EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (LOSS OF BENEFIT) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2016

2016 No. 225

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 amend the Social Security (Loss of Benefit) Regulations (Northern Ireland) 2002 (S.R. 2002 No. 79) to support changes introduced by the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I.) ("the Order").

2.2 The Order introduced more severe penalties to reduce benefit entitlement when claimants commit benefit offences.

2.3 The Regulations prescribe those offences which will be considered "relevant offences" which will incur an immediate 3 year loss of benefit penalty, on first offence, following a benefit fraud conviction for a serious case of organised fraud or identity related fraud.

2.4 These Regulations prescribe how loss of benefit penalties will apply to Universal Credit and put in place safeguards to mitigate losses of Universal Credit which would result in the claimant not being able to meet their basic needs. The Regulations also make changes to the loss of benefit provisions that apply to those on income related Employment and Support Allowance.

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 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" 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 Northern Ireland (Welfare Reform) Act 2015 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 in Northern Ireland an equivalent to the various welfare reforms set out in the Welfare Reform Act 2012, are now being brought forward.

4.5 The Regulations support changes introduced by Articles 117 and 118 of the Order to increase the duration of the period a person loses benefit when they commit a benefit offence (the "disqualification period") and escalate the duration of disqualification periods based on the number of offences committed rather than the number of convictions. The Order also introduces Universal Credit and these Regulations prescribe how the loss of benefit provisions will apply to Universal Credit.

5 Extent and Territorial Application

5.1 The extent of this instrument is Northern Ireland.

5.2 The territorial application of this instrument is Northern Ireland.

5.3 Equivalent provision was made for Great Britain in the Social Security (Loss of Benefit) (Amendment) Regulation 2013 (S.I. 2013 No. 385).

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

What is being done and why

7.1 Loss of benefit provisions are designed to be a deterrent against abuses of the benefit system by applying a benefit penalty to those convicted, or who have

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accepted a caution or an administrative penalty for a benefit fraud offence. Benefits may be reduced in part or withdrawn completely.

7.2 The strategy to tackle fraud and error and protect the integrity of the benefit system was announced by the United Kingdom Government on 18th October 2010 Tackling Fraud and Error in the Benefit and Tax Credits Systems. The strategy proposed fraudsters should lose benefit for increased periods to reflect the seriousness of welfare fraud including in the most serious and aggravated cases a 3 year loss of benefit applied after a single offence.

7.3 Following the October 2010 announcement, a White Paper entitled Universal Credit: Welfare that Works was published by the Government on 11th November 2010. Chapter 5 confirmed that the Government planned to introduce a tougher loss of benefit regime.

7.4 The Order amends the Social Security Fraud Act (Northern Ireland) 2001(c.17) ("the 2001 Act") to introduce tougher loss of benefit penalties in Northern Ireland to help tackle financial loss where benefit offences have been committed, and particularly for repeat offences.

7.5 The 2001 Act as originally enacted allowed the Department to reduce or withdraw certain benefit payments for 13 weeks where a person was convicted of benefit fraud on two occasions and the second offence was committed within a 3 year period of the date of conviction of the first (commonly called "two strikes"). This 3 year period was later extended to 5 years.

7.6 These measures were extended in the Welfare Reform Act (Northern Ireland) 2010 when a 4 week loss of benefit was introduced for offenders who commit a benefit offence regardless of whether this was disposed of by a court conviction, a caution or the acceptance of an administrative penalty (commonly referred to as "one-strike").

1st Offence

7.7 Provisions introduced by the Order are designed to make the existing loss of benefit provisions more effective as a deterrent. Offences resulting in an administrative penalty or caution continue to incur a 4 week loss of benefit, but for a first conviction the period for the loss of benefit increases to 13 weeks. If the conviction relates to a serious offence prescribed as a "relevant offence" under these regulations the loss of benefit will be for 3 years (where certain conditions are satisfied).

Repeat Offences

7.8 The Order also makes changes so that where two benefit offences are committed within a set time period, with the second resulting in a conviction, the loss of benefit will be for a period of 26 weeks. It introduces a 3 year loss of benefit where there are three offences within a set time period, with the third resulting in a conviction. The duration period for the loss of benefit following a conviction will escalate based on the number of previous offences, rather than based on the number of convictions.

