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STATUTORY RULES OF NORTHERN IRELAND

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**2017 No. 28**

**WELFARE**

**The Welfare Supplementary Payment  
(Amendment) Regulations (Northern Ireland) 2017**

*Laid before the Assembly in draft*

*Made - - - - 23rd January 2017*

*Coming into operation - 6th February 2017*

The Department for Communities makes the following Regulations in exercise of the powers conferred by Article 137 of the Welfare Reform (Northern Ireland) Order 2015(1), and now vested in it(2).

In accordance with Article 137(5) of that Order, a draft of these Regulations has been laid before and approved by a resolution of the Assembly.

**PART 1**

**INTRODUCTION**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Welfare Supplementary Payment (Amendment) Regulations (Northern Ireland) 2017.

(2) These Regulations come into operation on 6th February 2017.

**Amendments to welfare supplementary payment regime**

2. These Regulations amend the welfare supplementary payment regime as follows—

- (a) Part 2 makes provision for the recovery of overpayments of welfare supplementary payments,
- (b) Part 3 makes amendments to welfare supplementary payments in respect of the benefit cap,
- (c) Part 4 makes amendments to welfare supplementary payments in respect of contributory employment and support allowance,

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(1) [S.I. 2015/2006 \(N.I.1\)](#); Article 137 was amended by Article 18 of the Welfare Reform and Work (Northern Ireland) Order 2016 ([S.I. 2016/999 \(N.I. 1\)](#))

(2) See Article 8(b) of [S.R. 1999 No. 481](#) and section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I))

- (d) Part 5 makes amendments to welfare supplementary payments in respect of loss of disability-related premiums,
- (e) Part 6 makes amendments to welfare supplementary payments in respect of loss of carer payments, and
- (f) Part 7 makes amendments to welfare supplementary payments in respect of loss of disability living allowances.

### **Non-retrospective effect of provisions terminating or reducing welfare supplementary payment**

3. Where an amendment made by these Regulations would have the effect of terminating or reducing a welfare supplementary payment to which a person is entitled, that termination or reduction only has effect from the date on which the amendment comes into operation.

## **PART 2**

### **RECOVERY OF OVERPAYMENT OF WELFARE SUPPLEMENTARY PAYMENTS**

#### **Application of this Part**

4.—(1) This Part applies where welfare supplementary payments are paid in excess of what a person is entitled to (in this Part “an overpayment”).

(2) In this Part “welfare supplementary payment” means—

- (a) welfare supplementary payment under the Welfare Supplementary Payments Regulations (Northern Ireland) 2016(3),
- (b) welfare supplementary payment under the Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016(4),
- (c) welfare supplementary payment under the Welfare Supplementary Payment (Loss of Disability-Related Premiums) Regulations (Northern Ireland) 2016(5),
- (d) welfare supplementary payment under the Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations (Northern Ireland) 2016(6).

#### **Interpretation of this Part**

5. In this Part—

“the 1998 Order” means the Social Security (Northern Ireland) Order 1998(7),

“the 2015 Order” means the Welfare Reform (Northern Ireland) Order 2015,

“outstanding amount”, see regulation 7,

“overpayment” means welfare supplementary payment paid in excess of entitlement,

“relevant social security benefit” has the same meaning as in section 115CA of the Administration Act(8).

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(3) S.R. 2016 No. 178; as amended by S.R. 2016 No. 389

(4) S.R. 2016 No. 253

(5) S.R. 2016 No. 254

(6) S.R. 2016 No. 250

(7) S.I. 1998/1506 (N.I. 10)

(8) 1992 c.8; section 115CA was inserted by paragraph 8 of Schedule 6 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4) and amended by section 1(7) and (8) of the Social Security Fraud Act (Northern Ireland) 2001

### **Circumstances in which overpayment may be recovered**

6.—(1) The Department may recover an amount of overpayment in each of the following four cases.

(2) The first case is where—

- (a) a person, whether fraudulently or otherwise, misrepresents or fails to disclose a material fact in connection with the person's welfare supplementary payment or the person's claim for a relevant social security benefit, and
- (b) in consequence of that misrepresentation or failure, the person receives an overpayment.

(3) The second case is where—

- (a) a person fails to provide notification of a change of circumstances affecting entitlement to welfare supplementary payment, or does so only after an unreasonable delay, and
- (b) in consequence of that failure or delay, the person receives an overpayment.

(4) The third case is where—

- (a) a mistake, whether in the form of an act or omission, is made in a person's case by the Department or by an officer or a person providing services to the Department, and
- (b) in consequence of that mistake, the person receives an overpayment.

(5) The fourth case is where—

- (a) welfare supplementary payment is awarded in respect of a decision to reduce or remove entitlement to a relevant social security benefit,
- (b) there is—
  - (i) a revision of this decision under Article 10 of the 1998 Order<sup>(9)</sup>,
  - (ii) a supersession of this decision under Article 11 of the 1998 Order<sup>(10)</sup>, or
  - (iii) an appeal against this decision under Article 13 of the 1998 Order<sup>(11)</sup>,
- (c) on revision, supersession or appeal, the person is awarded that relevant social security benefit or the amount of the relevant social security benefit that the person is entitled to increases, and
- (d) in consequence, it transpires that the amount of welfare supplementary payment received was in excess of entitlement.

(6) The first and second case apply whether or not there has been a right of appeal under Article 13(4) of the 1998 Order in respect of any relevant social security benefit, entitlement to which is linked to the welfare supplementary payment.

### **Means of recovery**

7.—(1) An amount recoverable may be recovered—

- (a) by means of deduction from certain supplementary payments under regulation 9,

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(c. 17), paragraph 12 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14), Schedule 6 to the Tax Credits Act 2002 (c. 21), paragraph 4(11) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 (c. 2), paragraph 13 of Schedule 12 and paragraph 26 of Schedule 16 to the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.)) and paragraph 13 of Schedule 2, paragraph 11 of Schedule 9 and Part 1 of Schedule 12 to the Welfare Reform (Northern Ireland) Order 2015

(9) Article 10 was amended by Part 7 of Schedule 12 to the Welfare Reform (Northern Ireland) Order 2015

(10) Article 11 was amended by paragraph 17(a) of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and by Part 7 of Schedule 12 to the Welfare Reform (Northern Ireland) Order 2015

(11) Article 13 was amended by paragraphs 19 and 20 of Schedule 6 to, and Schedule 9 to, the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671), Articles 107 and 109 of the Welfare Reform (Northern Ireland) Order 2015 and Article 4(2) of the Tax Credits, Child Benefit and Guardian's Allowance Reviews and Appeals Order 2014 (S.I. 2014/886) and applied by section 14(6) of the Justice Act (Northern Ireland) 2016 (c.21 (N.I.))

- (b) in so far as the outstanding amount is not recovered under regulation 9, by means of deduction from benefits under regulation 10,
- (c) in so far as the outstanding amount is not recovered under regulations 9 and 10, by means of deduction from earnings under regulation 11, and
- (d) in so far as the outstanding amount is not recovered under regulations 9, 10 and 11, by means of action taken in court under regulation 12.

(2) In addition, where the Department may recover an overpayment by virtue of the fourth case in regulation 6, the amount recoverable may be recovered by means of deduction from back-dated payments awarded under regulation 13.

(3) In this Part “the outstanding amount” means, in relation to an amount recoverable, the amount which for the time being remains to be recovered.

### **Persons from whom overpayments may be recovered**

8.—(1) This regulation applies where there has been an overpayment in respect of a person (A).

(2) If payment is made to A, the amount recoverable is only recoverable from A.

(3) If payment is made to a person appointed under regulation 33 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(12), then the amount recoverable is recoverable from—

- (a) A, and
- (b) the person appointed.

(4) If payment is made to a person that A has nominated under regulation 91(3) of the Housing Benefit Regulations (Northern Ireland) 2006(13), then the amount recoverable is recoverable from—

- (a) A, and
- (b) the person nominated.

(5) If payment is made to A’s landlord or A’s landlord’s agent, then the amount recoverable is only recoverable from the landlord or the landlord’s agent, as the case may be.

