EXPLANATORY MEMORANDUM TO THE DEPARTMENT FOR SOCIAL DEVELOPMENT COMMITTEE

The Social Security (Claims and Payments) (Amendment) Regulations (Northern Ireland) 2010

S.R. 2010 No. 129

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Social Security (Claims and Payments) (Amendment) Regulations (Northern Ireland) 2010 which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under powers conferred by the Social Security Administration (Northern Ireland) Act 1992 (c. 8) and is subject to the negative resolution procedure.

1.3 The rule is due to come into operation on 8 April 2010.

2. Purpose

2.1 This Statutory Rule amends the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 to make it clear how money which is paid direct to a mortgage lender to help with the person's mortgage costs is to be applied by the lender. It makes no changes to the amounts payable and applies to all benefit customers who have mortgage interest deducted from their benefit (income support, income-based jobseeker's allowance, state pension credit and income-related employment and support allowance) and paid direct to qualifying lenders by the Department for Social Development.

3. Background

3.1 A claimant in receipt of the benefits named above may be entitled to help towards their mortgage costs through the Support for Mortgage Interest rules. Specifically, this covers eligible interest on loans (up to prescribed capital limits) taken out to purchase a home and on certain home improvement loans.

3.2 Current legislation provides that where mortgage interest payments are deducted from benefit and paid directly to the lender under the Mortgage Interest Direct scheme which has been in place since 1992, those payments must be applied towards the discharge of the interest liability.

3.3 Since 1995, help towards interest on mortgage loans and home improvement loans for homeowners has been calculated by applying a standard interest rate to the capital outstanding on the eligible loan.

3.4 Until November 2008, the Standard Interest Rate was based on a formula - the Bank of England base rate plus 1.58%. At pre-Budget Report in November 2008, the Chancellor announced that the Standard Interest Rate would be frozen at 6.08% as allowing it to fall back to 2.08% (the current Bank of England base rate plus 1.58%) would have increased the possibility of claimants falling into arrears on their mortgage accounts and increased the likelihood of repossessions.

3.5 The decision to freeze the standard interest rate at 6.08% to provide additional help in the economic downturn, taken together with the historically low base rates, has significantly increased the number of people who receive more money than is needed to cover their actual mortgage interest liability.

3.6 When the Standard Interest Rate was introduced in 1995 the policy was made clear on how any excess housing costs payment should be treated. It was based on the principle, that lenders agree that any payments in excess, resulting from the actual rate being lower than the standard rate, should only be used to credit the claimant's loan account. This central principle reflects the overarching policy that support for mortgage interest payments should only be used to reduce mortgage liabilities for individuals which is intended to help minimise repossessions as well as safeguard public finances. It was never intended that any excess support for mortgage interest be made available to claimants to use for purposes unrelated to meeting their housing costs. However this principle was not set in the legislation introducing the Standard Interest Rate, thus creating a loophole.

3.7 Until recently, very few, if any, claimants came forward and asked for the excess mortgage payments to be paid back to them by lenders. The value of these excess payments has increased over time and in some cases is likely to be very high, particularly for those who have mortgages with interest rates at or slightly above the current Bank of England base rate of 0.5%. Customers will also be aware of the impact of any mortgage payments made to their accounts as a result of discussions with their lenders and through their annual mortgage statements. The Department for Work and Pensions have stated that there has been a significant increase in enquiries from lenders and the Council of Mortgage Lenders. They have also seen an increase in enquiries from claimants approaching Benefit Delivery Centres about these excess payments. While they have no official records on the numbers of enquiries made to Jobcentre Plus and Pensions Centres on this matter, they have stated that informal information suggests that there are on average over 200 enquiries a week. The position of the excess payments has also been questioned in Northern Ireland however records of the number of these enquiries are not available.

3.8 Lenders are concerned that an increasing number of claimants could go into arrears if the excess mortgage payments are paid to customers instead of being applied to their mortgage accounts as intended. This could be, for example, as a result of lenders' accounting processes which tend to calculate mortgage balances yearly in arrears; or, where customers hold repayment mortgages on which we do not pay the capital element; or, where the eligible housing costs for support for mortgage interest are based on a sum lower than the loan outstanding. Some lenders have also suggested that they may be inclined to withdraw from the Mortgage Interest Direct scheme altogether if this matter is not resolved as calculating and refunding excess payments would be administratively complex and costly. Such a move from the lenders could lead to repossessions if customers are then paid their Support for Mortgage Interest direct and then do not pass it on to their mortgage lenders.

3.9 This Statutory Rule will ensure that excess housing costs payments are credited to claimants' mortgage accounts, as always intended, and that customers will have no legal grounds to draw excess payments from their mortgage accounts to use for other purposes. This rule reflects existing overarching policy aims to prevent repossessions, and fully supports the principle which underpinned the introduction of the Standard Interest Rate.

3.10 The table below shows the number of claimants who receive assistance with mortgage interest payments.

Benefit	Total number of claimants receiving assistance with mortgage interest payments
Income Support	7,400
Income-based Jobseeker's Allowance	985
Pension Credit	5,540

Source: Analytical Services Unit, Department for Social Development – most recent publication at May 2009
The Income Support and Pension Credit publications are based on a 5% sample data while the Jobseeker's Allowance publication is based on 20%. There are no published figures or validated/reliable data on the number of Employment and Support Allowance claimants receiving help with mortgage interest.

4. Consultation

4.1 Under the Social Security Administration Act 1992 the Great Britain proposals for the regulations are required to be referred to the Social Security Advisory Committee for consultation unless it is inexpedient to do so for reasons of urgency. In view of the urgent need to have the changes in place without delay from 8 April 2010 because of rising repossessions and unemployment, the regulations were made and laid before Parliament without prior formal reference to the Social Security Advisory Committee. The regulations will be referred to the Committee by the Department for Work and Pensions as soon as practicable after they are made and laid and any recommendations will be carefully considered.

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 these legislative proposals and has concluded that the proposals do not have significant implications for equality of opportunity. In light of this, the Department considers that an equality impact assessment is not necessary.

6. Regulatory Impact

6.1 These Regulations do not require a Regulatory Impact Assessment as they do not impose any additional costs or savings on business, charities or voluntary bodies.

7. Financial Implications

7.1 No financial implications

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department has also considered its obligations under section 24 of the Northern Ireland Act 1998. It is the Department's judgement that the Social Security (Claims and Payments) (Amendment) Regulations (Northern Ireland) 2010 are not incompatible with the Convention rights, are not incompatible with Community law, do not discriminate against any person or class of person on the ground of religious belief or political opinion and do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. E.U. Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 The Regulations mirror those made in Great Britain Regulations and are in keeping with the principal of parity between Northern Ireland and Great Britain in social security matters. The Regulations come into operation on 8 April 2010.

11. Additional Information

11.1 Not applicable