

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

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DRAFT STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 000**

**WELFARE**

**The Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations (Northern Ireland) 2016**

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

The Department for Communities<sup>(1)</sup> makes the following Regulations in exercise of the powers conferred on it by Article 137 of the Welfare Reform (Northern Ireland) Order 2015<sup>(2)</sup>.

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 Disability Living Allowance) Regulations (Northern Ireland) 2016.

(2) These Regulations come into operation on 00 Month 2016.

**Interpretation**

2.—(1) In these Regulations—

“the 1998 Order” means the Social Security (Northern Ireland) Order 1998<sup>(3)</sup>;

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

“appeal tribunal” means the appeal tribunal constituted under Chapter 1 of Part II of the 1998 Order;

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(1) See section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))

(2) S.I. 2015/2006 (N.I. 1)

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

“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;

“Commissioner” means the Chief Social Security Commissioner or any other Social Security Commissioner and includes a tribunal of 2 or more Commissioners constituted under Article 16(7) of the 1998 Order;

“daily living activities” and “mobility activities” have the same meaning as in Part 5 of the 2015 Order;

“decision notice” means the decision notice under regulation 53(3) of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(4);

“disability living allowance” means disability living allowance under section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(5);

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

“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;

“the Transitional Provisions Regulations” means the Personal Independence Payment (Transitional Provisions) Regulations (Northern Ireland) 2016(7).

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

### **Welfare supplementary payment**

- 3.—(1) Welfare supplementary payment is payable in accordance with these Regulations.
- (2) Welfare supplementary payment is payable under either—
- (a) Part 2 (pending appeal against refusal of personal independence payment),
  - (b) Part 3 (where personal independence payment is awarded at a lower rate than disability living allowance), or
  - (c) Part 4 (in conflict related injury cases where personal independence payment has been refused).
- (3) But a person is not entitled to welfare supplementary payment under more than one Part at a time.

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(4) S.R. 1999 No. 162; regulation 53(3) was amended by regulation 7(10)(a) of SR 2005 No. 46

(5) 1992 c. 7; 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

(7) S.R. 2016 No. 227

## PART 2

### WELFARE SUPPLEMENTARY PAYMENT PENDING APPEAL AGAINST PERSONAL INDEPENDENCE PAYMENT REFUSAL

#### Eligibility

4.—(1) A person is entitled to welfare supplementary payment under this Part if the person meets—

- (a) the disability living allowance entitlement condition;
- (b) the personal independence payment refusal condition, and
- (c) the appeal condition.

(2) The disability allowance entitlement condition is that the person is in receipt of disability living allowance on the transition date.

(3) The personal independence payment refusal condition is that following a transitional assessment determination, the person's claim for personal independence payment is refused.

(4) The appeal condition is that the person has appealed, under Article 13 of the 1998 Order<sup>(8)</sup>, against the decision refusing personal independence payment.

#### Amount

5. The amount of welfare supplementary payment payable is equal to the amount which was payable to the person under the award of disability living allowance.

#### 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 disability living allowance terminates in accordance with regulation 17(1) of the Transitional Provisions Regulations.

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

- (a) after the first payment following the date on which the decision notice of the appeal tribunal is received by the Department; or
- (b) on 31st March 2020,

whichever is first to occur.

(4) Where a person is granted leave to make an appeal from a decision of the appeal tribunal to refuse personal independence payment to the Commissioner, the period during which further welfare supplementary payment is payable is set out in paragraphs (5) and (6).

(5) 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.

(6) The period during which further 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; or

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<sup>(8)</sup> 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

(b) on 31st March 2020,  
whichever is first to occur.

**Effect of changes in personal independence payment following revision or supersession of previous decision**

- 7.—(1) This regulation applies where—
- (a) a person is receiving welfare supplementary payment, and
  - (b) following an event referred to in paragraph (3), the person is awarded 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 decision to award personal independence payment.
- (3) The events referred to in paragraph (1)(b) are—
- (a) the decision to not award personal independence payment is revised under Article 10 of the 1998 Order,
  - (b) the decision to not award personal independence payment is superseded under Article 11 of the 1998 Order<sup>(9)</sup>.

### PART 3

#### WELFARE SUPPLEMENTARY PAYMENT WHERE PERSONAL INDEPENDENCE PAYMENT IS AWARDED AT LOWER RATE THAN DISABILITY LIVING ALLOWANCE

**Eligibility**

- 8.—(1) A person is entitled to welfare supplementary payment under this Part if the person meets—
- (a) the disability living allowance entitlement condition, and
  - (b) the lower personal independence payment threshold condition.
- (2) The disability living allowance entitlement condition is that the person is in receipt of disability living allowance on the transition date.
- (3) The lower personal independence payment threshold condition is that—
- (a) following a transitional assessment determination an award of personal independence payment is made to the person,
  - (b) the award of personal independence payment is less than the award of disability living allowance payable to the person on the transition date, and
  - (c) the difference between these two awards is at least £10 per week.