(6) In a case where payment is made to—

- (a) a joint-claim couple under regulation 14 or 15 of the Welfare Supplementary Payment (Loss of Disability-Related Premiums) Regulations (Northern Ireland) 2016, or
- (b) a joint claim: couples under regulation 28 of those Regulations,

the amount recoverable is recoverable from both members of that couple.

### **Deduction from certain supplementary payments**

9.—(1) The Department may, in the case of a person from whom an amount is recoverable, recover the outstanding amount by making deductions from—

- (a) such amounts of welfare supplementary payment as are still to be paid in that person’s case, and
- (b) in so far as the outstanding amount is not recovered by using the method under subparagraph (a), such amounts of housing supplementary payment as are still to be paid in that person’s case.

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(12) S.R. 1987 No. 465; relevant amending Regulations are S.R. 1992 No. 7, S.R. 2002 No. 297, S.R. 2005 No. 46 and S.R. 2006 No. 407

(13) S.R. 2006 No. 405

(2) When acting under paragraph (1) in a case where the outstanding amount is less than the total of the amounts referred to in sub-paragraph (a) or (b) (as the case may be), the Department must continue to pay the amounts in question until that total is equal to the outstanding amount.

(3) In this regulation “housing supplementary payment” means a payment under Article 137A of the 2015 Order<sup>(14)</sup>.

### **Deductions from benefits**

**10.**—(1) The Department may, in the case of a person from whom an amount is recoverable, recover the outstanding amount (subject to regulation 7(1)(b)) by making deductions from such amounts as are payable by way of relevant benefit in that person’s case.

(2) Each of the benefits listed in Schedule 1 is a “relevant benefit”.

(3) In the case of a relevant benefit which is income-related, a deduction under this regulation may, for any week for which the benefit is payable in that person’s case, be made at the rate of not more than 3 times 5% of the relevant personal allowance (see paragraph (6)).

(4) In the case of a relevant benefit which is not income-related, a deduction under this regulation may, for any week for which the benefit is payable in that person’s case, be made at the rate of not more than one-third of the amount of the benefit that is applicable to that person.

(5) Each of the following relevant benefits is “income-related”—

- (a) income support,
- (b) income-based jobseeker’s allowance,
- (c) contribution-based jobseeker’s allowance, in a case where if there were no entitlement to it there would be an entitlement to income-based jobseeker’s allowance,
- (d) income-related employment and support allowance,
- (e) contribution-related employment and support allowance, in a case where if there no entitlement to it there would be an entitlement to income-related employment and support allowance,
- (f) state pension credit.

(6) “Relevant personal allowance” means the amount for the time being specified in paragraph 1(1)(e) of column (2) of Schedule 2 to the Income Support (General) Regulations 1987<sup>(15)</sup>; and where 5% of that allowance is not a multiple of 5 pence, it is to be rounded up to the next higher multiple of 5 pence.

(7) A reference to contribution-based or income-based jobseeker’s allowance is to be construed in accordance with the Jobseekers Order<sup>(16)</sup>.

(8) A reference to contribution-related or income-related employment support allowance is to be construed in accordance with Part 1 of the Welfare Reform Act (Northern Ireland) 2007<sup>(17)</sup>.

(9) A reference to state pension credit is to be construed in accordance with the State Pension Credit Act (Northern Ireland) 2002<sup>(18)</sup>.

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<sup>(14)</sup> Article 137A was inserted by Article 19 of the Welfare Reform and Work (Northern Ireland) Order 2016 (S.I. 2016/999 (N.I. 1))

<sup>(15)</sup> S.R. 1987 No. 459; relevant amending Regulations are S.R. 1988 No. 318 and S.R. 1990 No. 213

<sup>(16)</sup> S.I. 1995/2705 (N.I. 15); relevant amending provisions are paragraphs 3 and 4 of Schedule 7, and Part V of Schedule 10, to S.I. 1997/3147 (N.I. 11), paragraph 102 of Schedule 6 to S.I. 1998/1506 (N.I. 10), paragraph 46 of Schedule 1 to 2002 c.19, 2004 c.33, paragraph 6(3) of Schedule 3 to 2007 c. 2 (N.I.), sections 4 and 11 of, and paragraphs 9 and 10 of Schedule 1 to, 2010 c.13 (N.I.), Articles 50(3), 55(3) and 66 of, and paragraph 29 of Schedule 2 and Part 1 of Schedule 12 to, S.I. 2015/2006

<sup>(17)</sup> 2007 c. 2 (N.I.)

<sup>(18)</sup> 2002 c. 14 (N.I.)

(10) A reference to income support is to be construed in accordance with section 122 of the Contributions and Benefits Act(19).

#### **Deduction from earnings**

11.—(1) The Department may, in the case of a person from whom an amount is recoverable, recover the outstanding amount (subject to regulation 7(1)(c)) by means of deduction made by the person’s employer from the person’s earnings.

(2) Schedule 2 makes further provision for the purposes of this regulation.

#### **Court action**

12.—(1) The Department may, in the case of a person from whom an amount is recoverable, recover the outstanding amount (subject to regulation 7(1)(d)) by means of court action taken under this regulation.

(2) The outstanding amount is, if a county court so orders, recoverable as if it were payable under an order of the court.

(3) Any costs of the Department in recovering the outstanding amount under this regulation may be recovered by the Department as if those costs were themselves part of the outstanding amount.

#### **Off-setting in the case of awards of benefit back-dated on appeal**

13.—(1) This regulation applies where the Department may recover an overpayment by virtue of the fourth case in regulation 6.

(2) In addition to the means set out above, the Department may recover the outstanding amount by making deductions from that portion of the amount of relevant social security benefit awarded on the revision, supersession or appeal (as the case may be) which represents back-dated benefit to which the person was entitled.

## **PART 3**

### **AMENDMENTS TO WELFARE SUPPLEMENTARY PAYMENTS IN RESPECT OF THE BENEFIT CAP**

#### **Amendments to the Welfare Supplementary Payments Regulations**

14. The Welfare Supplementary Payments Regulations (Northern Ireland) 2016 are amended in accordance with this Part.

#### **Amendment of the definition of welfare benefit**

15. In regulation 3(1), for the definition of “welfare benefit” substitute ““welfare benefit” has the same meaning as in Article 101(7) of the 2015 Order(20);”.

#### **Timing of payments**

16. For regulation 4(7) substitute—

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(19) 1992 c. 7; section 122 was amended by Schedule 6 to the Tax Credits Act 2002 (c.21)

(20) Article 101(7) was substituted by Article 5(4) of the Welfare Reform and Work (Northern Ireland) Order 2016 (S.I. 2016/999 (N.I. 1))

“(7) A welfare supplementary payment to which a person is entitled under this regulation must be paid—

- (a) in a case where the person’s landlord is the Northern Ireland Housing Executive, every four weeks, or as soon as is reasonably practicable after that, in arrears,
- (b) in any other case, every four weeks, at the time that housing benefit is paid to that person, in arrears.”.

#### **Effective date of change in circumstances**

17. After regulation 4A(21) insert—

##### **“Effective date of change of circumstances**

**4B.**—(1) This regulation applies where, as a consequence of a change of circumstances as set out in regulation 4A(3), there is a change in the amount of welfare supplementary payment to which a person is entitled.

(2) The effective date of that change of circumstances, for the purpose of calculating the person’s entitlement to welfare supplementary payment, is the date on which the change in the person’s award of housing benefit takes effect.”.

#### **Persons to whom welfare supplementary payments may be made**

18.—(1) In regulation 4 omit paragraphs (8) and (9).

(2) After regulation 4B insert—

##### **“Persons to whom welfare supplementary payments may be made**

**4C.**—(1) A welfare supplementary payment to which a person (A) is entitled under this Part must be paid to A, but this is subject to the following.

(2) Payment may be made to A’s landlord if—

- (a) A’s housing benefit is paid to the landlord, and
- (b) the landlord is—
  - (i) registered under regulation 3 of the Landlord Registration Scheme Regulations (Northern Ireland) 2014(22),
  - (ii) the Northern Ireland Housing Executive, or
  - (iii) a housing association.

(3) Payment may be made to A’s landlord’s agent if—

- (a) A’s housing benefit is paid to the agent, and
- (b) the landlord is registered under regulation 3 of the Landlord Registration Scheme Regulations (Northern Ireland) 2014.

