

*Draft Regulations laid before the Assembly under Article 137(5) of the Welfare Reform (Northern Ireland) Order 2015 for approval*

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DRAFT STATUTORY RULES OF NORTHERN IRELAND

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**2016 No.**

**WELFARE**

**The Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016**

<i>Made</i>	- - - -	2016
<i>Coming into operation</i>		2016

The Department for Communities makes the following Regulations in exercise of the powers conferred on it 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 (Loss of Carer Payments) Regulations (Northern Ireland) 2016.

(2) These Regulations come into operation on 2016.

**Interpretation**

2.—(1) In these Regulations—

“the 1998 Order” means the Social Security (Northern Ireland) Order 1998(3),

“award” in relation to disability living allowance, means the award having effect immediately prior to its termination under regulation 17(1) of the Transitional Provisions Regulations(4),

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(1) [S.I. 2015/2006 \(N.I. 1\)](#)

(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.))

(3) [S.I. 1998/1506 \(N.I. 10\)](#)

(4) [S.R. 2016 No. 227](#)

“caree” means a person being cared for on the transition date,

“disability living allowance” means disability living allowance under section 71 of the Contributions and Benefits Act(5),

“transitional assessment determination” means the determination, under regulation 4 of the Personal Independence Payment Regulations (Northern Ireland) 2016(6) of a claim for personal independence payment made by a transfer claimant,

“transfer claimant” has the same meaning as in the Transitional Provisions Regulations,

“the Transitional Provisions Regulations” means the Personal Independence Payment (Transitional Provisions) Regulations (Northern Ireland) 2016.

- (2) The transition date is the date on which—
- (a) the Department sends a notification to the caree, in accordance with regulation 3(1) of the Transitional Provisions Regulations, inviting the caree to make a claim for personal independence payment, or
  - (b) the caree makes a claim for personal independence payment in accordance with regulation 4 of the Transitional Provisions Regulations.

### **Welfare supplementary payments**

3.—(1) Welfare supplementary payment is payable in accordance with these Regulations.

(2) Welfare supplementary payment is payable on transition of a caree from disability living allowance to personal independence payment under—

- (a) Part 2 (as a result of loss of carer’s allowance),
- (b) Part 3 (as a result of loss of carer premium),
- (c) Part 4 (as a result of loss of income support for carers),
- (d) Part 5 (as a result of loss of additional amount in respect of carers under state pension credit).

(3) But a person is not entitled to more than one welfare supplementary payment under these Regulations at a time.

## **PART 2**

### **Welfare Supplementary Payment as a result of loss of Carer’s Allowance on caree’s transition from Disability Living Allowance to Personal Independence Payment**

#### **Eligibility**

4.—(1) A person is entitled to welfare supplementary payment under this Part if the following conditions are met—

- (a) the carer’s allowance entitlement condition,
- (b) the PIP daily living component refusal condition, and
- (c) the termination of carer’s allowance condition.

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(5) Section 71 was amended by Article 64(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

(6) S.R. 2016 No. 217

(2) The carer's allowance entitlement condition is that a person is in receipt of carer's allowance under section 70 of the Contributions and Benefits Act(7), in respect of a caree, on the transition date.

(3) The PIP daily living component refusal condition is that following a transitional assessment determination the caree is not awarded the daily living component of personal independence payment.

(4) The termination of carer's allowance condition is that, in consequence of the PIP daily living component refusal condition, the decision of the Department to award carer's allowance is superseded by a decision of the Department to not award carer's allowance.

### Amount

5.—(1) Where a person is entitled to a contributory benefit, the amount of welfare supplementary payment payable is given by the formula—

$$WSP = CA - CB$$

where —

WSP is welfare supplementary payment,

CA is the carer's allowance payable to the person on the date entitlement to the allowance is lost, and

CB is the amount of contributory benefit payable to the person.

(2) Where the contributory benefit is greater than the carer's allowance, then no welfare supplementary payment is payable.

(3) Where a person is not entitled to contributory benefit, the amount of welfare supplementary payment payable is given by the formula—

$$WSP = CA$$

where —

WSP is welfare supplementary payment, and

CA is the carer's allowance payable to the person on the date entitlement to the allowance is lost.