Loss of Benefit – Universal Credit

7.9 The Order introduces Universal Credit and makes provision for Universal Credit to be both a disqualifying benefit and a sanctionable benefit. A sanctionable benefit is a benefit that can be reduced or withdrawn as a result of a benefit offence (i.e. one to which a 'loss of benefit' sanction can be applied). A benefit offence involving a disqualifying benefit triggers a loss of benefit sanction.

7.10 These Regulations prescribe how loss of benefit penalties will apply to Universal Credit. The Regulations set out when the reduction in payment of Universal Credit would start and the amount of that reduction. For those subject to full work-related requirements the reduction will be 100% (or 50% if the offender is a joint claimant) of the standard allowance as defined by regulation 38 of the Universal Credit Regulations (Northern Ireland) 2016 (S.R. 2016 No.216). The reduction is capped at that amount so that additional amounts paid in respect of housing or children are not impacted.

7.11 Protection from the highest rate of reduction applies to certain claimants. For those who are not subject to work-related requirements by virtue of certain provisions or who are subject to work-focused interview requirements only, the reduction will be 40% (or 20% if the offender is a joint claimant). Claimants covered by this protection include those who are pregnant or those who have responsibilities for a young child.

Hardship

7.12 These Regulations also provide a safeguard in the form of hardship payments for Universal Credit claimants who are subject to a loss of benefit. They allow for such payments to be made to claimants who can demonstrate their household cannot meet their immediate basic and essential needs for accommodation, food, heating or hygiene.

7.13 The hardship payment is a daily rate based on 60% of a single person's standard monthly amount in Universal Credit. Payment may only be made if certain conditions are satisfied and the claimant (and any joint claimant) agrees to the recovery of the payments from future non-sanctioned benefit payments. Rates of recovery will be set to take account of the financial and personal circumstances of the claimants.

7.14 Hardship payments will also be available to offenders who, due to a loss of benefit penalty, no longer get income-related Employment and Support Allowance. The payments are calculated at a daily rate based on 60% of a single person's award. The hardship payments continue until the period of penalty ends subject to review if during this period the claimant's circumstances change.

Prescribed "relevant offences"

7.15 Some offences warrant a more severe penalty for a single offence, namely those which involve the most serious and aggravated examples of benefit fraud. These Regulations prescribe the offences, which in addition to the common law offence of conspiracy to defraud (cited in the Order) trigger, on conviction, loss of benefit for 3 years. These offences involve serious organised benefit or identity fraud. The list of offences ensures only the most serious organised or identity frauds are subject to the toughest immediate penalty. To make certain that is the case, any conviction will need to satisfy at least one additional requirement from those below:

- the criminal court finds there is an overpayment of £50,000 or more;
- the person receives a sentence of at least one year's imprisonment (including a suspended sentence); or
- the criminal court finds the benefit fraud has occurred over a period of two years or more.

Reductions in Employment and Support Allowance

7.16 These Regulations also change the way income-related Employment and Support Allowance is to be reduced when a loss of benefit applies. The method of reduction aligns with the changes in conditionality sanctions for the benefit (conditionality sanctions are not fraud related but they can apply so that a customer can lose benefit for failing to comply with benefit rules eg not actively seeking work). Where an offender or an offender's family member is not pregnant or seriously ill and is subject to work related requirements, payment will cease, although access to hardship payments will be available if certain conditions are met. Where an offender or an offender's family member is subject to no work related requirements a 40% reduction rate will apply. Where the offender or the offender's family member is pregnant or seriously ill the reduction will be 20%.

Miscellaneous

7.17 These Regulations make other amendments in connection with the amendments made by the Order. These include the following minor technical amendments:

- they update a reference to persons over the age of 16 in respect of whom child benefit is payable; and
- they change the hardship provisions for Jobseekers Allowance to reflect the introduction of Personal Independence Payment.

Consolidation

7.18 This instrument will be informally consolidated in the Northern Ireland 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 These proposals had their origin in the joint Department for Work and Pensions and Her Majesty's Revenue and Custom consultation paper issued in October 2010 "Tackling Fraud and Error in the benefit and Tax Credits Systems". The proposals received widespread exposure and culminated in the Welfare Reform Act 2012 at Westminster and a Welfare Reform Bill in the Northern Ireland Assembly. In the consultation on the Draft Bill which fell during procedures in the Northern Ireland Assembly there were no concerns raised about the provisions in the Bill relating to loss of benefit sanctions.