**Eligibility (following termination of welfare supplementary payment under Part 2)**

- 9.—(1) A person is entitled to welfare supplementary payment under this Part if the person meets—
- (a) the Part 2 welfare supplementary payment termination condition, and

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

- (b) the lower personal independence payment threshold on appeal, revision or supersession condition.
- (2) The Part 2 welfare supplementary payment termination condition is that a person's entitlement to welfare supplementary payment under Part 2 terminates—
  - (a) following an appeal, in accordance with regulation 6(3)(a) or 6(6)(a), or
  - (b) following a revision or supersession, in accordance with regulation 7.
- (3) The lower personal independence payment threshold on appeal, revision or supersession condition is that—
  - (a) on the appeal, revision or supersession, an award of personal independence payment is made to the person,
  - (b) the award of personal independence payment is less than the award of disability living allowance payable to the person on the transition date, and
  - (c) the difference between these two awards is at least £10 per week.

#### **Amount**

**10.**—(1) The amount of welfare supplementary payment payable is equal to 75% of the amount by which the award of disability living allowance exceeded the award of personal independence payment.

(2) Where the amount of welfare supplementary payment would, but for this paragraph, include a fraction of a penny, that fraction must be disregarded.

#### **Period of payment**

**11.**—(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—

- (a) disability living allowance terminates in accordance with regulation 17(1) of the Transitional Provisions Regulations, (in the case of eligibility under regulation 8), or
- (b) welfare supplementary payment under Part 2 terminates (in the case of eligibility under regulation 9).

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

- (a) one year after the day on which—
  - (i) it commences (in the case of eligibility under regulation 8), or
  - (ii) welfare supplementary payment under Part 2 commences (in the case of eligibility under regulation 9); or
- (b) on 31st March 2020,

whichever is first to occur.

#### **Effect of changes in personal independence payment following revision, appeal or supersession of previous decision**

**12.**—(1) This regulation applies where—

- (a) a person is receiving welfare supplementary payment, and
- (b) following an event referred to in paragraph (5), there is a change in the award of personal independence payment to the person.

(2) If—

- (a) the person is no longer entitled to personal independence payment, or
- (b) the difference between the award of disability living allowance and the award of personal independence payment is no longer at least £10 per week,

then welfare supplementary payment must cease to be paid from the day after the first payment of welfare supplementary payment following the decision to change personal independence payment.

(3) If personal independence payment is increased, then the amount of welfare supplementary payment payable must be recalculated (under regulation 10) with the new amount of personal independence payment instead of the original amount of personal independence payment, paid from the day after the first payment of welfare supplementary payment following the decision to change personal independence payment.

(4) If personal independence payment is decreased, then the amount of welfare supplementary payment payable does not change.

(5) The events referred to in paragraph (1)(b) are—

- (a) the decision to award personal independence payment is revised under Article 10 of the 1998 Order,
- (b) the decision to award personal independence payment is appealed under Article 13 or 15 of the 1998 Order<sup>(10)</sup>,
- (c) the decision to award personal independence payment is superseded under Article 11 of the 1998 Order.

## PART 4

### WELFARE SUPPLEMENTARY PAYMENT WHERE PERSONAL INDEPENDENCE PAYMENT REFUSED (CONFLICT RELATED CASES)

#### Eligibility

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

- (a) the disability living allowance entitlement condition,
- (b) the personal independence payment refusal condition,
- (c) the 4 points on assessment condition, and
- (d) the conflict related injury condition (see regulation 15).

(2) The disability living allowance entitlement condition is that the person is in receipt of disability living allowance on the transition date.

(3) The personal independence payment refusal condition is that following a transitional assessment determination, the person's claim for personal independence payment is refused.

(4) The 4 points on assessment condition is that the person obtained a score of at least 4 points in relation to either the daily living activities' category or the mobility activities' category of the transitional assessment determination.

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<sup>(10)</sup> Article 15 was amended by paragraph 22(1) of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.))

### **Eligibility (following termination of welfare supplementary payment under Part 2)**

14.—(1) A person is entitled to welfare supplementary payment under this Part if the person meets—

- (a) the Part 2 welfare supplementary payment termination condition,
- (b) the disability living allowance entitlement condition,
- (c) the personal independence payment refusal on appeal, revision or supersession condition,
- (d) the 4 points on appeal, revision or supersession condition, and
- (e) the conflict related injury condition (see regulation 15).

