

EXPLANATORY MEMORANDUM

THE WELFARE SUPPLEMENTARY PAYMENT (LOSS OF DISABILITY LIVING ALLOWANCE) REGULATIONS (NORTHERN IRELAND) 2016

S.R. 2016 No. xxx

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Communities To accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under Article 137(5) of the Welfare Reform (Northern Ireland) Order 2015 (“the Order”) and is subject to draft affirmative procedure.

2. Purpose

- 2.1 These Regulations introduce welfare supplementary payments to mitigate impacts as defined in the document “A Fresh Start the Stormont Agreement and Implementation Plan” arising from the implementation of Welfare Reform.
- 2.2 The Regulations provide for mitigations on the introduction of Personal Independence Payment (as provided for in Part 5 of the Order).

3. Background

- 3.1 The Regulations provide for payments referred to as welfare supplementary payments. Their introduction has its basis in measures brought forward by the Westminster Government which included the introduction of Personal Independence Payment to replace Disability Living Allowance for working age claimants only i.e. those aged 16 – 64. The legislation stipulates that because there are difference eligibility criteria for Personal Independence Payment, all existing Disability Living Allowance claimants of working age will be required to claim and be reassessed for this new benefit, irrespective of their disability or the circumstances under how their disability arose in the first instance. Adherence to the normal parity provision for social security measures for single social security systems for the whole of the UK will see the introduction of similar provision in Northern Ireland from 20 June 2016 and approximately 125,000 existing Disability Living Allowance claimants will be impacted by this change.. The Northern Ireland Executive sought and agreed transitional protection for those impacted by the reforms for defined periods.
- 3.2 “A Fresh Start the Stormont Agreement and Implementation Plan” was agreed by the main political parties in Northern Ireland on 17 November 2015. This included agreement on the implementation of welfare reform in Northern Ireland. It also agreed that Professor Eileen Evason should lead a small working group to bring forward proposals for mitigating

welfare reforms within an agreed financial envelope. The Executive agreed to implement the findings of the working group.

- 3.3 In its report the Welfare Reform Mitigations Working Group recommended that existing DLA claimants who are financially worse off as a result of transitioning to PIP should receive welfare supplementary payments and they provided for them under the following three categories:
- Pending appeal against refusal of PIP;
 - Where PIP is awarded at a lower rate than DLA; or
 - Conflict related injury cases where PIP has been refused.
- 3.4 These Regulations make provision for these payments and Regulation 3(3) stipulates that a claimant cannot be entitled to more than one supplementary payment for loss of Disability Living Allowance at any given time.
- 3.5 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 to a tribunal or Social Security Commissioner. 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. This will commence on the day immediately after the claimants Disability Living Allowance ceases and continues until one payment after the Department receives notification of the appeal outcome or the date the mitigation scheme ends (31 March 2020), whichever comes first. Provision is also included within Part 2 for welfare supplementary payments to cease in cases where Personal Independence Payment is awarded on revision or supersession before a tribunal gives a determination on any appeal lodged in which case the appeal would lapse.
- 3.6 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 and the difference between these two awards must be at least £10 per week. It stipulates 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 Provision is also made for welfare supplementary payments under Part 3 in cases where a claimant is subsequently awarded Personal Independence Payment following an initial refusal determination.
- 3.7 Regulation 12 also makes provision for welfare supplementary payments under Part 3 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.

- 3.8 Welfare supplementary payments under Part 3 are to be paid for up to one year from when the financial loss was incurred but not beyond 31 March 2020, whichever comes first. However, if the claimant becomes entitled to Personal Independence Payment or is awarded less than 4 points following an appeal, revision or supersession determination before then payments under this Part will cease.
- 3.9 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. It stipulates that in order for welfare supplementary payments to be considered under Part 4 the claimant must have been awarded between 4 and 7 points under the Personal Independence Payment assessment criteria, in either the daily living or mobility component. It also stipulates at Regulation 15 that 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 between 1966 and the point of transition to Personal Independence Payment.
- 3.10 Regulation 16 provides that evidence must be provided by the claimant to confirm the conflict related incident and stipulates that the Department can consult with the Commission for Victims and Survivors where necessary and Regulation 17 stipulates that this evidence be obtained from either the Police Service of Northern Ireland, Healthcare Professional or a Victims and Survivors group receiving funding from the Victim and Survivors Service
- 3.11 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.
- 3.12 Welfare supplementary payments under Part 4 are to be paid for up to one year from when the financial loss was incurred but not beyond 31 March 2020, whichever comes first or earlier if the claimant becomes entitled to Personal Independence Payment or is awarded less than 4 points following an appeal, revision or supersession determination.
- 3.13 All welfare supplementary payments provided for within these Regulations, regardless of which Part, are to be paid four weeks in arrears.
- 3.14 Regulation 21 provides for reviewing a person's entitlement to a welfare supplementary payment.
- 3.15 A welfare supplementary payment is to be disregarded in the consideration of entitlement to social security benefits (regulation 22).

- 3.16 Regulation 23 defines entitlement by reference to residency and presence in Northern Ireland.
- 3.17 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.
- 3.18 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.
- 3.19 A welfare supplementary payment will not be paid where a person is imprisoned or detained in legal custody for a period in excess of 28 days.
- 3.20 Regulations 26 and 27 provides that a welfare supplementary payment will not be paid where a person is a resident in a care home, hospital or similar institution and the costs are being paid out of public funds.
- 3.21 Regulation 28 provides that a welfare supplementary payment will not be paid where a person is imprisoned or detained in legal custody.
- 3.22 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.

4. Consultation

- 4.1 The working group set up under the leadership of Professor Evason has consulted widely on the Working Group's report and the Department is solely implementing its recommendations.

5. Equality Impact

- 5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on proposals for these Regulations and concluded that they do not have significant implications for equality of opportunity. In light of this, the Department considers that an equality impact assessment is not necessary.

6. Regulatory Impact

- 6.1 These Regulations do not require a Regulatory Impact Assessment as they impose only minimal costs on business, charities or voluntary bodies.

7. Financial Implications

7.1 The figures in the table below represent costs estimated by reference to existing cases.

Administration costs over the four years for all the mitigation measures are estimated to be £20m.

ITEM- WELFARE REFORM	16/17	17/18	18/19	19/20	Total (£m)
100% protection for those who appeal against refusal of PIP	1	15	14	14	44
75% protection where PIP is awarded at a lower rate than DLA (by at least £10 per week)	1	10	14	12	37
Conflict related injury cases where PIP has been refused (equivalent to either standard daily living or standard mobility component)	0	4	4	6	14
Total (£m)	2	29	32	32	95

8. Section 24 of the Northern Ireland act 1998

8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the Rule—

- (a) is not incompatible with any of the Convention rights,
- (b) is not incompatible with Community law,
- (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and
- (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 There is no equivalent provision being made for Great Britain.

On 17 November 2015 “A Fresh Start the Stormont Agreement and Implementation Plan” was agreed by the main political parties in Northern Ireland. Included in this agreement was the approach agreed by the Executive and HM Government to implementing welfare reform in Northern Ireland.