(4) Payment may be made to a person that A has nominated (other than A’s landlord, or A’s landlord’s agent) in accordance with regulation 91(3) of the Housing Benefit Regulations.”.

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(21) Regulation 4A was inserted by regulation 2(3) of S.R. 2016 No. 389

(22) S.R. 2014 No. 9; to which there are amendments not relevant to these Regulations

### **Termination of welfare supplementary payment if person ceases to be entitled to housing benefit**

19. After regulation 4C insert—

#### **“Termination of welfare supplementary payment if person ceases to be entitled to housing benefit**

**4D.**—(1) This regulation applies where a person ceases to be entitled to housing benefit.

(2) Welfare supplementary payment under this Part must cease to be paid from the day after the first payment of welfare supplementary payment following the date on which the person ceases to be entitled to housing benefit.

(3) Provided that—

(a) housing benefit only ceased before the date the new benefit cap is applied to the person, and

(b) housing benefit does not cease after this date,

this regulation does not prevent a person’s entitlement to welfare supplementary payment restarting if the person meets the eligibility conditions set out in regulation 4 on the date the new benefit cap is applied to the person.”.

### **Termination of welfare supplementary payment if person ceases to be affected by benefit cap**

20. After regulation 4D insert—

#### **“Termination of welfare supplementary payment if person ceases to be affected by benefit cap**

**4E.**—(1) This regulation applies where the housing benefit to which a person is entitled ceases to be reduced in accordance with regulation 73D of the Housing Benefit Regulations(23).

(2) Welfare supplementary payment under this Part must cease to be paid from the day after the first payment of welfare supplementary payment following the date on which the person’s housing benefit ceases to be reduced.”.

### **Entitlement to welfare supplementary payment where couple separates**

21. After regulation 4E insert—

#### **“Entitlement to welfare supplementary payment where couple separates**

**4F.**—(1) Paragraph (2) applies where—

(a) A and B were a couple,

(b) on or after 31 May 2016, A and B ceased to be a couple, and

(c) immediately before that, either the couple or A were entitled to a welfare supplementary payment under this Part.

(2) Where this paragraph applies, regulation 4(2)(a) is to be treated as being satisfied in respect of B on the date that A and B cease to be a couple.

(3) Paragraph (4) applies where—

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(23) Regulation 73D was inserted by regulation 3(5) of [S.R. 2016 No. 55](#)

- (a) A and B were a couple,
  - (b) on or after 31 May 2016, A and B ceased to be a couple, and
  - (c) immediately before that, either the couple or A were entitled to a welfare benefit.
- (4) Where this paragraph applies, then for the purposes of regulation 4(2)(a), B is to be treated as if B was entitled to that welfare benefit from the date that the couple or A were entitled to it.”.

### **Effect of sanctions**

22. After regulation 4F insert—

#### **“Effect of sanctions**

**4G.** For the avoidance of doubt, where a person is subject to a benefit sanction (for example for failure to take part in a work-focused interview), the effect of the sanction is to be disregarded in calculating the amount of welfare supplementary payment payable.”.

### **Information sharing**

23. After regulation 4G insert—

#### **“Information sharing**

**4H.—**(1) The Northern Ireland Housing Executive may supply to the Department such information as the Department may require for the purposes of functions relating to the payment and administration of welfare supplementary payments.

(2) The Department may supply to the Northern Ireland Housing Executive such information relating to the payment of welfare supplementary payments as the Northern Ireland Housing Executive may require for the purposes of reconciling its accounts.

(3) Information supplied under this regulation must not be supplied by the recipient of the information to any other person or body without—

- (a) the authority of the Northern Ireland Housing Executive, in the case of information supplied under paragraph (1),
- (b) the authority of the Department, in the case of information supplied under paragraph (2).

(4) Where information supplied under this regulation has been used for the purposes for which it was supplied, it is lawful for it to be used for any purposes for which information held for those purposes could reasonably be used.

(5) This regulation does not limit the circumstances in which information may be supplied apart from this regulation.”.

## PART 4

### AMENDMENTS TO WELFARE SUPPLEMENTARY PAYMENTS IN RESPECT OF CONTRIBUTORY EMPLOYMENT AND SUPPORT ALLOWANCE

#### **Amendments to the Welfare Supplementary Payments Regulations**

24. The Welfare Supplementary Payments Regulations (Northern Ireland) 2016 are amended in accordance with this Part.

#### **Meaning of limited capability for work**

25. In regulation 7, for paragraph (4) substitute—

“(4) In paragraph (3) “limited capability for work credit” refers to a credit under regulation 8B(1) of the Social Security (Credits) Regulations (Northern Ireland) 1975<sup>(24)</sup> where paragraph (2)(a)(iva) of that regulation applies and which follows the cessation of the entitlement to contributory employment and support allowance as a consequence of section 1A of the WRA 2007<sup>(25)</sup>.”.

#### **Effect of sanctions**

26. After regulation 8 insert—

##### **“Effect of sanctions**

8A. For the avoidance of doubt, where a person is subject to a benefit sanction (for example for failure to take part in a work-focused interview), the effect of the sanction is to be disregarded in calculating the amount of welfare supplementary payment payable.”.

#### **Effective date of change in circumstances**

27. After regulation 9 insert—

##### **“Effective date of change of circumstances**

9A.—(1) This regulation applies where, as a consequence of a change of circumstances as set out in regulation 9, there is a change in the amount of welfare supplementary payment to which a person is entitled (including a termination in entitlement to welfare supplementary payment).

(2) The effective date of that change of circumstances, for the purpose of calculating the person’s entitlement to welfare supplementary payment, is the date on which the change in the person’s award of income-related employment and support allowance or contributory employment and support allowance (as the case may be) takes effect.”.

#### **Persons to whom welfare supplementary payments may be made**

28. After regulation 10 insert—

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(24) S.R. 1975 No. 113; regulation 8B was inserted by regulation 2(6) of S.R. 1996 No. 430, relevant amending Regulations are S.R. 2000 No. 404, S.R. 2003 No. 151, S.R. 2008 No. 286, S.R. 2010 No. 109 and 2016 No. 175

(25) Section 1A was inserted by Article 57 of the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1)) and is subject to commencement by Article 3 of S.R. 2016 No. 166 (C. 11)

**“Persons to whom welfare supplementary payments may be made**

**10A.**—(1) A welfare supplementary payment to which a person is entitled under this Part must be paid to the person, but this is subject to paragraph (2).

(2) Payment may be made to a person appointed under regulation 33 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987~~(26)~~.”.

**Information sharing**

**29.** After regulation 10A insert—

**“Information sharing**

**10B.**—(1) The Department may supply to the Commissioners for Her Majesty’s Revenue and Customs such information as they may require for the purposes of HMRC functions.

(2) Information supplied under this regulation must not be supplied by the recipient of the information to any other person or body without the authority of the Department.

(3) Where information supplied under this regulation has been used for the purposes for which it was supplied, it is lawful for it to be used for any purposes for which information held for those purposes could reasonably be used.

(4) This regulation does not limit the circumstances in which information may be supplied apart from this regulation.

(5) In this regulation “HMRC functions” means any function—

(a) for which the Commissioners for Her Majesty’s Revenue and Customs are responsible by virtue of section 5 of the Commissioners for Revenue and Customs Act 2005~~(27)~~, or

(b) which relates to a matter listed in Schedule 1 to that Act~~(28)~~.”.

**PART 5**

**AMENDMENTS TO WELFARE SUPPLEMENTARY PAYMENTS  
IN RESPECT OF LOSS OF DISABILITY-RELATED PREMIUMS**

**Amendments to the Welfare Supplementary Payment (Loss of Disability-Related Premiums) Regulations**

**30.** The Welfare Supplementary Payment (Loss of Disability-Related Premiums) Regulations (Northern Ireland) 2016~~(29)~~ are amended in accordance with this Part.

**Definition of welfare benefit**

**31.** In regulation 2(1) insert in the appropriate place in alphabetical order—

““welfare benefit” has the same meaning as in Article 101(7) of the 2015 Order;”.

