

## **EXPLANATORY MEMORANDUM**

### **THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2013**

**S.R. 2013 No. 67**

#### **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 Jobseekers (Northern Ireland) Order 1995, the Social Security (Northern Ireland) Order 1998, 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;
- 2.2 The Regulations also make amendments to:
  - the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999;

#### **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 3.22.

### **Liabe Relative Payments**

- 3.3 There is an inconsistency in the Income-related Benefits which penalises claimants who are in receipt of a liable relative payment which is paid to, or in respect of, a third party for housing costs not met by benefit. Where the third party payment is in respect of things normally expected to be covered by benefit, the intention is that it should fall within the meaning of a liable relative payment and be taken into account.
- 3.4 The problem arises where the claimant's ex-partner is making payments in respect of the claimant's housing costs for items *not* covered by benefit. Such payments are currently taken into account in full. The effect is that the claimant may have insufficient income remaining for essential living costs.
- 3.5 To ensure consistency with the other parts of the regulations dealing with the treatment of income and third party payments, an amendment is required to the relevant regulations to clarify that third party payments made by liable relatives for housing costs should only be taken into account where these are costs for which benefit is payable.

### **Jobseeker's Allowance - Hardship**

- 3.6 In deciding whether someone is in hardship the total resources available to the family are compared with the amount of hardship payment that would be payable. This is an issue because since the introduction of tax credits in 2006, the Jobseeker's Allowance hardship rate payable is set by reference to the benefit entitlement of the adult members of the household. However, benefits for dependants such as Child Benefit and Child Tax Credit are included in the calculation of total resources available.
- 3.7 The unintended effect is that claimants with children may be excluded from hardship payments where the amount of Jobseeker's Allowance payable for a claimant or a claimant and partner is lower than that of the total weekly amount of benefit paid for children.
- 3.8 Regulations need to be updated so that Child Benefit and Child Tax Credit payments are excluded when the comparison with the Jobseeker's Allowance hardship rate is made

### **Social Fund Payments**

- 3.9 An omission needs to be corrected in the Housing Benefit State Pension Credit Regulations, to ensure that payment of arrears of any Social Fund as capital are fully disregarded, in line with current policy for all the income-related benefits.

### **Non-dependant deduction**

- 3.10 Where a claimant has housing costs, any non-dependant in the household is normally expected to contribute towards those costs, and the amount of housing costs allowed to the claimant is reduced by virtue of ‘non-dependant deductions’.
- 3.11 There are inconsistencies in the drafting of the provisions in Income Support, Jobseeker’s Allowance and State Pension Credit compared with their equivalents in Housing Benefit and Employment and Support Allowance which means the former does not fully reflect the policy intention. The effect of this inconsistency is that in Income Support, Jobseeker’s Allowance and State Pension Credit no deduction would be made in respect of non-dependants aged under 25 who get either income-related Employment and Support Allowance or contributory Employment and Support Allowance in the assessment phase.
- 3.12 The policy intention is that no deduction should be made in respect of a non-dependant aged under 25 who is receiving income-related Employment and Support Allowance at the assessment phase rate. However, a deduction should be made where the under 25 non-dependant is receiving contributory Employment and Support Allowance or National Insurance credits if they are not otherwise entitled to Employment and Support Allowance. In order to ensure consistency of treatment in relation to non-dependants that are under 25 the relevant regulations are amended to refer to income-related Employment and Support Allowance rather than Employment and Support Allowance.

### **Housing benefit for prisoners**

- 3.13 Regulations permit the continued payment of Housing Benefit for temporary absence from the home in certain circumstances. For claimants serving a prison sentence, Housing Benefit is payable for a maximum of 13 weeks, provided that the absence is unlikely to exceed 13 weeks, the claimant intends to return to their home, and the property is not sub-let. There is similar provision for remand prisoners, but with a more generous maximum of 52 weeks.
- 3.14 The Upper Tribunal have considered how these temporary absence rules should operate when a Housing Benefit claimant was simultaneously remanded while serving a sentence for another offence. The Tribunal interpreted the regulations as meaning that a claimant in this situation would be entitled to the more generous 52 week provision for remand prisoners, even though they are also serving a prison sentence.
- 3.15 An amendment is required to provide that, in such cases, a claimant should only receive Housing Benefit for a maximum of 13 weeks, as with sentenced prisoners who are not remanded for another offence. Otherwise claimants who are more prolific offenders, and therefore more likely to be sentenced and remanded for different offences, would be treated more

generously than sentenced prisoners who are not being prosecuted for any other crime.

### **Housing Benefit - Employment and Support Allowance credits only**

- 3.16 Claimants who have limited capability for work are entitled to a class 1 national insurance credit even where they are not entitled to an award of Employment and Support Allowance. These claimants are referred to as ‘credits-only cases.’ This helps maintain their National Insurance contribution record and access back to work support. Credits only claimants still have to complete a limited capability for work questionnaire, participate in the Work Capability Assessment and when required attend medical assessments.
- 3.17 Where a credits-only claimant is on Housing Benefit, the intention is that those who are placed in the work-related activity group or the support group should be entitled to the corresponding component within the calculation of their Housing Benefit applicable amounts. However, the Housing Benefit Regulations do not currently provide for this and an amendment is required to correct the position.

### **State Pension Credit – re-instatement week for severe disability**

- 3.18 Where Attendance Allowance or Disability Living Allowance payable to a claimant on State Pension Credit is suspended due to hospitalisation, the additional amount within their State Pension Credit is also suspended. The Attendance Allowance or Disability Living Allowance is re-instated once they are discharged. However, the additional amount for severe disability is only reinstated from the first day of the following benefit week in advance pay cases. This is unintended.
- 3.19 An amendment is required to the Decisions and Appeals Regulations to maintain the policy that where payment of Attendance Allowance or Disability Living Allowance is reinstated, the additional amount for severe disability is awarded from the first day of that benefit week. Also, regulations need a further amendment to ensure that this applies equally where the claimant’s partner, if any, is awarded Attendance Allowance or Disability Living Allowance.

## **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 2013 (S.I. 2013/XXX). 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.