

EXPLANATORY MEMORANDUM

THE SOCIAL SECURITY (PERSONS SERVING A SENTENCE OF IMPRISONMENT DETAINED IN HOSPITAL) REGULATIONS (NORTHERN IRELAND) 2010

S.R. 2010 No. 58

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under sections 113(1)(b), 122(1)(a), 131(1) and (2), and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, sections 2(3), (6) and (9) and 19(1) and (2) of the State Pension Credit Act (Northern Ireland) 2002 and sections 2(1)(a), 4(2) and (3), 18(4)(b) and 25(2) of the Welfare Reform Act (Northern Ireland) 2007 and is subject to the negative procedure.

2. Purpose

- 2.1 These Regulations correct drafting which has been held by the Court of Appeal in *R (on the application of D & M) v Secretary of State for Work and Pensions* EWCA Civ 18 to require an interpretation different from the one intended.

The Social Security (Persons Serving a Sentence of Imprisonment Detained in Hospital) Regulations (Northern Ireland) 2010 amend the Social Security (General Benefit) Regulations (Northern Ireland) 1984 (“the General Benefit Regulations”), the Income Support (General) Regulations (Northern Ireland) 1987 (“the Income Support Regulations”), the State Pension Credit Regulations (Northern Ireland) 2003 (“the State Pension Credit Regulations”) and Employment and Support Allowance Regulations (Northern Ireland) 2008 (“the Employment and Support Allowance Regulations”) to ensure that patients with a prison sentence of indeterminate length, whether a mandatory or discretionary life sentence or an indeterminate sentence for public protection, should not become eligible for benefits when the tariff part of their sentence expires.

- 2.2 Regulation 1 provides for the title and commencement of the Regulations.

- 2.3 Regulation 2 amends the General Benefit Regulations to ensure a prisoner detained under Article 53 of the Mental Health (Northern Ireland) Order 1986 and who has an indeterminate sentence without a release date in accordance with Article 56(3) of that Order, is not exempt from disqualification of receipt of benefit.
- 2.4 Regulation 3 amends the Income Support Regulations to include a new definition of “a person serving a sentence of imprisonment detained in hospital” and to ensure that the applicable amount for that person is nil.
- 2.5 Regulation 4 amends the State Pension Credit Regulations to ensure a prisoner detained under Article 53 of the Mental Health (Northern Ireland) Order 1986 and who has an indeterminate sentence without a release date in accordance with Article 56(3) of that Order, is not exempt from disqualification of receipt of benefit.
- 2.6 Regulation 5 amends the Employment and Support Allowance Regulations to include a new definition of “a person serving a sentence of imprisonment detained in hospital” and to ensure a prisoner detained under Article 53 of the Mental Health (Northern Ireland) Order 1986 and who has an indeterminate sentence without a release date in accordance with Article 56(3) of that Order, is not exempt from disqualification of receipt of benefit.
- 2.7 Regulation 6 makes a consequential revocation.

3. Consultation

- 3.1 As the Regulations make, in relation to Northern Ireland, only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain they do not have to be submitted to the Social Security Advisory Committee.

4. Equality Impact

- 4.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise and concluded that as the Regulations.

5. Regulatory Impact

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

6. Financial Implications

- 6.1 None.

7. Section 24 of the Northern Ireland act 1998

7.1 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.

8. EU Implications

8.1 Not applicable.

9. Parity or Replicatory Measure

9.1 The corresponding Great Britain instrument is the Social Security (Persons Serving a Sentence of Imprisonment Detained in Hospital) Regulations 2010 (S.I. 2010/442). In keeping with the long-standing policy of parity in social security, the Regulations come into operation on 25 March 2010, the same date as the corresponding Great Britain provisions. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.