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~~(26)~~ S.R. 1987 No. 465; relevant amending Regulations are S.R. 1992 No. 7, S.R. 2002 No. 297, S.R. 2005 No. 46 and S.R. 2006 No. 407

~~(27)~~ 2005 c.11; as amended by paragraph 20 of Schedule 3 to, and Part 1 of Schedule 14 to, the Welfare Reform Act 2012 (c.5) and modified by sections 1(7)(a) and 7(8)(a) of the Borders, Citizenship and Immigration Act 2009 (c.11)

~~(28)~~ Schedule 1 was amended by paragraph 61 of Schedule 1 to the Work and Families Act 2006 (c. 18), Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5) and paragraph 64 of Schedule 7 to the Children and Families Act 2014 (c. 6)

~~(29)~~ S.R. 2016 No. 254

## Entitlement to welfare supplementary payment where couple separates

32. After regulation 38 insert—

### “PART 6A

#### WELFARE SUPPLEMENTARY PAYMENT WHERE A COUPLE SEPARATES

##### Application of this Part

**38A.**—(1) This Part applies where—

- (a) A and B were a couple,
- (b) on or after 20 July 2016, A and B ceased to be a couple, and
- (c) immediately before that, A was entitled to welfare supplementary payment under Parts 2 to 6.

(2) In this Part, the welfare supplementary payment to which A was entitled is referred to as “the old WSP”.

##### Disability premium

**38B.**—(1) This regulation applies where the old WSP was in respect of a disability premium.

(2) In this regulation, a disability premium means—

- (a) disability premium under paragraph 11 of Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987<sup>(30)</sup>,
- (b) disability premium under paragraph 13 of Schedule 1 to the Jobseeker’s Allowance Regulations (Northern Ireland) 1996<sup>(31)</sup>, or
- (c) disability premium under paragraph 20G of Schedule 1 to the Jobseeker’s Allowance Regulations (Northern Ireland) 1996<sup>(32)</sup>.

(3) If both A and B met—

- (a) the PIP refusal condition, and
- (b) the loss of disability premium condition,

then A and B are each separately entitled to welfare supplementary payment (under the Part to which A was originally entitled to welfare supplementary payment) when they cease to be a couple.

(4) Where paragraph (3) applies, the amount of welfare supplementary payment payable to each A and B is equal to half the old WSP.

(5) If only one member of the couple (“the eligible member”) met—

- (a) the PIP refusal condition, and
- (b) the loss of disability premium condition,

then only the eligible member is entitled to welfare supplementary payment (under the Part to which A was originally entitled to welfare supplementary payment) when they cease to be a couple.

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<sup>(30)</sup> S.R. 1987 No. 459; as amended by S.R. 2003 No. 191, S.R. 2003 No. 413, S.R. 2007 No. 154 and S.R. 2010 No. 103

<sup>(31)</sup> S.R. 1996 No. 198; as amended by S.R. 2007 No. 154 and S.R. 2010 No. 103

<sup>(32)</sup> Paragraph 20G was inserted by paragraph 53(4) of Schedule 2 to S.R. 2000 No. 350 and amended by S.R. 2007 No. 154 and S.R. 2010 No. 103

(6) Where paragraph (5) applies, then immediately after A and B cease to be a couple, the amount of welfare supplementary payment payable to the eligible member is equal to the old WSP.

(7) Where paragraph (5) applies, then when the eligible member makes an application for a welfare benefit as a single person, the amount of welfare supplementary payment payable to the eligible member is equal to the amount of disability premium which would have been payable to the eligible member on the transition date if the eligible member had not been a member of a couple on the date entitlement to the premium was lost.

(8) The PIP refusal condition is that following a transitional assessment determination, the person is refused personal independence payment, or the component of personal independence payment, that is a condition for entitlement to disability premium.

(9) The loss of disability premium condition is that, in consequence of the PIP refusal condition, the decision of the Department to award disability premium is superseded by a decision to not award disability premium.

### **Enhanced disability premium**

**38C.**—(1) This regulation applies where the old WSP was in respect of an enhanced disability premium.

(2) In this regulation, an enhanced disability premium means—

- (a) enhanced disability premium under paragraph 13A of Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987(**33**),
- (b) enhanced disability premium under paragraph 15A of Schedule 1 to the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(**34**),
- (c) enhanced disability premium under paragraph 20IA of Schedule 1 to the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(**35**), or
- (d) enhanced disability premium under paragraph 7 of Schedule 4 to the Employment and Support Allowance Regulations (Northern Ireland) 2008(**36**).

(3) If both A and B met—

- (a) the PIP refusal condition, and
- (b) the loss of enhanced disability premium condition,

then A and B are each separately entitled to welfare supplementary payment (under the Part to which A was originally entitled to welfare supplementary payment) when they cease to be a couple.

(4) Where paragraph (3) applies, the amount of welfare supplementary payment payable to each A and B is equal to half the old WSP.

(5) If one member of the couple (“the eligible member”) met—

- (a) the PIP refusal condition, and
- (b) the loss of enhanced disability premium condition,

(33) Paragraph 13A was inserted by regulation 2(c)(ii) of S.R. 2000 No. 367 and amended by S.R. 2003 No. 195, S.R. 2007 No. 154, S.R. 2011 No. 135, S.R. 2011 No. 357 and S.I. 2013/3021

(34) Paragraph 15A was inserted by regulation 4(c)(ii) of S.R. 2000 No. 367 and amended by S.R. 2003 No. 195, S.R. 2007 No. 154, S.R. 2011 No. 135, S.R. 2011 No. 357, S.I. 2013/3021 and S.R. 2016 No. 228

(35) Paragraph 20IA was inserted by regulation 4(c)(v) of S.R. 2000 No. 367 and amended by S.R. 2007 No. 154, S.R. 2010 No. 103, S.I. 2013/3021 and S.R. 2016 No. 228

(36) S.R. 2008 No. 280 as amended by S.I. 2013/3021 and S.R. 2016 No. 228

then only the eligible member is entitled to welfare supplementary payment (under the Part to which A was originally entitled to welfare supplementary payment) when they cease to be a couple.

(6) Where paragraph (5) applies, then immediately after A and B cease to be a couple, the amount of welfare supplementary payment payable to the eligible member is equal to the old WSP.

(7) Where paragraph (5) applies, then when the eligible member makes an application for a welfare benefit as a single person, the amount of welfare supplementary payment payable to the eligible member is equal to the amount of enhanced disability premium which would have been payable to the eligible member on the transition date if the eligible member had not been a member of a couple on the date entitlement to the premium was lost.

(8) The PIP refusal condition is that following a transitional assessment determination, the person is refused personal independence payment, or the component of personal independence payment, that is a condition for entitlement to enhanced disability premium.

(9) The loss of enhanced disability premium condition is that, in consequence of the PIP refusal condition, the decision of the Department to award enhanced disability premium is superseded by a decision to not award enhanced disability premium.

### **Severe disability premium**

**38D.**—(1) This regulation applies where the old WSP was in respect of a severe disability premium.

(2) In this regulation, a severe disability premium means—

- (a) severe disability premium under paragraph 13 of Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987**(37)**,
- (b) severe disability premium under paragraph 15 of Schedule 1 to the Jobseeker's Allowance Regulations (Northern Ireland) 1996**(38)**,
- (c) severe disability premium under paragraph 20I of Schedule 1 to the Jobseeker's Allowance Regulations (Northern Ireland) 1996**(39)**,
- (d) severe disability premium under paragraph 6 of Schedule 4 to the Employment and Support Allowance Regulations (Northern Ireland) 2008**(40)**, or
- (e) the additional amount (in respect of the appropriate minimum guarantee) prescribed under regulation 6(4) of the State Pension Credit Regulations (Northern Ireland) 2003**(41)** for persons treated as severely disabled persons.

(3) A and B are each separately entitled to welfare supplementary payment (under the Part to which A was originally entitled to welfare supplementary payment), when they cease to be a couple, but this is subject to paragraphs (5) and (6).

(4) Where paragraph (3) applies, the amount of welfare supplementary payment payable to each A and B is half the old WSP.

