income.

- 3.9. **Disabled Child Premium and Enhanced Disability Premium:**
In the income-related benefits, where child allowances and premiums are in payment and a child dies, the intention is that payment of benefit for that child can continue for a further eight weeks whilst Child Benefit remains in payment. This includes any Disabled Child Premium and Enhanced Disability Premium which was in payment for the child immediately before their death. However, entitlement to these two premiums is based on entitlement to Disability Living Allowance, which ceases on the death of a child. As a result, income-related benefit legislation does not currently provide for these premiums to continue in payment after the death of the child. These regulations ensure Disabled Child Premium and Enhanced Disability Premium can continue to be paid following the death of a child during the eight week run-on of Child Benefit.
- 3.10. **Housing costs linking rule regarding child support maintenance:**
From 12 April 2010 child maintenance payments were fully disregarded in income-related benefits, and a housing costs linking rule relating to child support maintenance payments became outdated, apart from transitional cases. The linking rule was intended for cases where child support maintenance payments, which were previously taken into account as income, had exceeded the claimant's benefit entitlement on or before 11 April 2010. It provided protection for mortgage interest payments to resume immediately if child support maintenance payments reduced and the claimant reclaimed benefit within 26 weeks. The 26-week transitional period ended on 10 October 2010. These regulations remove the out of date linking rule.
- 3.11. **Housing costs linking rule regarding excess income and capital:**
A housing costs linking rule within income-related benefits is intended to apply where the person's income is equal to or exceeds the customer's benefit entitlement. However this is not fully provided for in regulations. The current rule applies only where claimants are not entitled to benefit because their income "exceeds" their benefit entitlement. The rule allows claimants to be treated as being in receipt of benefit so that the period counts towards the qualifying period for mortgage interest support if their income reduces and they reclaim benefit within 13 weeks.
This linking rule is also intended to apply to Employment and Support Allowance claimants who have entitlement to both the contributory and income-related elements and the amount payable under both elements is the same. In these circumstances, the benefit payable must be treated as a contributory allowance rather than an income-based allowance, which means claimants in this situation are unable to benefit from the linking rule. These regulations amend the linking rule to ensure it applies as intended.
- 3.12. **Child Maintenance Bonus Scheme:**
The Child Maintenance Bonus Scheme was replaced by the Child Maintenance Premium, which was originally a £10 a week disregard of child maintenance payments. The disregard increased to £20 until a full disregard was introduced from April 2010. These regulations remove out of date references to the Child Maintenance Bonus Scheme from the

income-related benefit regulations and the Claims and Payments Regulations.

- 3.13. Disregard of child dependency increases in Employment and Support Allowance:
Income payable to or in respect of a child is not taken into account in Employment and Support Allowance as the benefit does not provide any payments for children. Child dependency increases may still be paid with certain benefits such as Incapacity Benefit, Severe Disablement Allowance or Carer's Allowance. The intention is that such increases being paid to an Employment and Support Allowance claimant are disregarded. However current legislation does not make clear that the disregard applies only in respect of any child dependency increases and does not apply to any adult dependency increases that are payable. These regulations clarify that only child dependency increases are disregarded.
- 3.14. Meaning of the expression "medical evidence":
Within Employment and Support Allowance and Incapacity Benefit it is sufficient for medical evidence from a claimant's GP to be provided as evidence of incapacity until a medical assessment can take place. Benefit may be disallowed where medical evidence has expired and contact is lost with the claimant when a return to work is not notified. This avoids unnecessary referrals for a medical assessment. Medical evidence normally means a medical certificate from a General Practitioner but it can also mean a self-certificate from the claimant for the first 7 days of incapacity. Though it is intended that this applies to the expiry of self-certificates as well as medical evidence from a General Practitioner, current regulations do not make this clear. These regulations make it clear that the definition of medical evidence includes self-certificates.
- 3.15. Linking rules for work or training beneficiaries on Employment and Support Allowance: Employment and Support Allowance Regulations provide a linking rule for people who leave benefit to start work or training but then need to reclaim benefit within 104 weeks. In this situation the claimant can be treated as having limited capability for work or limited capability for work-related activity (in accordance with the original determination). This is intended to apply only until a determination is made following a further work capability assessment. However, current regulations do not make this absolutely clear. These regulations ensure the linking rule applies only for the period up until a work capability assessment decision has been made in respect of the new claim.
- 3.16. The Income Support and Jobseeker's Allowance provisions are amended to correct an oversight by inserting a reference to "rates" in the child maintenance and liable relative provisions.

4. Consultation

- 4.1. The Social Security Advisory Committee were consulted and were in agreement that they did not require the proposals for these Regulations to be formally referred.

5. Equality Impact

- 5.1. The changes proposed do not provide a new benefit or service but correct or clarify the treatment of income or capital in the income-related benefits Regulations.
- 5.2. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on these legislative proposals and has concluded that the proposals do not have significant implications for equality of opportunity. In light of this, the Department considers that an equality impact assessment is not necessary.

6. Regulatory Impact

- 6.1. These Regulations do not require a Regulatory Impact Assessment as they do not impose any additional costs or savings on business, charities or voluntary bodies.

7. Financial Implications

- 7.1. Removal of the Child Benefit Disregard is expected to produce savings. The amount of initial savings will be at least £392,400 and further savings of related child allowances and premiums are expected when Child Tax Credits are claimed, replacing these elements of Income Support as a result of the Child Benefit disregard. The financial costs of the remainder of these changes are neutral as any costs will be negligible.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department has also considered its obligations under section 24 of the Northern Ireland Act 1998. It is the Department's judgement that the Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2011 are not incompatible with the Convention rights, are not incompatible with Community law, do not discriminate against any person or class of person on the ground of religious belief or political opinion and do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. The Regulations mirror the Great Britain Regulations and are in keeping with the principle of parity between Northern Ireland and Great Britain in social security matters.

11. Additional Information

- 11.1. Not applicable.