(2) The Part 2 welfare supplementary payment termination condition is that a person's entitlement to welfare supplementary payment under Part 2 terminates—

- (a) following an appeal, in accordance with regulation 6(3)(a) or 6(6)(a), or
- (b) following a revision or supersession, in accordance with regulation 7.

(3) The personal independence payment refusal on appeal, revision or supersession condition is that following the appeal, revision or supersession, the person's claim for personal independence payment is refused.

(4) The 4 points on appeal, revision or supersession condition is that the person obtained a score of at least 4 points in relation to either the daily living activities' category or the mobility activities' category on the appeal, revision or supersession.

(5) The 4 points must have been obtained within one year of the day following the day on which the person's entitlement to disability living allowance terminates in accordance with regulation 17(1) of the Transitional Provisions Regulations.

### **Meaning of conflict related injury condition**

15.—(1) The conflict related injury condition is that the person is or has been physically or psychologically injured as a result of, or in consequence of a violent incident in connection with the affairs of Northern Ireland.

(2) The violent incident must have occurred—

- (a) in or after 1966, and
- (b) before the person's entitlement to disability living allowance terminated in accordance with regulation 17(1) of the Transitional Provisions Regulations.

(3) Without prejudice to the generality of paragraph (1), a person may be psychologically injured as a result of or in consequence of—

- (a) witnessing a violent incident or the consequences of such an incident; or
- (b) providing medical or other emergency assistance to an individual in connection with a violent incident.

### **Procedure for establishing eligibility**

16.—(1) The Department must, of its own initiative, within four weeks of—

- (a) the disability living allowance entitlement condition,
- (b) the personal independence payment refusal condition, and
- (c) the 4 points on assessment condition,

being met in relation to a person, make a request of that person.

(2) The Department must, of its own initiative, within four weeks of—

- (a) the Part 2 welfare supplementary payment termination condition,
- (b) the disability living allowance entitlement condition,
- (c) the personal independence payment refusal on appeal, revision or supersession condition,
- (d) the 4 points on appeal, revision or supersession condition,

being met in relation to a person, make a request of that person.

- (3) The request under paragraph (1) or (2) must—
  - (a) state that the Department will make an award of welfare supplementary payment if the conflict related injury condition is met,
  - (b) request that the person submit evidence (or arrange for evidence to be submitted) that the condition is met.

(4) All evidence submitted must be in the form required by regulation 17.

(5) Unless it is unreasonable in the circumstances, evidence must be submitted within one calendar month of the day the request is made.

(6) In determining whether a person meets the conflict related injury condition, the Department may consult with the Commission for Victims and Survivors.

(7) The Department must consider all evidence and information submitted in accordance with this regulation and regulation 17 and determine if the person is eligible for welfare supplementary payment.

### **Evidence for establishing conflict related injury condition**

**17.** Evidence that the conflict related injury condition is met can only be submitted if it is in the form of a report from—

- (a) a member of the Police Service of Northern Ireland,
- (b) a health care professional within the meaning of section 11C(6) of the Welfare Reform Act (Northern Ireland) 2007<sup>(11)</sup>, or
- (c) a body providing services and support to victims and survivors which is in receipt of a grant under Article 10 of the Victims and Survivors (Northern Ireland) Order 2006<sup>(12)</sup>.

### **Amount**

**18.—**(1) The amount of welfare supplementary payment payable is—

- (a) in cases where the person scored at least 4 points in relation to the daily living activities' category of the transitional assessment determination (or in the case of eligibility under regulation 14, on appeal, revision or supersession), an amount equal to the relevant standard rate of the daily living component for personal independence payment;
- (b) in all other cases, an amount equal to the relevant standard rate of the mobility component for personal independence payment.

(2) In this regulation—

“standard rate” has the same meaning as in—

- (a) Article 83 of the 2015 Order (in respect of the daily living component),
- (b) Article 84 of the 2015 Order (in respect of the mobility component), and

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<sup>(11)</sup> 2007 c. 2 (N.I.); section 11C is inserted by Article 63(2) of the Welfare Reform (Northern Ireland) Order 2015

<sup>(12)</sup> S.I. 2006/2953 (N.I. 17)



“relevant standard rate” means the standard rate prescribed under those Articles at the date of coming into operation of these Regulations.

### **Period of payment**

**19.**—(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 disability living allowance terminates in accordance with regulation 17(1) of the Transitional Provisions Regulations (in the case of eligibility under regulation 13).