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**(37)** Paragraph 13 was amended by S.R. 1988 No.146, S.R. 1992 No.6, S.R. 1993 No. 218, S.R. 1993 No. 373, S.R. 1994 No. 327, S.R. 1994 No. 474, S.R. 2000 No. 74, S.R. 2000 No. 80, S.R. 2002 No. 323, S.R. 2007 No. 154, S.R. 2011 No. 291, S.I. 2013/3021 and S.R. 2014 No. 275

**(38)** Paragraph 15 was amended by S.R. 2000 No. 74, S.R. 2002 No.80, S.R. 2002 No. 323, S.R. 2007 No. 154, S.R. 2011 No. 291, S.I. 2013/3021, S.R. 2014 No. 275 and S.R. 2016 No. 228

**(39)** Paragraph 20I was inserted by paragraph 53(4) of Schedule 2 to S.R. 2000 No. 350 and amended by S.R. 2002 No. 80, S.R. 2002 No. 323, S.R. 2007 No. 154, S.R. 2011 No. 291, S.I. 2013/302, S.R. 2014 No. 275 and S.R. 2016 No. 228

**(40)** Paragraph 6 was amended by S.R. 2011 No. 291, S.R. 2011 No. 357, S.I. 2013/3021 and S.R. 2016 No. 228

**(41)** S.R. 2003 No. 28

(5) If a person becomes entitled to a severe disability premium in consequence of ceasing to be a member of a couple, then in accordance with regulations 10, 19, 26 or 38, that person must cease to be paid welfare supplementary payment.

(6) If A is entitled to welfare supplementary payment because B satisfies the blind condition, as set out in regulations 6(6), 13(6), 15(7), 22(6) or 34(6), as the case may be, then when A and B cease to be a couple, only A is entitled to welfare supplementary payment (under the Part to which A was originally entitled to welfare supplementary payment) when they cease to be a couple.

(7) Where paragraph (6) applies, the amount of welfare supplementary payment payable to A is equal to the old WSP.”.

### **No termination of welfare supplementary payment if conflict related welfare supplementary payment applies**

33. In regulation 39, after paragraph (2) insert—

“(2A) Paragraph (2) does not apply if the person becomes entitled to welfare supplementary payment under regulation 14 of the Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations (Northern Ireland) 2016(42) consequent upon that appeal.”.

### **Persons to whom welfare supplementary payments may be made**

34. After regulation 44 insert—

#### **“Persons to whom welfare supplementary payments may be made**

44A.—(1) A welfare supplementary payment to which a person is entitled under these Regulations must be paid to the person, but this is subject to paragraph (2).

(2) Payment may be made to a person appointed under regulation 33 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(43).”.

### **Effect of sanctions**

35. After regulation 44A insert—

#### **“Effect of sanctions**

44B. For the avoidance of doubt, where a person is subject to a benefit sanction (for example for failure to take part in a work-focused interview), the effect of the sanction is to be disregarded in calculating the amount of welfare supplementary payment payable.”.

### **Information sharing**

36. After regulation 44B insert—

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(42) S.R. 2016 No. 250

(43) S.R. 1987 No. 465; relevant amending Regulations are S.R. 1992 No. 7, S.R. 2002 No. 297, S.R. 2005 No. 46 and S.R. 2006 No. 407

**“Information sharing**

**44C.**—(1) The Department may supply to the Commissioners for Her Majesty’s Revenue and Customs such information as they may require for the purposes of HMRC functions.

(2) The Commissioners for Her Majesty’s Revenue and Customs may supply to the Department such information as the Department may require for the purposes of functions relating to the payment and administration of welfare supplementary payments.

(3) Information supplied under this regulation must not be supplied by the recipient of the information to any other person or body without—

- (a) the authority of the Department, in the case of information supplied under paragraph (1),
- (b) the authority of the Commissioners for Her Majesty’s Revenue and Customs, in the case of information supplied under paragraph (2).

(4) Where information supplied under this regulation has been used for the purposes for which it was supplied, it is lawful for it to be used for any purposes for which information held for those purposes could reasonably be used.

(5) This regulation does not limit the circumstances in which information may be supplied apart from this regulation.

(6) In this regulation “HMRC functions” means any function—

- (a) for which the Commissioners for Her Majesty’s Revenue and Customs are responsible by virtue of section 5 of the Commissioners for Revenue and Customs Act 2005, or
- (b) which relates to a matter listed in Schedule 1 to that Act.”.

## PART 6

### AMENDMENTS TO WELFARE SUPPLEMENTARY PAYMENTS IN RESPECT OF LOSS OF CARER PAYMENTS

**Amendments to the Welfare Supplementary Payment (Loss of Carer Payments) Regulations**

**37.** The Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016<sup>(44)</sup> are amended in accordance with this Part.

**Definition of couple**

**38.** In regulation 2(1) insert in the appropriate place in alphabetical order—

“couple” has the same meaning as in Article 45 of the Welfare Reform (Northern Ireland) Order 2015.”.

**Priority where claimant potentially entitled under more than one Part**

**39.** After regulation 3(3) insert—

“(4) If a person satisfies the criteria for entitlement to welfare supplementary payment under both Part 2 and Part 3, then only entitlement under Part 3 is to be applied.

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<sup>(44)</sup> S.R. 2016 No. 253

(5) If a person satisfies the criteria for entitlement to welfare supplementary payment under Part 2, Part 3 and Part 4, then only entitlement under Part 4 is to be applied.

(6) If a person satisfies the criteria for entitlement to welfare supplementary payment under Part 5 and any other Part, then only entitlement under Part 5 is to be applied.”.

#### **Change in the amount of contributory benefit**

40. After regulation 5 insert—

##### **“Change in the amount of contributory benefit**

5A.—(1) This regulation applies if there is a change in the amount of contributory benefit (within the meaning of regulation 5) that a person is entitled to.

(2) The amount of welfare supplementary payment the person is entitled to must be recalculated in accordance with the provisions set out in regulation 5.

(3) The effective date of the change in the amount of contributory benefit, for the purposes of calculating the person’s entitlement to welfare supplementary payment, is the date on which the change in the person’s award of contributory benefit takes effect.”.

#### **Date payments cease if caree ceases to receive welfare supplementary payment for loss of disability living allowance**

41. In regulation 20(2) after “cease to be paid from” insert “the day after”.

#### **Termination of welfare supplementary payment if caree awarded daily living component of personal independence payment**

42. After regulation 21 insert—

##### **“Termination of welfare supplementary payment if caree awarded daily living component of personal independence payment**

21A.—(1) This regulation applies where the caree is awarded the daily living component of personal independence payment.

(2) Welfare supplementary payment must cease to be paid from the day after the first payment of welfare supplementary payment following the date on which the caree is awarded the daily living component of personal independence payment.”.

#### **Couples: termination of welfare supplementary payment on death of carer**

43. After regulation 21A insert—

##### **“Couples: termination of welfare supplementary payment on death of carer**

21B.—(1) This regulation applies where—

- (a) A and B are a couple,
- (b) B is in receipt of welfare supplementary payment by virtue of A providing care for the caree, and
- (c) A dies.

(2) Welfare supplementary payment must cease to be paid at the expiry of 8 weeks beginning with the Sunday following the death (or beginning with the date of the death if the death occurred on a Sunday).

(3) The period of payment must not exceed the time limit set out in—

- (a) regulation 6(3),
- (b) regulation 10(3),
- (c) regulation 14(3), or
- (d) regulation 18(3).”.

#### **Time limits for termination of welfare payment on death of caree**

44. After regulation 22(2)(a) insert—

“(ab) regulation 10(3).”.

#### **Persons to whom welfare supplementary payments may be made**

45. After regulation 22 insert—

##### **“Persons to whom welfare supplementary payments may be made**

**22A.**—(1) A welfare supplementary payment to which a person is entitled under these Regulations must be paid to the person, but this is subject to paragraph (2).

(2) Payment may be made to a person appointed under regulation 33 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987.”.

#### **Effect of sanctions**

46. After regulation 22A insert—

##### **“Effect of sanctions**

**22B.** For the avoidance of doubt, where a person is subject to a benefit sanction (for example for failure to take part in a work-focused interview), the effect of the sanction is to be disregarded in calculating the amount of welfare supplementary payment payable.”.

#### **Change in the amount of welfare supplementary payment after person forms a couple**

47. After regulation 22B insert—

##### **“Change in the amount of welfare supplementary payment after person forms a couple**

**22C.**—(1) This regulation applies where a person (A) who is entitled to welfare supplementary payment under Part 2 or 4 forms a couple with another person (B).

