

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY, CHILD SUPPORT AND MESOTHELIOMA**  
**LUMP SUM PAYMENTS (DECISIONS AND APPEALS) (AMENDMENT)**  
**REGULATIONS (NORTHERN IRELAND) 2016**

**S.R. 2016 No. 208**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Social Development (Northern Ireland) on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 These regulations concern decision making and appeals in relation to a number of benefits and payments administered by the Department for Social Development (“the Department”). The purpose is to require disputes in relation to certain decisions made by the Department to be reconsidered by the decision-maker and resolved through a formal internal reconsideration process before a person can appeal to an appeal tribunal. This process will enable more disputes to be resolved internally without the need for an appeal to the tribunal but will not alter a person’s right of appeal.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative context**

- 4.1 Section 87 of the Northern Ireland Act 1998 (<http://www.legislation.gov.uk/ukpga/1998/47/section/87>) places a statutory duty on the Minister for Social Development and the Secretary of State for Work and Pensions to consult with one another with a view to securing a single social security system for the United Kingdom. Section 88 of the 1998 Act makes provision for financial adjustments to support the maintenance of these parity arrangements.
- 4.2 Underpinning the parity principle is the argument that, as people in Northern Ireland pay the same rates of income tax and National Insurance contributions as people in Great Britain, they are entitled to the same rights and benefits paid at the same rates.

- 4.3 The Welfare Reform Act 2012 introduced a number of reforms including Universal Credit, Personal Independence Payment, the Jobseeker's Allowance Claimant Commitment and a cap on the amount of benefits working age people can receive. It also reassessed incapacity benefits claimants for Employment and Support Allowance, improved the Work Capability Assessment and made sure housing support is fair.
- 4.4 On 17 November 2015 "A Fresh Start: The Stormont Agreement and Implementation Plan" (<https://www.gov.uk/government/news/a-fresh-start-for-northern-ireland>) 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. The Welfare Reform (Northern Ireland) Order 2015 (<http://www.legislation.gov.uk/nisi/2015/2006/contents>) provides a power for Her Majesty to legislate on social security, child support and certain matters related to employment and training in Northern Ireland by Order in Council. Any such Order in Council may then confer power on the Secretary of State or a Northern Ireland department to make further provision regarding these matters by regulations or order. The Welfare Reform (Northern Ireland) Order 2015 was made on 9 December 2015 and regulations stemming from the Order to implement the various welfare reforms set out in the Welfare Reform Act 2012 in Northern Ireland are now being brought forward.
- 4.5 Following the introduction of the corresponding GB instrument, The Social Security, Child Support, Vaccine Damage and Other Payments (Decisions and Appeals) (Amendment) Regulations 2013 (SI 2013/2380), GB appeals have been lodged directly with Her Majesty's Courts and Tribunal Service (part of the Ministry of Justice which has had responsibility for the administration of tribunals since November 2008) rather than with the office from which the decision being appealed was issued. Since November 2008 tribunal procedures have been set out in Tribunal Procedure Rules.
- 4.6 Although it was agreed in 2010 that statutory responsibility for the administration of appeal tribunals in Northern Ireland would be transferred to the Department of Justice (Northern Ireland) the necessary Transfer of Functions Order has not yet been brought forward and, until such time as the Order is made and comes into operation, the legislation which governs tribunal procedures remains with the Department for Social Development. Hence the omission of corresponding Northern Ireland provisions relating to appeal procedures and transitional or savings provisions are as a result not needed.

## **5. Extent and Territorial application**

- 5.1 This extent of this instrument is Northern Ireland.
- 5.2 The territorial application of this instrument is Northern Ireland.
- 5.3 The instrument makes the equivalent changes, in respect only of introducing mandatory reconsideration, for Northern Ireland that were made in Great Britain

by The Social Security, Child Support, Vaccine Damage and Other Payments (Decisions and Appeals) (Amendment) Regulations 2013 (SI2013/2380).

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- 7.1 In recent years the volume of appeals has been increasing. This adversely affects the service delivered to claimants and puts pressure on the Department for Social Development and the Appeals Service in administering appeals. Although many other improvements have been put in place the Department wants to resolve more disputes with claimants through the reconsideration process, before the claimant appeals to the tribunal. A claimant can already ask for a decision to be reconsidered by a decision maker, which may result in a revised decision in a quicker timeframe. In practice many people do not do so and instead make an appeal from the outset.
- 7.2 The new reconsideration process will allow a claimant's decision to appeal to be informed by whether the reconsideration had provided them with a clear justification for the original decision, and a clear explanation of it. The reconsideration process will also enable new information or evidence to be taken into account which may not have been available when the original decision was made.
- 7.3 The new formalised process will enable more disputes to be resolved internally without the need for an appeal to the tribunal but will not alter a person's right of appeal.