(3) The period during which welfare supplementary payment is payable commences on the day following the day welfare supplementary payment under Part 2 terminates (in the case of eligibility under regulation 14).

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

(a) one year after the day on which—

(i) it commences (in the case of eligibility under regulation 13), or

(ii) welfare supplementary payment under Part 2 commences (in the case of eligibility under regulation 14), or

(b) on 31st March 2020,

whichever is first to occur.

### **Effect of changes in personal independence payment following revision, appeal or supersession of previous decision**

**20.**—(1) This regulation applies where—

(a) a person is receiving welfare supplementary payment, and

(b) following an event referred to in paragraph (3), there is a change in entitlement to personal independence payment to the person.

(2) If the person—

(a) is awarded personal independence payment, or

(b) obtains a score of less than 4 points in relation to either the daily living activities’ category or the mobility activities’ category,

then welfare supplementary payment must cease to be paid from the day after the first payment of welfare supplementary payment following the decision to change personal independence payment.

(3) The events referred to in paragraph (1)(b) are—

(a) the decision to not award personal independence payment is revised under Article 10 of the 1998 Order,

(b) the decision to not award personal independence payment is appealed under Article 13 or 15 of the 1998 Order,

(c) the decision to not award personal independence payment is superseded under Article 11 of the 1998 Order.

## PART 5

### MISCELLANEOUS

#### **Review**

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

(2) The procedures established must—

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

**22.** 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**

**23.** A person is not entitled to welfare supplementary payment unless the person—

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

#### **Temporary absence from Northern Ireland**

**24.**—(1) Subject to regulation 25, where a person is temporarily absent from Northern Ireland, the person is treated as present in Northern Ireland for the purpose of these Regulations for the first 4 weeks of absence.

(2) A person is temporarily absent from Northern Ireland if, at the beginning of the period of absence, the person's absence is unlikely to exceed 52 weeks.

#### **Temporary absence from Northern Ireland to receive medical treatment**

**25.**—(1) Where a person is temporarily absent from Northern Ireland, the person is treated as present in Northern Ireland for the purposes of these Regulations for the first 13 weeks of that absence, where—

- (a) the person's absence is solely in connection with arrangements made for the medical treatment of the person for a disease or bodily or mental disablement which commenced before the person 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 is 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 24(2).

### Care home residents

**26.**—(1) Subject to regulation 29, no welfare supplementary payment is payable in respect of any period during which a person is a resident of a care home in circumstances in which any of the costs of any qualifying services provided for the person 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(**13**),
- (b) the Mental Health (Northern Ireland) Order 1986(**14**),
- (c) section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002(**15**), 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(**16**),
  - (ii) Article 30 of the Education and Libraries (Northern Ireland) Order 1993(**17**), or
  - (iii) Article 3 of the Education (Student Support) (Northern Ireland) Order 1998(**18**).

(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(**19**) 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(**20**).

(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—

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(13) 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)) and 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))

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

(15) 2002 c. 6 (N.I.)

(16) 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)

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

(18) 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))

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

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

“care home” and “qualifying services” have the same meaning as in Article 90 of the 2015 Order,

“Health and Social Care trust” means a body as established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991(21), 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(22).

### **Hospital in-patients**

27.—(1) Subject to regulation 29, no welfare supplementary payment is payable in respect of any period during which a person is 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 to the person are borne out of public funds.

(2) For the purposes of paragraph (1) the costs of treatment, accommodation or any related services are borne out of public funds if a person is 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(23), or
- (b) a hospital or similar institution maintained or administered by the Defence Council.

### **Prisoners**

28. Subject to regulation 29, no welfare supplementary payment is payable under these Regulations for a period during which a person is in prison or detained in legal custody.

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

29. Regulation 26(1), 27(1) or, as the case may be, regulation 28 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

*Name*  
A senior officer of the Department for  
Communities

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(21) 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.))

(22) 2009 c. 1 (N.I.)

(23) S.I. 1991/194 (N.I. 1)

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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) Order 2015 (“the Order”) as defined in the document “A Fresh Start the Stormont Agreement and Implementation Plan”.

The Regulations provide for mitigations on the introduction of Personal Independence Payment (as provided for in Part 5 of the Order).

Regulation 2 is an interpretative provision for these Regulations which provides for payments to be made to existing Disability Living Allowance claimants who are financially worse off as a result of transitioning to Personal Independence Payment.

Regulation 3 provides for payments referred to as welfare supplementary payments (Disability Living Allowance).

Part 2 makes provision for those existing Disability Living Allowance claimants who are refused Personal Independence Payment on reassessment and they subsequently appeal this decision.