8.2 The Department for Social Development published an Equality Impact Assessment on the proposals contained in the draft Bill. The consultation period ran from 5 September 2011 to 30 November 2011. The document was sent directly to 65 different organisations and bodies as well as being made available on the Department's website. A total of 27 responses representing the views of 37 groups and individuals were received.

8.3 The list of organisations consulted appears on pages 148-149 of the document. Seven organisations responded to the Fraud and Error sanctions although none of the responses related to loss of benefit and are therefore not relevant to these Regulations. A summary of their concerns and the Department's responses appear on Page 184.

8.4 The Welfare Reform Bill was, exceptionally, subject to the scrutiny of an Ad Hoc Committee. The Committee's report is available on the Assembly's website. Given that level of scrutiny for welfare reform was unprecedented the Committee did not raise concerns relating to the loss of benefit provisions.

8.5 Following recommendations from the Ad Hoc Committee the Department updated its Equality Impact Assessment.

9. Guidance

9.1 A Communications Plan is in place to communicate the new Welfare Reform "fraud provisions", including the changes introduced by these Regulations, to internal and external audiences.

9.2 Internal activity will focus on ensuring that Single Investigation Service (SIS) staff involved in enforcement and compliance operations (investigators, information gathers, prosecution teams etc.) are aware of the new provisions and penalties. Departmental staff have received regular updates on the progress of welfare reform from its introduction as Bill in the Northern Ireland Assembly in October 2012. It is now proposed to deliver a consistent message to both Social Security Agency and Department for Employment and Learning staff who are dealing with benefit claimants to ensure they are aware of the new sanctions. Activities proposed include information on Departmental intranets and bulletins and instructions to staff. The Social Security Agency will inform its staff by:

- updates of headlines/ticker tape on the Social Security Agency (SSA) Zone on the Departmental intranet linked to more detailed information on the Benefit Security Homepage;
- posting updates on Notice Board on SSA Zone Homepage to convey how new penalities will assist in tackling benefit fraud;
- publication of a Single Investigation Service Bulletin placed on the Benefit Security local area network and its publication notified to staff by e-mail;
- updating guidance (Fraud Procedures and Instructions Manual) on the Benefit Security local network to include the operational implications on the introduction of the Regulations;
- emailing staff an Fraud Procedures and Instructions Memo alerting them that changes have been made to the guidance;

- posting notice on Department for Employment and Learning (responsible for getting people into employment) intranet to convey how new penalties will assist in tackling benefit fraud;
- engagement with Operations Directorate Support to ensure that staff applying the loss of benefit penalties collect and retain accurate statistics to inform future policy;

9.3 External activity will focus on ensuring information on fraud penalties is delivered for the information of claimants through the [NI Direct website](), which will be continually updated. Information will also potentially be included in existing customer facing benefit fraud products (e.g. Penalties Policy, forms and leaflets). In addition the new fraud sanctions will be communicated to key external stakeholders in the advice sector (Citizen's Advice, the Law Centre Northern Ireland etc.).

9.4 The Department for Social Development's corporate site is the Department's online interface with the public. On the introduction of the measures, key information will be updated, including the fraud publication "Social Security Benefit Fraud Sanction Policy". This is a source of advice to the wider pubic and those who engage with the public in an advisory capacity. Online publication of the intended reforms began in May 2015 and communications activities will escalate to coincide with the Regulations coming into operation.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 This measure is part of the welfare reform package that will help restore parity with the rest of the UK and contribute toward sustainable finances for the executive.

10.3 The impact on the public sector is negligible as this will be enabled by IT shared with the Department for Work and Pensions, though there will likely be some fiscal savings that result from longer term reductions in benefit spending on fraudulent claims.

10.4 An Impact Assessment has been prepared for this instrument. The impact of these changes is restricted to people who accept an administrative penalty, caution or are convicted of benefit fraud. Benefit reductions only apply to sanctionable benefits. Vulnerable households will be able to apply for hardship payments, which will be recoverable in the case of Universal Credit.

11. Regulating small business

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

12. Monitoring & review

12.1 The operation of the Regulations will continue to be reviewed by monitoring feedback from operational staff in the Single Investigation Service and benefit delivery (including the Northern Ireland Housing Executive), from stakeholders in the advice sector, public representatives and from members of the public. The Department is committed to providing loss of benefit statistics to the Northern Ireland Assembly's Committee for Social Development.

13. Contact

13.1 Stephen Braiden at the Department for Social Development. Telephone: 028 90829204 or email: Stephen.braiden@dsdni.gov.uk can answer any queries regarding the instrument.