

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (LOSS OF BENEFIT) (AMENDMENT)
REGULATIONS (NORTHERN IRELAND) 2011

S.R. 2011 No. 291

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Social Security (Loss of Benefit) (Amendment) Regulations (Northern Ireland) 2011 which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under the Social Security Fraud Act (Northern Ireland) 2001 and the Welfare Reform Act (Northern Ireland) 2010 and is subject to the confirmatory procedure.

2. Purpose

- 2.1. These Regulations introduce provision for a new loss / reduction of benefit sanction of four weeks for a first offence of benefit fraud that results in a caution, administrative penalty or conviction.
- 2.2. Currently the Social Security Fraud Act (Northern Ireland) 2001 and the Social Security (Loss of Benefit) Regulations (Northern Ireland) 2002 enables benefit to be withdrawn or reduced for a period of 13 weeks where a person is convicted of benefit fraud twice and the second offence was committed within 5 years of the date of conviction for the first offence.
- 2.3. The existing loss of benefit provision only impacts on the small number of people who commit benefit fraud twice and are convicted of the offence in court. It has no impact on the significant number of people who commit benefit fraud once.
- 2.4. The introduction of a new loss of benefit sanction by section 19 of the Welfare Reform Act (Northern Ireland) 2010 will strengthen the range of deterrents in place to deter more people from committing benefit fraud in the first instance.

3. Background

- 3.1. The Green Paper 'No one written off: reforming welfare to reward responsibility' published in July 2008 posed questions in relation to benefit fraud and stronger sanctions. Responses broadly welcomed a stronger sanction regime for those who seek to defraud the system.
- 3.2. The White Paper 'Raising expectations and increasing support: reforming welfare for the future' published in December 2008 confirmed that a new sanction to reduce or withdraw entitlement to benefit for four weeks after a first benefit fraud offence would be introduced. This new sanction extends the existing loss of benefit provision to cover those who commit a first offence which results not only in a conviction, but also cautions and administrative penalties.

- 3.3. The amending regulations support the new loss of benefit provision introduced by the Welfare Reform Act (Northern Ireland) 2010 (amending the Social Security Fraud Act (Northern Ireland) 2001). The new sanction will apply not only to cases which are prosecuted and result in a criminal conviction for benefit fraud but also to those cases which result in an administrative penalty or a caution. This means that as well as convictions in all cases where there is sufficient evidence that benefit fraud had been committed to commence a prosecution there would be:
- recovery of the overpayment;
 - a fraud sanction (conviction, administrative penalty or caution); and
 - a four week benefit penalty.
- 3.4. The new loss of benefit sanction will only apply if a relevant offence was committed after the commencement of this provision. If the individual is convicted, accepts an administrative penalty or caution for a benefit fraud offence following the commencement date, but the offence was committed prior to it then the new sanction will not apply. This is to prevent the provision having retrospective effect.
- 3.5. The right of customers to request hardship payments will not change. These payments will help ensure that the basic needs of vulnerable customers or those with families continue to be met whilst underlying entitlement remains to Housing Benefit, free school meals etc. The loss of benefit sanction cannot be applied to bereavement payments, retirement pension, benefits paid for children or those that cover the extra costs of disability.

4. Consultation

- 4.1. The primary powers to make these Regulations were included in the Welfare Reform Act (Northern Ireland) 2010. The Act was subject to a full consultation the results of which were published in December 2009 on the Department for Social Development's web site.

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. The impact on the public sector is minimal and is limited to the Department.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department has considered its obligations under section 24 of the Northern Ireland Act 1998. It is the Department's judgment that the Social Security (Loss of Benefit) (Amendment) Regulations (Northern Ireland) 2010 are not incompatible with 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. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. The Northern Ireland Regulations are in keeping with the principle of parity between Northern Ireland and Great Britain in social security matters. The corresponding Great Britain Regulations are the Social Security (Loss of Benefit) (Amendment) Regulations (S.I. 2010/1160).

11. Additional Information

- 11.1. Not applicable.