(2) The amount of welfare supplementary payment to which A is entitled will change if case 1 or case 2 applies, otherwise it will not change solely as a consequence of A forming a couple with B.

(3) Case 1 applies if—

- (a) at the time when A forms a couple with B, B is entitled to welfare supplementary payment under Part 3 or 5, and

- (b) either A or B are or become entitled to an income-related benefit.
- (4) Case 2 applies if B is or becomes entitled to an income-related benefit.
- (5) Where case 1 or 2 applies, the amount of welfare supplementary payment to which A is entitled is reduced to the amount of welfare supplementary payment to which A would have been entitled under Part 3 if A had satisfied the conditions for payment on loss of carer premium on transition from disability living allowance to personal independence payment.
- (6) In this regulation “income-related benefit” means—
  - (a) income-based jobseeker’s allowance under the Jobseekers (Northern Ireland) Order 1995(45),
  - (b) income-related employment and support allowance under Part 1 of the Welfare Reform Act (Northern Ireland) 2007(46),
  - (c) income support under section 122 of the Contributions and Benefits Act(47),
  - (d) state pension credit under the State Pension Credit Act (Northern Ireland) 2002(48).

#### **Welfare supplementary payment (under Part 3 or 5) where a couple separates**

48. After regulation 22C insert—

##### **“Welfare supplementary payment (under Part 3 or 5) where a couple separates**

**22D.**—(1) This regulation applies where—

- (a) A and B were a couple,
  - (b) on or after 20 July 2016, A and B ceased to be a couple, and
  - (c) immediately before that, A was entitled to welfare supplementary payment under regulation 8 or regulation 16.
- (2) After they cease to be a couple, only the person by virtue of whom—
- (a) the carer premium entitlement condition was satisfied under regulation 8, or
  - (b) the additional amount (carer) entitlement condition was satisfied under regulation 16,

as the case may be, is entitled to welfare supplementary payment (under the Part to which A was originally entitled to welfare supplementary payment).”

#### **Information sharing**

49. After regulation 22D insert—

##### **“Information sharing**

**22E.**—(1) The Department may supply to the Commissioners for Her Majesty’s Revenue and Customs such information as they may require for the purposes of HMRC functions.

(2) Information supplied under this regulation must not be supplied by the recipient of the information to any other person or body without the authority of the Department.

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(45) S.I. 1995/2705 (N.I. 15))

(46) 2007 c. 2 (N.I.)

(47) 1992 c. 7; section 122 was amended by Schedule 6 to the Tax Credits Act 2002 (c. 21)

(48) 2002 c. 14 (N.I.)

(3) Where information supplied under this regulation has been used for the purposes for which it was supplied, it is lawful for it to be used for any purposes for which information held for those purposes could reasonably be used.

(4) This regulation does not limit the circumstances in which information may be supplied apart from this regulation.

(5) In this regulation “HMRC functions” means any function—

(a) for which the Commissioners for Her Majesty’s Revenue and Customs are responsible by virtue of section 5 of the Commissioners for Revenue and Customs Act 2005(49), or

(b) which relates to a matter listed in Schedule 1 to that Act(50).”.

### **Change of circumstances: residency, care home, hospital, prison**

50. After regulation 31 insert—

#### **“Change of circumstances: residency, care home, hospital, prison**

32.—(1) This regulation applies where there is a change of circumstances of a kind set out in regulations 25 to 30 which affects a person’s entitlement to welfare supplementary payment.

(2) Where it is reasonable to expect the person to do so, the person must inform the Department of this change of circumstances.

(3) For the purposes of calculating the person’s entitlement to welfare supplementary payment, the date to be used is the date on which the change of circumstances takes effect.

## **PART 7**

### **AMENDMENTS TO WELFARE SUPPLEMENTARY PAYMENTS IN RESPECT OF LOSS OF DISABILITY LIVING ALLOWANCE**

#### **Amendments to the Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations**

51. The Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations (Northern Ireland) 2016 are amended in accordance with this Part.

#### **Effective date of change of circumstances**

52.—(1) For regulation 7(2) substitute—

“(2) Welfare supplementary payment must cease to be paid from the date the decision to award personal independence payment takes effect.”.

(2) In regulation 12(2) for “from the day after the first payment of welfare supplementary payment following the decision to change personal independence payment.” substitute “from the date the decision to change personal independence payment takes effect.”.

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(49) 2005 c.11; as amended by paragraph 20 of Schedule 3 to, and Part 1 of Schedule 14 to, the Welfare Reform Act 2012 (c.5) and modified by sections 1(7)(a) and 7(8)(a) of the Borders, Citizenship and Immigration Act 2009 (c.11)

(50) Schedule 1 was amended by paragraph 61 of Schedule 1 to the Work and Families Act 2006 (c. 18), Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5) and paragraph 64 of Schedule 7 to the Children and Families Act 2014 (c. 6)

(3) In regulation 20(2) for “from the day after the first payment of welfare supplementary payment following the decision to change personal independence payment.” substitute “from the date the decision to change personal independence payment takes effect.”.

**Persons to whom welfare supplementary payments may be made**

53. After regulation 21 insert—

**“Persons to whom welfare supplementary payments may be made**

21A.—(1) A welfare supplementary payment to which a person is entitled under these Regulations must be paid to the person, but this is subject to paragraph (2).

(2) Payment may be made to a person appointed under regulation 33 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(51).”.

**Change of circumstances: residency, care home, hospital, prison**

54. After regulation 29 insert—

**“Change of circumstances: residency, care home, hospital, prison**

30.—(1) This regulation applies where there is a change of circumstances of a kind set out in regulations 23 to 29 which affects a person’s entitlement to welfare supplementary payment.

(2) Where it is reasonable to expect the person to do so, the person must inform the Department of this change of circumstances.

(3) For the purposes of calculating the person’s entitlement to welfare supplementary payment, the date to be used is the date on which the change of circumstances takes effect.

Sealed with the Official Seal of the Department for Communities on 23rd January 2017

(L.S.)

*Tommy O’Reilly*  
A senior officer of the Department for  
Communities

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(51) S.R. 1987 No. 465; relevant amending Regulations are S.R. 1992 No. 7, S.R. 2002 No. 297, S.R. 2005 No. 46 and S.R. 2006 No. 407

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## SCHEDULES

### SCHEDULE 1

Regulation 10(2)

#### RELEVANT BENEFITS

- Attendance allowance
- Bereavement allowance
- Bereavement payment
- Carer’s allowance
- Disability living allowance
- Disablement pension
- Employment and support allowance (whether contribution-related or income-related)
- Incapacity benefit
- Income support
- Industrial death benefit
- Jobseeker’s allowance (whether contribution-based or income-based)
- Maternity allowance
- Personal independence payment
- Reduced earnings allowance
- Retirement pension, either Category A or B under Part 2 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 or Category D under Part 3 of that Act.
- Severe disablement allowance **(52)**
- State pension credit
- Universal credit
- Widow’s pension
- Widowed mother’s allowance
- Widowed parent’s allowance

### SCHEDULE 2

Regulation 11(2)

#### DEDUCTION FROM EARNINGS

- 1.—(1) When acting under regulation 11, the Department must prepare a notice requiring an employer of the person from whom the outstanding amount is recoverable (“the liable person”)—
- (a) to make deductions from earnings which are payable to the liable person, and

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**(52)** Entitlement to severe disablement allowance was conferred by section 68 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) which was repealed by the Welfare Reform and Pensions (Northern Ireland) Order 1999 subject to savings in [S.R. 2000 No. 332](#) (c. 14)

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- (b) to pay corresponding amounts to the Department for application towards the discharge of the outstanding amount.
- (2) Having prepared a notice under this paragraph, the Department must give the notice to—
  - (a) the liable person, and
  - (b) the employer to whom the notice is directed.
- (3) The notice must specify—
  - (a) the full name and address of the liable person,
  - (b) the name of the employer,
  - (c) where known, the liable person’s place of work, the nature of that person’s work and any staff number, payroll number or similar identifying number,
  - (d) the liable person’s national insurance number,
  - (e) the deduction or rate of deduction to be made under paragraph 3,
  - (f) the protected earnings proportion,
  - (g) the address to which amounts paid by cheque are to be sent, and
  - (h) details of the account to which amounts paid by direct credit transfer are to be transferred.
- (4) The notice has effect from the next pay-day which falls a minimum of 22 days after the day on which it is given.

