

## **EXPLANATORY MEMORANDUM**

### **THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2012**

**S.R. 2012 No. 121**

#### **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, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, the State Pension Credit Act (Northern Ireland) 2002 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 Income-related Benefit Regulations namely:
  - the Income Support (General) Regulations (Northern Ireland) 1987;
  - the Jobseeker's Allowance Regulations (Northern Ireland) 1996;
  - the State Pension Credit Regulations (Northern Ireland) 2003;
  - the Housing Benefit Regulations (Northern Ireland) 2006;
  - the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006; and
  - the Employment and Support Allowance Regulations (Northern Ireland) 2008;
  - the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010.
- 2.2 The Regulations also make amendments to:
  - the Statutory Sick Pay Regulations (Northern Ireland) 1982;
  - the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987;
  - the Social Security (Payments on Account, Overpayments and Recovery) Regulations (Northern Ireland) 1988;
  - the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999;

- the Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000; and
- the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001.

### 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 legislation (listed at paragraph 2.1 to 2.2) and further explained at paragraphs 3.3 to 3.27.

#### **Including definitions of Additional Paternity Leave and Additional Statutory Paternity Pay in the income-related benefits regulations**

- 3.3 Before April 2011, an eligible employee could take either one week or two consecutive weeks' Ordinary Paternity Leave and may have been entitled to Ordinary Statutory Paternity Pay, as long as they met certain conditions.
- 3.4 An employee may receive payments of Ordinary Statutory Paternity Pay from their employer and also claim a social security benefit. If they do this, the way Ordinary Statutory Paternity Pay is taken into account depends on which benefit the employee has claimed.
- In Pension Credit and Housing Benefit, Ordinary Statutory Paternity Pay is taken into account as earnings in the same way as maternity and adoption pay. This means an earnings disregard can be applied, that is, a specified amount of their earnings can be ignored. In addition, any childcare costs can also be disregarded in Housing Benefit because Ordinary Paternity Leave is not treated as being in remunerative work, except for the purposes of treatment of childcare charges.
  - For Income Support, income-based Jobseeker's Allowance and income-related Employment and Support Allowance purposes, a person on Ordinary Paternity Leave is not in remunerative work and Ordinary Statutory Paternity Pay is treated as income other than earnings. There is a disregard for tax, National Insurance contributions and half of payments towards an occupational or personal pension. That is, these amounts are deducted from the gross amount of Ordinary Statutory Paternity pay and the net amount is taken into account when assessing benefit.
  - Where housing costs are paid with income-related benefits a deduction may be made where there is a non-dependant living in the home. A higher rate applies where the non-dependant is in remunerative work but this does not apply to Ordinary Statutory

Paternity Pay because undertaking Ordinary Statutory Paternity Leave is not treated as being in remunerative work.

- 3.5 Since April 2011, fathers satisfying the necessary conditions have been able to claim up to 26 weeks Additional Paternity Leave and Additional Statutory Paternity Pay.
- 3.6 The current definitions of Paternity Leave and Statutory Paternity Pay for the purposes of income-related benefits do not include Additional Paternity Leave and Additional Statutory Paternity Pay. An amendment is required to include those references so that Additional Paternity Leave and Additional Statutory Paternity Pay will be treated in the same way as Ordinary Paternity Leave and Ordinary Statutory Paternity Pay. This is a clarification, rather than a change to existing policy. It is consistent with the way in which maternity leave and pay are treated

### **Extension of Second Chance Learning**

- 3.7 In recent years attempts have been made to help young people living away from parents who may not have made the most of their opportunities at school and who have, post aged 16, realised that getting education and training is the best way to improve their prospects in the job market.
- 3.8 Many of these young people will have suffered disrupted schooling because of being in care or because they are in abusive family relationships and have left home because they are at risk. They are, typically, two to three years behind, undertaking GCSEs at age 18 and A levels after that. Before 2006, these young people would have qualified for Income Support if they had returned to full-time, non-advanced education (up to and including A Level/NVQ Level 3) but would have been forced to claim Jobseeker's Allowance at age 19. This meant that in many cases they would have been unable to complete their second chance at education. To address this, the cut-off age for Income Support has incrementally increased to 20 years from April 2006 and to 21 years from April 2009, where the relevant course of education started before the young person's 19<sup>th</sup> birthday.
- 3.9 These Regulations introduce three further refinements to;
- specifically include a young person who has enrolled on, been accepted for, or is undertaking a course of full-time non-advanced education and amend the meaning of "course of full-time non-advanced education" to more clearly allow progression through GCSE to completion of A Level (or NVQ3 and equivalents). This would bring it into line with the accepted school progression from GCSE to A level (and equivalents) and ensure that a young person progressing from GCSE (and equivalent) to A level (and equivalent) in this way will continue to qualify for Income Support, assuming the other eligibility conditions are met;