### ***Consolidation***

- 7.4 This instrument will be informally consolidated in the NI equivalent of the GB Law Relating to Social Security (or "Blue Volumes"), as the legislation applies only to Northern Ireland. It will be available to the public at no cost via the internet at: <https://www.dsdni.gov.uk/services/law-relating-social-security>

## **8. Consultation outcome**

- 8.1 The policy background set out in Section 4 above details that the legislation in Northern Ireland which governs tribunal procedures currently remains with the Department for Social Development. Hence these regulations do not extend to the introduction of direct lodgement to the Tribunal. These regulations provide specifically and only, for the requirement for disputes to be resolved through an internal reconsideration process before a person can make an appeal to an appeal tribunal.

- 8.2 This process of reconsideration is already informally part of the social security and child support appeals practice in Northern Ireland and these regulations ensure that this step is placed on a mandatory legislative footing.
- 8.3 Mandatory reconsideration was contained within the Welfare Reform Bill (Northern Ireland) proposals. The Department for Social Development consulted on the implications of the wider reforms as part of the Welfare Reform Bill consultation process, and has also discussed informally with stakeholders to ensure that the operational implications are fully understood and that processes are in place to ensure that the change is implemented correctly in Northern Ireland.

## **9. Guidance**

- 9.1 Detailed guidance on both regulatory and operational changes will be provided to staff and decision makers within the Northern Ireland Social Security Agency (NI SSA) and the Child Maintenance Service (CMS). Procedures will be updated, staff trained and notification letters amended.
- 9.2 Before these regulations are brought into operation changes will be made to the Decision Makers Guide (DMG) which is also available free on the internet at: <https://www.dsdni.gov.uk/articles/decision-makers-guide>.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector relates to the change in resource to allow the increase in volume of reconsiderations and to ensure that the resource is appropriate for the appeals to take place where they still go ahead. These will be administrative costs. This measure is part of the welfare reform package that will restore parity with the rest of the UK and contribute toward sustainable finances for the executive. This suite of policy changes are designed to improve work incentives and enhance fairness, whilst ensuring support for the most vulnerable. These were implemented in Great Britain in 2012 and the package of reforms has proved to be successful in increasing moves into employment by those affected.
- 10.3 An Impact Assessment, prepared by the Department for Work and Pensions, is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website. This change aims to ensure timely resolution of individuals' challenges around decisions on their claims and awards is reached in the context of this wider welfare reform. There is no anticipated behavioural change through this procedural change, it is intended to support the efficient review process for claims when there is dispute. Overall, those groups who are more likely to apply to receive benefit are more likely to be affected by this policy change, though these groups will not see a change in benefit income in cash terms.

10.4 Evidence from GB suggests that mandatory reconsideration is having the intended effect of reducing appeals, with 82% fewer appeals for ESA decisions in 2014/15 relative to the previous year and 92% fewer JSA appeals. The length of time waited by claimants who are appealing has also reduced since 2014, though the measure is not directly comparable over this time, indicatively this is a reduction of 4 weeks. It is unknown whether this will be replicated exactly in NI, but the intent is to ensure that disputes relating to benefit eligibility are resolved as quickly as possible to ensure that claimants receive the support and entitlement that best meets their needs.

## **11. Regulating small business**

11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring and review**

12.1 The operation of the Regulations will continue to be reviewed through the normal avenues of guidance enquiries received from the Department's offices and correspondence from members of the public.

12.2 The effects of mandatory reconsideration will be monitored as part of the Department's ongoing evaluation of the effectiveness of decision making and appeals.

12.3 In addition the Welfare Reform (Northern Ireland) (Order) makes specific provision for a duty on the Department to conduct and publish a report on the operation of the Order. This must be produced within 3 years of the making of the Order. The Department is required to lay the report before the Northern Ireland Assembly.

12.4 Northern Ireland social security legislation normally maintains parity with changes made by the Department for Work and Pensions.

## **13. Contact**

13.1 Anne McCleary at the Department for Social Development can direct any queries regarding the instrument. Telephone: 028 90819973 or email: [caroline.banks@dndni.gov.uk](mailto:caroline.banks@dndni.gov.uk).