**Meaning of “earnings” etc.**

- 2.—(1) This paragraph applies for the purposes of this Schedule.
- (2) “Earnings”, in relation to the liable person, means any sum payable to the liable person by way of—
  - (a) wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary payable under a contract of service),
  - (b) pension paid with wages or salary (including an annuity in respect of past service, whether or not rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or diminution in the emoluments, of any office or employment), or
  - (c) statutory sick pay.
- (3) But a reference to earnings in relation to the liable person does not include a reference to—
  - (a) any sum payable by a public department of a territory outside the United Kingdom,
  - (b) any pay or allowance payable to the person as a member of Her Majesty’s forces other than pay or allowances payable by the employer to the person as a special member of a reserve force (within the meaning of the Reserve Forces Act 1996<sup>(53)</sup>),
  - (c) any pension, allowance or benefit payable under a statutory provision relating to social security,
  - (d) any pension or allowance payable in respect of disablement or disability,
  - (e) guaranteed minimum pension within the meaning of the Pension Schemes (Northern Ireland) Act 1993<sup>(54)</sup>,
  - (f) working tax credit payable under section 10 of the Tax Credits Act 2002<sup>(55)</sup>, or

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(53) 1996 c. 14  
(54) 1993 c. 49  
(55) 2002 c. 21

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(g) any sum paid to reimburse expenses wholly and unnecessarily incurred in the course of the employment.

(4) “Protected earnings proportion”, in relation to the liable person, means 60% of the person’s net earnings during the period to which a deduction under this Schedule relates, as calculated by the employer on the relevant pay-day.

(5) “Net earnings”, in relation to the liable person, means the residue of the person’s earnings after the deduction of—

- (a) income tax,
- (b) primary Class 1 contributions,
- (c) amounts deductible by way of contributions to a superannuation scheme which provides for the payment of annuities or lump sums—
  - (i) to the liable person on retirement at a specified age or on becoming incapacitated at some earlier age, or
  - (ii) on the liable person’s death or otherwise, to the liable person’s personal representative, widow, widower, surviving civil partner, relatives or dependants.

(6) “Pay-day”, in relation to the liable person, means an occasion on which earnings are to be paid to that person or the day on which earnings would normally fall to be paid.

**Deduction by employer: general**

3.—(1) This paragraph applies where an employer of the liable person has received a notice under paragraph 1 relating to the liable person.

(2) On each pay-day the employer must make a deduction from the net earnings which the employer would otherwise pay to the liable person on that pay-day.

(3) Where the earnings are payable weekly, the amount to be deducted is—

- (a) the percentage of net earnings specified in Table A below for the band within which the net earnings payable on the pay day in question fall, or
- (b) a lower amount calculated in the manner specified in the notice.

**Table A**

<i>Net earnings band</i>	<i>Percentage of net earnings</i>
Not exceeding £100	Nil
Exceeding £100 but not exceeding £160	3
Exceeding £160 but not exceeding £220	5
Exceeding £220 but not exceeding £270	7
Exceeding £270 but not exceeding £375	11
Exceeding £375 but not exceeding £520	15
Exceeding £520	20

(4) Where the earnings are payable monthly, the amount to be deducted is—

- (a) the percentage of net earnings specified in Table B below for the band within which the net earnings payable on the pay day in question fall, or
- (b) a lower amount calculated in the manner specified in the notice.

**Table B**

<i>Net earnings band</i>	<i>Percentage of net earnings</i>
Not exceeding £430	Nil
Exceeding £430 but not exceeding £690	3
Exceeding £690 but not exceeding £950	5
Exceeding £950 but not exceeding £1,160	7
Exceeding £1,160 but not exceeding £1,615	11
Exceeding £1,615 but not exceeding £2,240	15
Exceeding £2,240	20

(5) Where an amount determined under sub-paragraph (3) or (4) results in a fraction of a penny, that fraction is to be disregarded if it is half a penny or less; otherwise it is to be treated as a penny.

(6) The employer remains subject to the duty under sub-paragraph (2) unless and until—

(a) the employer is notified by the Department that the notice—

- (i) has been varied under paragraph 9,
- (ii) has been discharged under paragraph 10, or
- (iii) has lapsed under paragraph 11, or

(b) the employer considers that, as a result of deductions under this Schedule, the outstanding amount is nil.

#### **Deduction by employer: particular cases**

4.—(1) Where there is a pay-day (“the relevant pay-day”) on which the employer fails to deduct the amount required under paragraph 3, the employer must on the next available pay-day or pay-days deduct—

- (a) first, the amount required to be deducted, and
- (b) then, the amount which should have been deducted on the relevant pay-day.

(2) Where there is a pay-day (“the relevant pay-day”) on which the employer deducts less than the amount required under paragraph 3, the employer must on the next available pay-day or pay-days deduct—

- (a) first, the amount required to be deducted, and
- (b) second, the difference between the amount which was deducted, and the amount which should have been deducted, on the relevant pay-day.

(3) Where there is a pay-day (“the relevant pay-day”) on which the employer deducts more than the amount required under paragraph 3, the employer must on the next available pay-day or pay-days deduct only the amount required to be deducted less the difference between the amount which was deducted, and the amount which should have been deducted, on the relevant pay-day.

(4) Where a deduction under paragraph 3 would reduce the amount paid to the liable person below the protected earnings proportion, the employer must deduct only such amount as will result in the employer paying the liable person an amount equal to the protected earnings proportion.

(5) Where the employer makes a deduction on a pay-day in accordance with the notice under paragraph 1, the employer may also deduct an amount not exceeding £1 for administrative costs;

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and a deduction under this sub-paragraph may reduce the amount which the employer pays to the liable person on that pay-day below the protected earnings proportion.

#### **Notification to liable person**

- 5.—(1) The employer must notify the liable person in writing of—
- (a) the amount of a deduction under paragraph 3 or 4(1) to (3), and
  - (b) if a deduction is made under paragraph 4(5), the amount of that deduction.
- (2) A notification under this paragraph must be given no later than the pay-day on which the deduction is made or, where that is impracticable, no later than the following pay-day.
- (3) The employer must, within 28 days of receiving a written request from the liable person, provide the person with an explanation in writing of how the amount of a deduction under paragraph 3 was calculated.

#### **Payment to Department**

- 6.—(1) Where the employer makes a deduction under paragraph 3 or 4(1) to (3), the employer must pay the amount of the deduction to the Department by the 19th day of the month following that in which the deduction is made.
- (2) A payment under this paragraph may be made by cheque, direct credit transfer or such other method as the Department may permit.
- (3) The employer must keep a record of each amount paid to the Department in the case of the liable person.

#### **Information from liable person**

- 7.—(1) The liable person, having received a notice under paragraph 1, must notify the Department within 7 days of each occasion on which the person—
- (a) leaves the employment of the employer to whom the notice is directed, or
  - (b) becomes employed or re-employed.
- (2) A notification under sub-paragraph (1)(b) must include—
- (a) the name and address of the employer or employers,
  - (b) the amount of the liable person's earnings or expected earnings, and
  - (c) the liable person's place of work, the nature of the liable person's work and any staff number, payroll number or similar identifying number.

#### **Notification to Department**

- 8.—(1) Where a notice under paragraph 1 is given to a person who is believed to be the liable person's employer but is in fact not, the person receiving the notice must notify the Department of that fact in writing, at the address specified in the notice, within 10 days after the day on which the notice was given.
- (2) Where a person who is the liable person's employer is required to make deductions under a notice under paragraph 1 and the liable person ceases to be in that employment, the employer must notify the Department of that fact in writing, at the address specified in the notice, within 10 days after the day on which the liable person ceases to be in that employment.

## **Variation**

9.—(1) The Department may vary a notice under paragraph 1 so as to—

- (a) decrease an amount to be deducted under paragraph 3, or
- (b) with the agreement of the liable person, increase an amount to be deducted under paragraph 3 but only to the extent that deductions of the increased amount will result in the employer paying the liable person an amount more than, or equal to, the protected earnings proportion.