(4) In this regulation contributory benefit means—

(a) contributory benefit within the meaning of Part 2 of the Contributions and Benefits Act,

(b) employment and support allowance under section 1(2)(a) of the Welfare Reform Act (Northern Ireland) 2007(8), or

(c) a contribution-based jobseeker's allowance within the meaning of Article 3 of the Jobseekers (Northern Ireland) Order 1995(9).

### Period of payment

6.—(1) Welfare supplementary payment must be paid at intervals of four weeks (or as soon as is reasonably practicable after that) in arrears.

(2) The period during which welfare supplementary payment is payable commences on the day following the day on which the person's entitlement to carer's allowance terminates.

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(7) Section 70 was amended by regulations 2(2) and 3 of [S.R. 2002 No. 321](#), regulation 2(3) of [S.R. 2011 No. 356](#) and is amended by regulation 5(2) of [S.R. 2016 No. 228](#)

(8) [2007 c.2 \(N.I.\)](#)

(9) [S.I. 1995/2705 \(N.I. 15\)](#); Article 3 was amended by paragraph 3 of Schedule 7 to [S.I. 1999/3147 \(N.I. 11\)](#), paragraph 131 of Schedule 24 to the Civil Partnership Act [2004 \(c. 33\)](#) and paragraph 6(3) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.))

- (3) The period during which welfare supplementary payment is payable ends—
- (a) one year after the day on which it commences, or
  - (b) on 31<sup>st</sup> March 2020,

whichever is first to occur.

#### **Termination of payment on award of carer's allowance**

7.—(1) Welfare supplementary payment must cease to be paid to a person from the date the person is entitled to carer's allowance.

- (2) The entitlement to carer's allowance must arise out of—
- (a) a new claim for carer's allowance,
  - (b) a revision under Article 10 of the 1998 Order,
  - (c) a supersession of a previous decision under Article 11 of the 1998 Order(10), or
  - (d) an appeal under Article 13 of the 1998 Order(11).

### **PART 3**

#### **Welfare Supplementary Payment as a result of loss of Carer Premium on caree's transition from Disability Living Allowance to Personal Independence Payment**

##### **Eligibility**

8.—(1) A person is entitled to welfare supplementary payment under this Part if the following conditions are met—

- (a) the carer premium entitlement condition,
- (b) the PIP daily living component refusal condition,
- (c) the termination of carer's allowance condition, and
- (d) the termination of carer premium condition.

(2) The carer premium entitlement condition is that a person is in receipt of carer premium under—

- (a) paragraph 17 or paragraph 20J of Schedule 1 to the Jobseekers' Allowance Regulations (Northern Ireland) 1996(12),
- (b) paragraph 8 of Schedule 4 to the Employment and Support Allowance Regulations (Northern Ireland) 2008(13), or

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(10) Article 11 was amended by paragraph 17 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999

(11) Article 13 was amended by paragraph 19 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671), Article 4(2) of S.I. 2014/886 and Articles 107(2), (3) and (4) and 109(6) of the Welfare Reform (Northern Ireland) Order 2015

(12) S.R. 1996 No. 198; paragraph 17 of Schedule 1 was amended was amended by regulation 4(3)(b)(i) and (iii) of S.R. 2000 No. 74, regulation 3(a) of S.R. 2002 No. 322, regulation 3 of S.R. 2002 No. 323 and regulation 4(3)(a) of S.R. 2003 No. 417; paragraph 20J of Schedule 1 was inserted by paragraph 53(4) of S.R. 2000 No. 350 and amended by regulation 3(b) of S.R. 2002 No. 322, regulation 3 of S.R. 2002 No. 323 and regulation 4(3) of S.R. 2003 No. 417

(13) S.R. 2008 No. 280

(c) paragraph 14ZA of Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987(14),

in respect of a carer, on the transition date.

(3) The PIP daily living component refusal condition is that following a transitional assessment determination the carer is not awarded the daily living component of personal independence payment.

(4) The termination of carer's allowance condition is that, in consequence of the PIP daily living component refusal condition, the decision of the Department to award carer's allowance is superseded by a decision of the Department to not award carer's allowance.

(5) The termination of carer premium condition is that, in consequence of the termination of carer's allowance condition, the decision of the Department to award carer premium is superseded by a decision of the Department to not award carer premium.