- change the end date of the provision. Currently the provision is limited to the earlier of either the end of the course or age 21. For someone whose 21<sup>st</sup> birthday falls before the end of the course, this can mean that they may have to leave their course or suffer financial hardship. It was therefore decided that young people should remain entitled to Income Support under the Second Chance Learning provision whilst under 21 or aged 21, if they attained that age whilst undertaking a full-time course of non-advanced education; and
- remove the existing restriction that requires the young person to have started, enrolled or been accepted on the course before the age of 19, so that young people who begin a full-time course of non-advanced education when aged 19, 20 or 21 are also able to make use of the provision, provided they meet the other conditions for accessing the provision.

### **Young person claiming Income Support**

- 3.10 Certain young people in non-advanced education can claim Income Support. One of the conditions of entitlement is that the young person is living away from parents who are unable to provide financial support and who are ‘chronically sick or mentally or physically disabled’. The meaning of ‘chronically sick or mentally or physically disabled’ makes reference to meeting the conditions for the Income Support Disability Premium. One of those conditions is the receipt of long term Incapacity Benefit. In order to put young people with parents in receipt of Employment and Support Allowance in the same position as those with parents in receipt of long term Incapacity Benefit, reference to the main phase Employment and Support Allowance is added to the meaning of ‘chronically sick or mentally or physically disabled’.

### **Aligning supersession rules**

- 3.11 The Severe Disability premium is payable under certain circumstances with income-related benefit, if the claimant is also receiving Attendance Allowance or the middle or higher rate care component of Disability Living Allowance. The premium is not payable if there is a non-dependant in the household. A non-dependant is a person who normally lives with the claimant but is not treated as financially dependent on the claimant for benefit purposes. When the non-dependant leaves the household, the award of benefit is changed to include the premium.
- 3.12 The regulation which specifies when the change takes effect applies to Income Support, income-related Employment and Support Allowance and State Pension Credit but not income-based Jobseeker’s Allowance. Jobseeker’s Allowance was omitted due to an oversight. This amendment to the relevant regulation addresses this anomaly so that it applies to income-based Jobseeker’s Allowance

### **Substitute “throughout the qualifying week” for “in the qualifying week” for Winter Fuel Payments**

- 3.13 These Regulations make an amendment to clarify the circumstances in which people will be entitled to a Winter Fuel Payment. The policy intention is that in order to get a Winter Fuel Payment, a claimant only has to satisfy the qualifying conditions for one day in the qualifying week, not the whole of that week. The amendment removes the current ambiguity.

### **Clarification of claim date for Winter Fuel Payments**

- 3.14 The current Winter Fuel Payment Regulations state that claim forms must be received “before the 31<sup>st</sup> March”. This is causing some confusion. The policy intention is that all claim forms must be received by the Department on or before 31 March, i.e. claims received after this date are determined late and disallowed. Changing the wording in the regulation would make this clear.

### **Minor amendment to Housing Benefit Decisions and Appeals Regulations**

- 3.15 This Regulation makes a minor amendment to remove a reference to an obsolete paragraph.

### **Amendments to the Employment and Support Allowance Regulation**

- 3.16 Normally, to be entitled to contributory Employment and Support Allowance, the first contribution condition which a claimant has to satisfy is to have paid sufficient class 1 or class 2 contributions in one of the last two complete tax years before the year of claim. In certain prescribed circumstances, however, the rules are relaxed to allow the claimant to be taken as satisfying the first contribution condition where they otherwise might not have done. Under this easement, claimants who satisfy any one of a prescribed list of conditions is taken as satisfying the first contribution condition, provided they have paid sufficient Class 1 or Class 2 contributions in respect of any one complete tax year before the year in which the claim is made.
- 3.17 One of these conditions is where the claimant has been entitled to contributory Employment and Support Allowance at any time in the last complete tax year before the year in which the claim is made.
- 3.18 In devising the Employment and Support Allowance legislation, the provision in question was brought forward more or less word-for-word from the Incapacity Benefit legislation. That easement was originally introduced in April 2001 - at a time when the contribution conditions for Incapacity Benefit were being tightened - as a safeguard for former claimants. Although it was carried forward into the Employment and Support Allowance regime, it was decided, upon reflection, that it did not serve any utility, nor did it reflect the overarching policy intent for the relaxation of the contribution conditions to operate. Furthermore, there is,

