

EXPLANATORY MEMORANDUM TO THE DEPARTMENT FOR SOCIAL DEVELOPMENT COMMITTEE

The Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2010

S.R. 2010 No. 6

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Social Security (Miscellaneous) 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 Contributions and Benefits (Northern Ireland) Act 1992 (c. 7), the Jobseekers (Northern Ireland) Order 1995, the Immigration and Asylum Act 1999 and the Welfare Reform Act (Northern Ireland) 2007 and is subject to the negative resolution procedure.
- 1.3 The rule is due to come into operation on 25 January 2010.

2. Purpose

- 2.1 This Statutory Rule amends the Income Support (General) Regulations (Northern Ireland) 1987, the Jobseeker's Allowance Regulations (Northern Ireland) 1996, the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 and the Employment and Support Allowance Regulations (Northern Ireland) 2008.
- 2.2 The purpose of these regulations is to:-
 - remove the Urgent Case Payment provision for those who have a temporary disruption in income and who find themselves in hardship, and pay full rate benefit instead, or in limited cases access to Social Fund, and
 - remove the provision which allows disabled workers in full-time employment access to Income Support or Jobseeker's Allowance, and for those who have a disabled partner who is in full time work access to Employment and Support Allowance.

3. Background

Urgent Case Payment

- 3.1 Within the working age benefits (Income Support, income-based Jobseeker's Allowance and income-related Employment and Support Allowance) there is provision which allow a reduced amount of benefit to be paid to prevent hardship. This is known as an Urgent Case Payment and is paid at 90% of the personal allowance rate and is generally awarded

when someone's normal income stream is temporarily interrupted. The volume of people applying for an Urgent Case Payment has dramatically reduced in recent years following changes to Asylum Seeker rules in April 2000, which removed benefit entitlement to all new Asylum Seekers from this date and transferred responsibility for this client group to the Asylum and Support Service within the Home Office.

- 3.2 The qualifying criteria for using the Urgent Case Payment facility are very restricted and therefore rarely used. Instead customers who could qualify for Urgent Case Payments use the Social Fund Crisis Loan scheme when facing hardship (although this is not currently available to persons subject to immigration control). Urgent Case Payments are complicated to administer as clerical calculations have to be made with consideration taken of the special rules on treatment of capital and income as well as recovery in certain cases. Therefore the proposed removal of the provisions will help to aid the simplification of the benefit system.
- 3.3 For these reasons, it has been decided to dispense with Urgent Case Payments, in line with State Pension Credit, in favour of normal benefit rates and entitlement. However unlike State Pension Credit the working age rules surrounding notional income will be retained as an anti-abuse measure.

Disabled Workers and employed persons living in residential accommodation

- 3.4 Currently certain disabled workers in full-time remunerative work (16 hours or more per week) may access Income Support or Jobseeker's Allowance and claimants who have a disabled partner who is in full-time remunerative work (24 hours or more a week) can access income-related Employment and Support Allowance.
- 3.5 The original policy rationale which was carried forward into the Income Support Scheme in 1988 from the old Supplementary Benefit Scheme was to help remove discrimination faced by disabled people in the workplace. This policy pre-dates both National Minimum Wage and Human Rights legislation, and was not reviewed when Working Tax Credit was introduced to help low earners working 16 hours or more per week. Nor was it fully re-evaluated before the introduction of Employment and Support Allowance, rather it was transferred across to Employment and Support Allowance solely in respect of partners because they are subject to the normal remunerative work rules (whereas claimants are subject to exempt work rules).
- 3.6 The current Employment and Support Allowance rules and the Working Tax Credit regime ensure the right level of support for this group of people, and consequently in the interest of simplification, consistency across the benefits and equal treatment, it has decided to remove the relevant provisions within Income Support.

- 3.7 To mitigate the risk of immediate losers as a result of the change it has been decided to introduce transitional provisions to ensure that the change does not apply to existing customers. However linking rules will not be available so that a customer who re-claims benefit after the change cannot access the current provisions once they have been removed.

4. Consultation

- 4.1 In advance of taking the decision to remove the provision that allow certain disabled workers access to benefits the Department for Work and Pensions in Great Britain wrote informally to the disability lobby to seek their views about the proposal. An informal consultation letter was sent to 13 disability organisations recognised as having an interest in these policies (e.g. MIND, Citizen's Advice, RNIB, RNID, Child Poverty Action Group, etc.). Those organisations then distributed the letter to a wider audience of a further 47 representatives and 6 weeks were given for replies to be returned. In total only four responses were received and only two substantive points were made, which related to housing costs and the impact of working patterns on fluctuating hours.
- 4.2 Respondents felt that some disabled home-owners will be worse off if they are required to claim Working Tax Credit (which does not meet housing costs) rather than an income-related benefit. This difference between in-work and out-of-work provision however applies across the board and is not an issue that specifically affects disabled people. It is also rare that customers who meet the current disabled worker conditions have mortgages. No specific cases were identified in the responses received.
- 4.3 Respondents highlighted an issue relating to working patterns and felt that the provisions allow Income Support to act as a fallback position for disabled people who are unable to comply with standard entitlement rules for either Working Tax Credit or Employment and Support Allowance. Respondents felt that removing the provisions could cause some disruption because in future people who might otherwise be able to take advantage of the current provisions may have to move between Employment and Support Allowance and Working Tax Credit on a regular basis. However this issue applies across the board, for example, to short term workers or those in and out of work, which makes it difficult to justify more favourable treatment for one particular group. In addition the Employment and Support Allowance rules in common with the rules in Income Support and Jobseeker's Allowance, allow hours to be averaged over a period of time. This means that one or two weeks of full-time work does not *necessarily* exclude someone from receiving Employment and Support Allowance. Also Employment and Support Allowance has a more generous earnings limit for claimants (£92 per week of earnings from permitted work can be allowed in certain cases, whereas all earnings over £20 are taken into account in Income Support and income-based Jobseeker's Allowance).

- 4.4 The Department for Work and Pensions have advised that the findings of their informal consultation suggested that the provisions in question are used extremely rarely and are also difficult to apply sensibly or consistently. To import the equivalent provision into the current Employment and Support rules in respect of Employment and Support claimants themselves would create preferential treatment that could not be legitimately justified now that discrimination in the work place has been addressed by other measures.
- 4.5 The Social Security Advisory Committee considered and cleared the Great Britain proposals at their meeting on 5 November 2009.

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 (Miscellaneous Amendments) 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. It is proposed that the Regulations come into operation on 25 January 2010.

11. Additional Information

11.1 Not applicable