### **Amount**

9.—(1) The amount of welfare supplementary payment payable is equal to the amount which was payable to the person under the award of carer premium on the date entitlement to the premium is lost.

(2) If the award of carer premium included an amount of premium in respect of more than one person, the amount of welfare supplementary payment payable is equal to the amount of carer premium lost on the date entitlement to that portion of the premium is lost.

### **Period of payment**

10.—(1) Welfare supplementary payment must be paid at intervals of four weeks (or as soon as is reasonably practicable after that) in arrears.

(2) The period during which welfare supplementary payment is payable commences on the day following the day on which the person's entitlement to carer premium terminates.

(3) The period during which welfare supplementary payment is payable ends—

- (a) one year after the day on which it commences, or
- (b) on 31<sup>st</sup> March 2020,

whichever is first to occur.

### **Termination of payment on award of carer premium**

11.—(1) Welfare supplementary payment must cease to be paid to a person from the date the person is entitled to carer premium.

(2) The entitlement to carer premium must arise out of—

- (a) a new award of carer premium,
- (b) a revision under Article 10 of the 1998 Order,
- (c) a supersession of a previous decision under Article 11 of the 1998 Order, or
- (d) an appeal under Article 13 of the 1998 Order.

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(14) SR 1987 No 459; paragraph 14ZA was inserted by regulation 6(d) of S.R. 1990 No. 346 and amended by regulation 13(d) (i) of S.R. 1991 No. 338, regulation 4(2)(b)(i) of S.R. 2000 No. 74, regulation 2 of S.R. 2002 No. 322, regulation 3 of S.R. 2002 No. 323 and regulation 2(3) of S.R. 2003 No. 417

## PART 4

### Welfare Supplementary Payment as a result of loss of Income Support on caree's transition from Disability Living Allowance to Personal Independence Payment

#### Eligibility

**12.**—(1) A person is entitled to welfare supplementary payment under this Part if the following conditions are met—

- (a) the income support entitlement condition,
- (b) the carer condition,
- (c) the PIP daily living component refusal condition, and
- (d) the termination of income support condition.

(2) The income support entitlement condition is that the person is in receipt of income support under section 122 of the Contributions and Benefits Act(15) on the transition date.

(3) The carer condition is that entitlement to income support is due to—

- (a) falling within a prescribed category of person under regulation 4ZA of the Income Support (General) Regulations (Northern Ireland) 1987(16),
- (b) by virtue of satisfying paragraph 4(b) of Schedule 1B to those Regulations(17) in respect of a caree.

(4) The PIP daily living component refusal condition is that following a transitional assessment determination the caree is not awarded the daily living component of personal independence payment.

(5) The termination of income support condition is that in consequence of the PIP daily living component refusal condition, the decision of the Department to award income support is superseded by a decision of the Department to not award income support.

#### Amount

**13.** The amount of welfare supplementary payment payable is equal to the weekly rate of carer's allowance specified in paragraph 4 of Part 3 of Schedule 4 to the Contributions and Benefits Act(18) on the date entitlement to income support is lost.

#### Period of payment

**14.**—(1) Welfare supplementary payment must be paid at intervals of four weeks (or as soon as is reasonably practicable after that) in arrears.

(2) The period during which welfare supplementary payment is payable commences on the day following the day on which the person's entitlement to income support terminates.

(3) The period during which welfare supplementary payment is payable ends—

- (a) one year after the day on which it commences, or

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(15) Section 122 was amended by paragraph 4(f) of Schedule 1 to the Tax Credits Act 1999 c.10

(16) Regulation 4ZA was inserted by regulation 4 of S.R. 1996 No. 199 and amended by regulation 5(2) of S.R. 1997 No. 412, the Schedule of S.R. 2000 No. 241, paragraph 1 of Schedule 1 to S.R. 2005 No. 319 (C. 23), regulation 2 of S.R. 2008 No. 290, regulation 2(3) of S.R. 2009 No. 92, regulation 3(2)(a) of S.R. 2009 No. 418 and regulation 3(2) of S.R. 2013 No. 246

(17) Schedule 1B was inserted by regulation 22 of S.R. 1996 No. 199; paragraph 4 was amended by regulation 4(1) of S.R. 2000 No. 74, regulation 3(3) of S.R. 2002 No. 80, paragraph 1(g) of the Schedule to S.R. 2002 No. 323 and regulation 4(2) of S.R. 2011 No. 291

(18) Paragraph 4 of Part III was amended by Article 2(2)(a)(vi) of S.R. 2002 No. 321

(b) on 31<sup>st</sup> March 2020,  
whichever is first to occur.