in any event, no longer the same justification for protecting people who paid contributions many years ago under more generous arrangements. The Department is not aware that anyone has ever sought to rely on this particular provision whilst it has been in the Employment and Support Allowance Regulations. This amendment removes the relevant regulation.

- 3.19 There is also a minor amendment to remake a previously revoked regulation.

**Amendment to the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010**

- 3.20 Claimants formerly entitled to awards of Incapacity Benefit or Severe Disablement Allowance who become entitled to contributory Employment and Support Allowance by virtue of the reassessment exercise are exempt from the requirement to satisfy the relevant contribution conditions which would otherwise apply to a claimant for contributory Employment and Support Allowance. Where the “reassessed” award comes to an end, and the claimant re-applies within 12 weeks, the policy intention is that he should still be exempt from the requirement to satisfy the contribution conditions, and thereby regain their previous entitlement to Employment and Support Allowance. Whilst, arguably, the current wording in the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 already meets this intention, this amendment delivers a technical change which puts the issue beyond doubt.

**Simple Payment**

- 3.21 A “Simple Payment” service is being established for the payment of benefits and will replace cheque payments on a phased basis from summer 2012. As this is to be based on an electronic transfer of funds and constitutes payment of benefit by “direct credit transfer”, an amendment is required to the Claims and Payments Regulations to enable the Department to make such payments without the necessity of prior arrangement with the claimant or his representative. The amendment is needed solely to reflect the fact that, in future, the Department will not need prior arrangement with the claimant to make payment by direct credit transfer in cases where there is no option but to use the Simple Payment service.
- 3.22 Direct Payment into a bank or other account is the normal way the Department pays benefit and pensions. Around 99% of recipients are now paid directly into a mainstream account, such as a bank/building society or Post Office card account. The remaining 1% of claimants are paid by cheque. However, cheque payments are outdated, costly, subject to postal delays and are open to fraud and abuse.
- 3.23 Citibank, working in partnership with PayPoint, will be delivering the service through PayPoint outlets. The service is designed specifically for

those claimants who for a variety of reasons, may not be able to be paid into a mainstream account of any kind. The new service will provide claimants with a safe, efficient and secure method of collecting their money.

- 3.24 These changes do not introduce compulsory payments into a mainstream bank account. The Department will continue to only pay into these accounts by prior arrangement with claimants and this will be made clear in guidance and leaflets. However this amendment ensures that, in those rare cases where for any reason, a claimant is not prepared to open a mainstream or other account (or does not wish their benefit to be paid into such an account), a payment can be made using the Simple Payment service regardless of the claimant's agreement, as this will be the only option available.

### **Students on income-related Employment and Support Allowance**

- 3.25 An Employment and Support Allowance claimant in education is not entitled to income-related Employment and Support Allowance. Education is defined as a course of study undertaken at an educational establishment. This places a limit on the types of training that claimants of income-related Employment and Support Allowance can take part in without it being classed as education and without losing entitlement
- 3.26 Since June 2011, Employment and Support Allowance claimants in the work-related activity group can be required to do work related activity which may involve training. This amendment ensures that the policy intention is met by amending the definition of education so that any Employment and Support Allowance work-related activity group claimant required to undertake training as part of their work related activity can do so without losing entitlement to income-related Employment and Support Allowance.

### **Amendment to the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982**

- 3.27 This amendment corrects a reference in relation to Public Health legislation.

## **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, clarify, align or update various social security Statutory Rules.
- 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 new costs on business, charities or voluntary bodies.

## **7. Financial Implications**

- 7.1 There are no significant costs to the Department to implement these proposals.

## **8. Section 24 of the Northern Ireland Act 1998**

- 8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the Rule—
- (a) is not incompatible with any of the Convention rights,
  - (b) is not incompatible with Community law,
  - (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and
  - (d) does 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 corresponding Great Britain Regulations are the Social Security (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/757). Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.