Regulation 4 stipulates the eligibility criteria for welfare supplementary payments to be made under Part 2.

Regulation 5 provides that the amount of welfare supplementary payment to be made to each claimant is to be equal to the weekly amount of Disability Living Allowance they were receiving at the point of reassessment.

Regulation 6 stipulates welfare supplementary payments under Part 2 are to be paid four weeks in arrears and provides for the duration of payments.

Regulation 7 makes provision for welfare supplementary payments to cease in cases where a claimant is subsequently awarded Personal Independence Payment.

Part 3 makes provision for existing Disability Living Allowance claimants who qualify for Personal Independence Payment but at a rate lower than what they were receiving under Disability Living Allowance.

Regulation 8 stipulates the eligibility criteria for welfare supplementary payments to be made under Part 3.

Regulation 9 makes provision for welfare supplementary payments under this Part where a claimant is subsequently awarded Personal Independence Payment following an initial refusal determination.

Regulation 10 provides that the amount of welfare supplementary payment to be made to each claimant is to be equal to 75% of the amount by which the award of Disability Living Allowance exceeded the award of Personal Independence Payment at the point of reassessment.

Regulation 11 stipulates welfare supplementary payments under Part 3 are to be paid four weeks in arrears and provides for the duration of payments.

Regulation 12 makes provision for welfare supplementary payments to be impacted in the event of the Personal Independence Payment award being changed. In the case where the claimants is no longer entitled to Personal Independence Payment or the difference between the award of Disability Living Allowance and the new award of Personal Independence Payment is no longer at least £10 per week, welfare supplementary payments under this Part will cease. If Personal Independence Payment is increased the amount of welfare supplementary payment will be recalculated to reflect 75% of

the financial loss incurred as a result of the new Personal Independence Payment determination. In the event that the Personal Independence Payment award is decreased the amount of welfare supplementary payment will not be recalculated and will continue at the same rate.

Part 4 makes provision for those existing Disability Living Allowance claimants who are refused Personal Independence Payment on reassessment and whose disability is as a result of a conflict related injury.

Regulation 13 stipulates the eligibility criteria for welfare supplementary payments to be made under Part 4.

Regulation 14 makes provisions for welfare supplementary payments under this Part when a claimant is not entitled to Personal Independence Payment but has been awarded between 4 and 7 points under the Personal Independence Payment assessment criteria, in either the daily living or mobility component.

Regulation 15 stipulates that in order to qualify for welfare supplementary payments under this Part the claimant must have been physically or psychologically injured as a result of, or in consequence of a violent incident in connection with the affairs of Northern Ireland. It further provides that the violent incident must have occurred between 1966 and the point of transition to Personal Independence Payment.

Regulation 16 provides that corroborative evidence must be provided by the claimant to confirm that they were involved in the conflict related incident and stipulates that the Department can consult with the Commission for Victims and Survivors where necessary.

Regulation 17 stipulates the sources of evidence from which corroborative evidence should be obtained.

Regulation 18 provides that the amount of welfare supplementary payment to be made under this Part is equivalent to either the standard rate of the daily living or mobility components, whichever is most financially advantageous to the claimant.

Regulation 19 stipulates welfare supplementary payments under Part 4 are to be paid four weeks in arrears and provides for the duration of payments.

Regulation 20 makes provision for welfare supplementary payments to cease in cases where a claimant is subsequently awarded Personal Independence Payment.

Part 5 makes provisions for certain miscellaneous matters that will impact welfare supplementary payments under these Regulations.

Regulation 21 provides for reviewing a person's entitlement to a welfare supplementary payment.

Regulation 22 ensures entitlement to welfare supplementary payment is to be disregarded in the consideration of entitlement to social security benefits.

Regulation 23 defines entitlement by reference to residency and presence in Northern Ireland.

Regulation 24 allows periods of temporary absence 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 25 allows temporary absence from Northern Ireland to be deemed as presence in Northern Ireland for the first 13 weeks of absence where a person is receiving medical treatment.

Regulation 26 provides that a welfare supplementary payment will not be paid where a person is a resident in a care home and the costs are being paid out of public funds.

Regulation 27 provides that a welfare supplementary payment will not be paid where a person is an inpatient in a hospital or a similar institution and the costs are being paid out of public funds.

Regulation 28 provides that a welfare supplementary payment will not be paid where a person is imprisoned or detained in legal custody.

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**Draft Legislation:** *This is a draft item of legislation. This draft has since been made as a Northern Ireland Statutory Rule: The Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations (Northern Ireland) 2016 No. 250*

Regulation 29 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 26, 27 and 28.