### **Termination of payment on award of income support**

**15.**—(1) Welfare supplementary payment must cease to be paid to a person from the date the person is entitled to income support on the basis that the person's entitlement to income support is due to falling within a prescribed category of person under regulation 4ZA of the Income Support (General) Regulations (Northern Ireland) 1987.

- (2) The entitlement to income support must arise out of—
- (a) a new claim for income support,
  - (b) a revision under Article 10 of the 1998 Order,
  - (c) a supersession of a previous decision under Article 11 of the 1998 Order, or
  - (d) an appeal under Article 13 of the 1998 Order.

## **PART 5**

### **Welfare Supplementary Payment following loss of the Additional Amount (Carer) of State Pension Credit on caree's transition from Disability Living Allowance to Personal Independence Payment**

#### **Eligibility**

**16.**—(1) A person is entitled to welfare supplementary payment under this Part if the following conditions are met—

- (a) the additional amount (carer) entitlement condition,
- (b) the PIP daily living component refusal condition, and
- (c) the termination of additional amount (carer) condition.

(2) The additional amount (carer) entitlement condition is that a person is in receipt of additional amount (carer) in respect of a caree, on the transition date.

(3) In this Part, additional amount (carer) means the additional amount (in respect of the appropriate minimum guarantee) prescribed under regulation 6(6)(a) of the State Pension Credit Regulations (Northern Ireland) 2003<sup>(19)</sup>, and appropriate minimum guarantee has the same meaning as in section 2(3) of the State Pension Credit Act (Northern Ireland) 2002<sup>(20)</sup>.

(4) The PIP daily living component refusal condition is that following a transitional assessment determination the caree is not awarded the daily living component of personal independence payment.

(5) The termination of additional amount (carer) condition is that in consequence of the PIP daily living component refusal condition, the decision of the Department to award additional amount (carer) is superseded by a decision of the Department to not award additional amount (carer).

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<sup>(19)</sup> S.R. 2003 No. 28

<sup>(20)</sup> 2002 c.14 (N.I.)

### **Amount**

**17.**—(1) The amount of welfare supplementary payment payable is equal to the amount which was payable to the person under the award of additional amount (carer) on the date entitlement to additional amount (carer) is lost.

(2) If the award of additional amount (carer) included an amount in respect of more than one person, the amount of welfare supplementary payment payable is equal to the amount of additional amount (carer) lost on the date entitlement to that portion of the additional amount (carer) is lost.

### **Period of payment**

**18.**—(1) Welfare supplementary payment must be paid at intervals of four weeks (or as soon as is reasonably practicable after that) in arrears.

(2) The period during which welfare supplementary payment is payable commences on the day following the day on which the person's entitlement to additional amount (carer) terminates.

(3) The period during which welfare supplementary payment is payable ends—

- (a) one year after the day on which it commences, or
- (b) on 31<sup>st</sup> March 2020,

whichever is first to occur.

### **Termination of payment on award of additional amount (carer)**

**19.**—(1) Welfare supplementary payment must cease to be paid to a person from the date the person is entitled to additional amount (carer).

(2) The entitlement to additional amount (carer) must arise out of—

- (a) a new award of additional amount (carer),
- (b) a revision under Article 10 of the 1998 Order,
- (c) a supersession of a previous decision under Article 11 of the 1998 Order, or
- (d) an appeal under Article 13 of the 1998 Order.

## **PART 6**

### **General**

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

**20.**—(1) This regulation applies where the caree ceases to be entitled to welfare supplementary payment under the Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations 2016(21) (“the DLA Regulations”).

(2) Welfare supplementary payment under these Regulations must cease to be paid from the first payment of welfare supplementary payment under these Regulations following the date on which the caree ceased to be entitled to welfare supplementary payment under the DLA Regulations.