(2) Where a notice under paragraph 1 is varied under this paragraph, paragraph 1 applies to the notice as varied as it applies to the original notice; and a reference in this Schedule to the notice is a reference to the notice as varied.

(3) Where a notice as varied is given under paragraph 1, the employer who is liable to make deductions under the notice must comply with the notice as varied from the day it takes effect under that paragraph.

## **Discharge**

10.—(1) The Department must discharge a notice under paragraph 1 if the outstanding amount is paid.

(2) The Department may discharge a notice under paragraph 1 if—

- (a) it appears to the Department that the notice is defective,
- (b) it appears to the Department that the notice is ineffective or that some other method of recovering the outstanding amount would be more effective, or
- (c) the liable person agrees with the Department to pay the outstanding amount by another method.

(3) A notice may be regarded as defective for the purposes of sub-paragraph (2)(a) where—

- (a) it fails to comply with paragraph 1(2), and
- (b) that failure has made it impracticable for the employer to comply with the duties under this Schedule.

(4) Where a notice is discharged under sub-paragraph (1) or (2), the Department must give notification of the discharge to the liable person and the employer concerned.

(5) Where a notice is discharged under sub-paragraph (2)(b) or (c), paragraph 6 nevertheless continues to apply in relation to any amount not yet paid to the Department.

## **Lapse**

11.—(1) Where the liable person's employment terminates, a notice under paragraph 1 lapses immediately after the pay-day coinciding with or following the termination.

(2) Where a notice lapses under this paragraph, paragraph 6 nevertheless continues to apply in relation to any amount not yet paid to the Department.

## **Crown employment**

12.—(1) This paragraph applies where the liable person is employed by the Crown.

(2) The chief officer for the time being of the government department, office or other body in which the liable person is employed is to be treated as employing the liable person (any transfer of the person from one department, office or body to another being treated as a change of employment).

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(3) Any earnings paid by the Crown, a minister of the Crown or a government department, or out of the public revenue of the United Kingdom or Northern Ireland, are to be treated as paid by that chief officer.

(4) “Government department” includes a department of the government of the United Kingdom.

### Priority

13.—(1) This paragraph applies where there is a pay-day in relation to the liable person on which the employer is required—

- (a) to comply with two or more notices under paragraph 1, or
- (b) to comply with one or more notices under paragraph 1 and with one or more of any of the following—
  - (i) child support orders;
  - (ii) other maintenance orders;
  - (iii) welfare overpayment notices.

(2) In a case within sub-paragraph (1)(a), the employer must—

- (a) deal with each notice according to the date on which it was made, disregarding any later notice until an earlier one has been dealt with, and
- (b) deal with any later notice as if the earnings to which it relates were the residue of the liable person’s earnings after the making of any deduction to comply with any earlier notice.

(3) In a case within sub-paragraph (1)(b), the employer must—

- (a) first, deal with any child support order,
- (b) then, deal with any other deduction order,
- (c) then, deal with any welfare overpayment notice, and
- (d) then, deal with the notice or notices under paragraph 1.

(4) Where the employer, when acting under paragraph (a), (b), (c) or (d) of sub-paragraph (3), has to deal with two or more of the orders or notices referred to in that paragraph, the employer must deal with them by using the method set out in sub-paragraph (2).

(5) The employer may make deductions under this paragraph only in so far as the deductions will result in the employer paying the liable person an amount greater than or equal to the protected earnings proportion.

(6) “Child support order” means a deduction from earnings order under Part 3 of the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992<sup>(56)</sup>.

(7) “Other deduction order” means an order, other than a child support order, under a statutory provision which requires deduction to be made from a person’s earnings.

(8) “Welfare overpayment notice” means a notice under regulation 18 of the Social Security (Overpayments and Recovery) Regulations (Northern Ireland) 2016<sup>(57)</sup>.

### Service by post

14. Where a notice or notification to be given under this Schedule is sent by ordinary post to the last known address of the recipient, it is to be treated as given on the day on which it is posted.

<sup>(56)</sup> S.R. 1992 No. 390

<sup>(57)</sup> S.R. 2016 No. 224

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make further provisions for the delivery of welfare supplementary payments. These payments are designed to mitigate impacts from implementation of the Welfare Reform (Northern Ireland) Order 2015 and the Welfare Reform and Work (Northern Ireland) Order 2016 as defined in the document “A Fresh start the Stormont Agreement and Implementation Plan”.

The Regulations provide for the recovery of amounts of welfare supplementary payments that have been paid in excess of entitlement. They also make amendments to the welfare supplementary payment regulations to provide for the impact of entitlement to a mitigation payment following a relevant change of circumstances.

Part 1 is technical and provides for commencement, interpretation and avoidance of retrospection.

Part 2 contains provisions for the recovery of welfare supplementary overpayments. In particular it establishes the circumstances in which an overpayment can be recovered including in cases of misrepresentation by a person or an error by the Department for Communities. Provision is made for the recovery of an overpayment from both the person entitled to a payment and any person to whom the payment has been made, including a landlord. Where recovery is necessary this will initially be achieved through deductions from welfare supplementary payments. Where this is not possible deductions will be made from social security benefits or a person’s earnings.

Part 3 makes amendments to welfare supplementary payments for the benefit cap by:

- aligning welfare supplementary payments with housing benefit payments;
- providing that a change of circumstances that affects entitlement will apply from the same date as the change to the housing benefit claim;
- providing for payments to be made to an agent acting on behalf of a landlord;
- terminating entitlement where a person is no longer entitled to housing benefit provided this occurs before they are affected by the new benefit cap level;
- terminating entitlement where a person is no longer affected by the benefit cap;
- making provision for entitlement to a welfare supplementary payment for the partner of a benefit claimant following the separation of a couple;
- clarifying that entitlement will not be affected by benefit sanctions;
- providing for information sharing with the Northern Ireland Housing Executive.

Part 4 makes amendments to welfare supplementary payments for contributory employment and support allowance by:

- amending the definition of limited capability for work credit to specify that it only applies to people affected by the time limiting of employment and support allowance;
- clarifying that entitlement will not be affected by benefit sanctions;
- providing that a change of circumstances that affects entitlement will apply from the same date as the change to the employment and support allowance claim;
- providing for payments to be made to an appointee acting on behalf of an entitled person;
- providing for information sharing with Her Majesty’s Revenue & Customs.

Part 5 makes amendments to welfare supplementary payments for disability-related premiums by:

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- making provision for entitlement to a welfare supplementary payment for both a benefit claimant and their partner following the separation of a couple;
- amending regulation 39 to provide that payment should not cease following the outcome of an appeal hearing where a welfare supplementary payment for people with a conflict-related injury is being paid;
- providing for payments to be made to an appointee acting on behalf of an entitled person;
- clarifying that entitlement will not be affected by benefit sanctions;
- providing for information sharing with Her Majesty's Revenue & Customs.

Part 6 makes amendments to welfare supplementary payments for the loss of carer payments by:

- introducing a priority order where there is entitlement to payment under more than one Part. This makes it clear under which Part a person should be paid;
- providing for the recalculation of entitlement under Part 2 where there has been a change in entitlement to a contributory benefit;
- providing for entitlement to cease if a caree is awarded the daily living component of personal independence payment;
- providing for payment to continue for a period of 8 weeks following the death of the carer;
- providing for payments to be made to an appointee acting on behalf of an entitled person;
- clarifying that entitlement will not be affected by benefit sanctions;
- making provision for future entitlement to a welfare supplementary payment when a person receiving payment forms a couple;
- making provision for entitlement to a welfare supplementary payment paid under Parts 3 or 5 for both a benefit claimant and their partner following the separation of a couple;
- providing for information sharing with Her Majesty's Revenue & Customs;
- providing that where a change of circumstances, as detailed in regulations 25 to 30, occurs it will affect entitlement from the date on which the change occurs.

Part 7 makes amendments to welfare supplementary payments for the loss of disability living allowance by:

- providing that where there is a change in entitlement to personal independence payment the date the change takes effect will be the effective date for changes in entitlement to welfare supplementary payment under regulations 7, 12 and 20;
- providing for payments to be made to an appointee acting on behalf of an entitled person;
- providing that where a change of circumstances, as detailed in regulations 23 to 28, occurs it will affect entitlement from the date on which the change occurs.