(3) Where further welfare supplementary payment is payable to the caree in accordance with regulation 6(4) of the DLA Regulations (appeal to the Commissioner), then further welfare



supplementary payment is payable under Parts 2 to 5 of these Regulations as set out in paragraphs (4) and (5).

(4) The period during which further welfare supplementary payment is payable commences on the day following the day that leave to appeal to the Commissioner is granted as set out in regulation 6(5) of the DLA Regulations.

(5) The period during which welfare supplementary payment is payable ends—

(a) after the first payment following the date on which the decision of the Commissioner is received by the Department as set out in regulation 6(6) of the DLA Regulations, or

(b) on 31st March 2020,

whichever is first to occur.

(6) Where the caree's entitlement to welfare supplementary payment under Part 2 of the DLA Regulations terminates but then recommences under regulation 14 of the DLA Regulations (eligibility under Part 4 following termination of welfare supplementary payment under Part 2), then paragraph (2) does not apply.

### **Termination of welfare supplementary payment if caree no longer entitled to personal independence payment**

**21.**—(1) This regulation applies where the caree ceases to be entitled to 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 ceases to be entitled to personal independence payment.

### **Termination of welfare supplementary payment on death of caree**

**22.**—(1) Where the caree dies, 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).

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

(a) regulation 6(3),

(b) regulation 14(3), or

(c) regulation 18(3).

### **Review**

**23.**—(1) The Department must establish procedures for reviewing a person's entitlement to welfare supplementary payment.

(2) The procedures established must—

(a) provide for a review to be carried out on the application of any person, and

(b) provide for the manner of making the application.

(3) The procedures may, in particular, provide for—

(a) the consideration of the applicant's entitlement to welfare supplementary payment by up to three persons nominated by the Department,

(b) the preparation of a report by these persons setting out their conclusions in relation to the applicant's entitlement to welfare supplementary payment and their recommendation as to the manner in which the matter should be finally determined.

## Disregards

**24.** No account must be taken of entitlement to welfare supplementary payment in considering a person's entitlement to benefit under a statutory provision relating to social security (irrespective of the name or nature of the benefit).

## Residency and presence in Northern Ireland

**25.** A person is not entitled to welfare supplementary payment unless the person and caree—

- (a) are ordinarily resident in Northern Ireland, and
- (b) are present in Northern Ireland.

## Temporary absence from Northern Ireland

**26.—(1)** Subject to regulation 27, where the person or the caree are temporarily absent from Northern Ireland, they are treated as present in Northern Ireland for the purpose of these Regulations for the first 4 weeks of absence.

(2) The person or the caree are temporarily absent from Northern Ireland if, at the beginning of the period of absence, their absence is unlikely to exceed 52 weeks.

## Temporary absence from Northern Ireland to receive medical treatment

**27.—(1)** Where the person or the caree are temporarily absent from Northern Ireland, they are treated as present in Northern Ireland for the purposes of these Regulations for the first 13 weeks of that absence, where—

- (a) the absence is solely in connection with arrangements made for their medical treatment for a disease or bodily or mental disablement which commenced before they left Northern Ireland; and
- (b) the arrangements referred to in sub-paragraph (a) relate to medical treatment—
  - (i) outside Northern Ireland,
  - (ii) during the period whilst the person or the caree are temporarily absent from Northern Ireland, and
  - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.

(2) In this regulation “temporarily absent” has the same meaning as in regulation 26(2).

## Care home residents

**28.—(1)** Subject to regulation 31, no welfare supplementary payment is payable in respect of any period during which the person or the caree is a resident of a care home in circumstances in which any of the costs of any qualifying services provided for the person or the caree are borne out of public funds by virtue of any of the statutory provisions referred to in paragraph (2).

(2) The statutory provisions are—

- (a) Article 5, 15 or 36 the Health and Personal Social Services (Northern Ireland) Order 1972(22),

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(22) S.I. 1972/1265 (N.I. 14); Article 15 was amended by paragraph 2(2) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992 (S.I. 1992/3204 (N.I. 20)); Article 36 was amended by section 1(1) and (2) of the Health and Personal Social Services Act (Northern Ireland) 2002 (c. 9 (N.I.)) and Article 45 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9))

- (b) the Mental Health (Northern Ireland) Order 1986(23),
- (c) section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002(24), or
- (d) any other statutory provision relating to persons under a disability or to young persons or to education or training except—
  - (i) Articles 50 and 51 of the Education and Libraries (Northern Ireland) Order 1986(25),
  - (ii) Article 30 of the Education and Libraries (Northern Ireland) Order 1993(26), or
  - (iii) Article 3 of the Education (Student Support) (Northern Ireland) Order 1998(27).
- (3) Subject to paragraph (4), paragraph (1) does not apply in the case of a person—
  - (a) who has not attained the age of 18 and to whom—
    - (i) Article 17(b) of the Children (Northern Ireland) Order 1995(28) applies because the person’s health is likely to be significantly impaired, or further impaired, without the provision of services for the person, or
    - (ii) Article 17(c) of that Order applies, or
  - (b) who is accommodated outside the United Kingdom if the costs of any qualifying services are borne wholly or partly by an education authority pursuant to its powers under Article 11 of the Education (Northern Ireland) Order 1996(29).
- (4) Paragraph (3)(a) only applies during any period in which the Regional Health and Social Care Board or the Health and Social Care Trust looking after the person places the person in a private dwelling with a family, or with a relative of the person, or with some other suitable person.
- (5) In this regulation—
  - “care home” and “qualifying services” have the same meaning as in Article 90 of the Welfare Reform (Northern Ireland) Order 2015,
  - “Health and Social Care trust” means a body as established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991(30), and
  - “the Regional Health and Social Care Board” means the body established under section 7 of the Health and Social Care (Reform) Act (Northern Ireland) 2009(31).

## Hospital in-patients

**29.**—(1) Subject to regulation 31, no welfare supplementary payment is payable in respect of any period during which the person or the caree are undergoing medical or other treatment as an in-patient at a hospital or similar institution in circumstances in which any of the costs of the treatment, accommodation and related services provided are borne out of public funds.

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(23) S.I. 1986/595 (N.I. 4)

(24) 2002 c. 6 (N.I.)

(25) S.I. 1986/594 (N.I. 3); Article 51 was substituted by Part 2 of Schedule 5 to the Education (Northern Ireland) Order 1996 (S.I. 1996/274 (N.I. 1)) and certain functions transferred from the Department of Education by Parts I and II of Schedule 3 to the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. 1999 No. 481) and for certain purposes functions transferred by Article 7(a) of the Departments (Transfer of Functions) Order (Northern Ireland) 2001 (S.R. 2001 No. 229)

(26) S.I. 1993/2810 (N.I. 12)

(27) S.I. 1998/1760 (N.I. 14); Article 3 was amended by section 147(3) of the Learning and Skills Act 2000 (c. 21), paragraph 238 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), section 147(4) of the Finance Act 2003 (c. 14) and Article 11(1) of the Higher Education (Northern Ireland) Order 2005 (S.I. 2005/1116 (N.I. 5))

(28) S.I. 1995/755 (N.I. 2)

(29) S.I. 1996/274 (N.I. 1)

(30) S.I. 1991/194 (N.I. 1); Article 10 was amended by section 1 of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1 (N.I.))

(31) 2009 c. 1 (N.I.)

(2) For the purposes of paragraph (1) the costs of treatment, accommodation or any related services are borne out of public funds if the person or the caree are undergoing medical or other treatment as an in-patient in—

- (a) a hospital or similar institution under the Health and Personal Social Services (Northern Ireland) Order 1972 or the Health and Personal Social Services (Northern Ireland) Order 1991; or
- (b) a hospital or similar institution maintained or administered by the Defence Council.

**Prisoners**

**30.** Subject to regulation 31, no welfare supplementary payment is payable to a person under these Regulations for a period during which the person or the caree is in prison or detained in legal custody.

**Exceptions: care homes, hospitals and prisons**

**31.** Regulation 28(1), 29(1) or, as the case may be, regulation 30 does not apply in respect of the first 28 days of any period during which a person is someone to whom any of those regulations apply.

Sealed with the Official Seal of the Department for Communities on 2016

*Name*  
A senior officer of the Department for  
Communities

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## EXPLANATORY NOTE

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

These Regulations introduce welfare supplementary payments to mitigate impacts from implementation of the Welfare reform (Northern Ireland) Regulations 2015 as defined in the document “A Fresh Start the Stormont Agreement and Implementation Plan”.

The Regulations provide for making mitigation payments for the loss of entitlement to Income Support, Carer’s Allowance and the additional amounts of benefit paid in respect of caring for severely disabled people who are in receipt of Disability Living Allowance and are assessed for Personal Independence Payment.

Part 1 contains definitions and lists the specific benefits for which mitigation payments will be made. It also states that a person will not be entitled to more than one welfare supplementary payment at a time under these Regulations.

Part 2 contains provisions for the award of mitigation payments to Carer’s Allowance claimants that lose entitlement to the benefit. In particular it establishes that to be eligible for a mitigation payment a claimant must be in receipt of Carer’s Allowance at the date the severely disabled person they are caring for is assessed for Personal Independence Payment. The claimant must also lose entitlement to Carer’s Allowance following the decision on entitlement to Personal Independence Payment. This Part also makes provision for calculating the amount of the mitigation payment, for payments to be made every four weeks in arrears for a period of up to one year and the circumstances in which payments will cease.

Part 3 contains provisions for the award of mitigation payments to Jobseeker’s Allowance, Income Support and Employment and Support Allowance claimants that lose entitlement to a carer premium. It establishes that to be eligible for a mitigation payment a claimant must be in receipt of a carer premium at the date the severely disabled person they are caring for is assessed for Personal Independence Payment. The claimant must also lose entitlement to the carer premium following the decision on entitlement to Personal Independence Payment. It also establishes the provisions for calculating and making payments and the circumstances in which payments will cease.

Part 4 contains provisions for the award of mitigation payments to Income Support claimants who lose entitlement to the benefit. In particular it establishes that to be eligible for a mitigation payment a claimant must be in receipt of Income Support, which has been awarded on the basis of providing care with an entitlement to Carer’s Allowance, at the date the severely disabled person they are caring for is assessed for Personal Independence Payment. It also establishes the eligibility conditions for a mitigation payment and the provisions for calculating and making payments and the circumstances in which payments will cease.

Part 5 contains provisions for the award of mitigation payments to State Pension Credit claimants that lose entitlement to an additional amount in respect of the minimum guarantee for caring. It establishes that to be eligible for a mitigation payment a claimant must be in receipt of an additional amount (carer) at the date the severely disabled person they are caring for is assessed for Personal Independence Payment. The claimant must also lose entitlement to the additional amount (carer) following the decision on entitlement to Personal Independence Payment. It also establishes the provisions for calculating and making payments and the circumstances in which payments will cease.

Part 6 makes provisions for certain miscellaneous matters that will impact welfare supplementary payments under these Regulations. It contains provisions for the termination of mitigation payments

including the outcome of an appeal not to award Personal Independence Payment or a subsequent award of Personal Independence Payment to the caree or if the caree dies.

Regulation 23 provides for reviewing a person's entitlement to a welfare supplementary payment.

Regulation 24 ensures entitlement to welfare supplementary payment is to be disregarded in the consideration of entitlement to social security benefits.

Regulation 25 defines entitlement by reference to residency and presence in Northern Ireland of the person or caree.

Regulation 26 allows periods of temporary absence of the person or caree from Northern Ireland to be deemed as presence for 4 weeks provided if at the beginning of the absence period that period was unlikely to exceed 52 weeks.

Regulation 27 allows temporary absence of the person or caree from Northern Ireland to be deemed as presence in Northern Ireland for the first 13 weeks of absence where a person or caree is receiving medical treatment.

Regulation 28 provides that a welfare supplementary payment will not be paid where a person or the caree is a resident in a care home and the costs are being paid out of public funds.

Regulation 29 provides that a welfare supplementary payment will not be paid where a person or the caree is an inpatient in a hospital or a similar institution and the costs are being paid out of public funds.

Regulation 30 provides that a welfare supplementary payment will not be paid where a person or the caree is imprisoned or detained in legal custody.

Regulation 31 provides that in the case of care homes, hospitals and prisons welfare supplementary payments will continue to be paid for the first 28 days before they cease in accordance with Regulations 28, 29 and 30.