

EXPLANATORY MEMORANDUM TO
THE PENSIONS (2015 ACT) (CONSEQUENTIAL AMENDMENTS) ORDER
(NORTHERN IRELAND) 2016

S.R. 2016 No. 353

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under the powers conferred by section 50 of the Pensions Act (Northern Ireland) 2015 (“the 2015 Act”) and is subject to the confirmatory resolution procedure before the Assembly.

2. Purpose

- 2.1 The Order makes further consequential amendments of primary legislation in connection with the new State pension which was introduced on 6 April 2016. The new State pension applies to people who reach (or reached) State pension age on or after that date.
- 2.2 The main group of amendments are to provisions which support the annual exercise to up-rate (increase) social security benefits in payment by enabling the award of certain income-related benefits to be adjusted automatically where another benefit which is taken into account in the calculation of the income-related benefit is up-rated. The amendments ensure this process will continue to apply where the other benefit income is new State pension. The other amendment made by this Order provides the right of appeal against decisions about National Insurance credits which count for new State pension purposes.

3. Background

- 3.1 The main structure and detailed provisions of the new State pension are set out in Part 1 of the 2015 Act and the State Pension Regulations (Northern Ireland) 2015 (“the 2015 Regulations”) respectively.
- 3.2 Provisions dealing with mainly administrative matters that are common to many benefits, such as claims or decision-making and appeals are contained in separate legislation. Most of the amendments needed to fit the new State pension into the existing administrative framework have already been made and generally extend the existing arrangements to new State pension in the same way as they apply to the old State pension. This Statutory Rule is needed to make a small number of further such amendments.
- 3.3 Article 2 of the Statutory Rule amends sections 139 to 139D of the Social Security Administration (Northern Ireland) Act 1992 (“the Administration Act”) that relate to the process of recalculating certain benefits as a consequence of annual up-rating.

Provision for benefits to be up-rated is contained in sections 132, 132A and 132B of the Administration Act. Section 132B was inserted by Schedule 12 to the 2015 Act; it provides that the Department may make corresponding provision for Northern Ireland when the Secretary of State makes an order under section 151A of the Social Security Administration Act 1992. Section 151A provides for the “protected payment” and certain other transitional components that may be payable with the new State pension to be up-rated in line with price increases. Both the new State pension and elements of the old State pension are up-rated in line with at least the growth in average earnings.

- 3.4 Article 3 amends Schedule 3 to the Social Security (Northern Ireland) Order 1998 (“the 1998 Order”), which lists decisions that can be appealed, to insert a reference at paragraph 17 to new subsection (5ZA) of section 22 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (“the Benefits Act”). Section 22(5) of the Benefits Act provides for regulations setting out the circumstances in which a person may be credited with earnings or National Insurance contributions to enable them to qualify for contributory benefits. The 2015 Act inserted new subsection (5ZA) to provide the power to make regulations about credits for the purposes of the new State pension. The relevant regulations are in Part 8 of the 2015 Regulations.
- 3.5 Article 4 makes a further consequential amendment to paragraph 6 of Schedule 3 to the Welfare Reform (Northern Ireland) Order 2015 which provides for a prospective consequential amendment to the definition of “applicable sums” in section 139A(5) of the Administration Act. The amendment in this Order will take account of the future changes needed to this definition as well as providing the consequential changes currently required for the introduction of new State pension.

Amendments to do with up-rating

- 3.6 Each year, the Secretary of State is required by sections 150, 150A and 151A of the Social Security Administration Act 1992 to review the level of the social security benefits specified in those provisions to determine whether they have maintained their value against the rise in prices or, for benefits specified in section 150A, the growth in average earnings, since the last review. If they have not done so, then the Secretary of State must lay an Up-rating Order before Parliament providing for the relevant benefits to be increased from the following April. The review is carried out in the Autumn and a Ministerial statement is then made to Parliament (the “Up-rating Statement”), announcing the new rates. Sections 132, 132A and 132B of the 1992 Act provide that where such an Order is made the Department may make corresponding provision for Northern Ireland.
- 3.7 Where a person is in receipt of Income Support, income-based Jobseeker’s Allowance, income-related Employment Support Allowance, Pension Credit or Universal Credit, sections 139 to 139D of the Administration Act enable that income-related benefit to be adjusted automatically, without the need for a formal decision by the Department, where the adjustment is because they, or their partner, are also in

receipt of another benefit which is up-rated. The normal decision making process does not apply in these circumstances as there is no right of appeal where the change is simply the result of an alteration in the rate of benefit set by law.

- 3.8 These provisions enable the exercise to recalculate these awards and ensure that the process of updating all the benefit payment systems with the new rates, issuing guidance to operational staff and sending notifications to recipients can be completed by the time the new rates actually take effect in April.
- 3.9 Article 2 amends sections 139 to 139D so that this process can continue to apply in respect of income-related benefit awards which take account of new State pension. As the first up-rating of the new State pension will be April 2017, the amendment needs to be in place by, or very shortly after, the time the Up-rating Statement is made.
- 3.10 These amendments will apply mainly in respect of Pension Credit awards. State pension may also form part of the benefit income of a person claiming a working-age income-related benefit if they are a member of a couple and their partner has reached State pension age.
- 3.11 Currently, “mixed age” couples - where one member of a couple has reached the qualifying age for Pension Credit but the other has not - can chose to claim either Pension Credit or the relevant working-age benefit, in effect by deciding who will be the claimant for the couple. The working age benefits are, however, subject to conditions which do not apply in Pension Credit and the numbers receiving the working-age benefit instead of Pension Credit are very low.
- 3.12 Income Support, income-based Jobseeker’s Allowance and income-related Employment and Support Allowance are due to be replaced by Universal Credit. Under current plans, no new claims to these “legacy” benefits will be possible after 2018 and all those already in receipt will be moved onto Universal Credit by 2022. From June 2018, it is also planned to remove the option to claim Pension Credit instead of Universal Credit from “mixed age” couples making new claims. Based on this timetable, therefore, after 2022 these amendments will have effect only in respect of awards of Universal Credit and Pension Credit.

Amendment to do with National Insurance credits

- 3.13 National Insurance contributions can be credited in a wide variety of circumstances where people are unable to work, or, in some cases, do not earn enough to pay or be treated as paying contributions. Credits can fill gaps in a person’s National Insurance record so their future entitlement to certain contributory benefits is protected. Many credits are posted on a person’s National Insurance record automatically when they receive certain benefits, for example, Child Benefit for a child under 12, whilst other credits must be applied for and can have specified time limits for applications. Credits are awarded only to the extent necessary to make a tax year a qualifying year for

benefit purposes, so if, for example, a person in receipt of Child Benefit has already paid sufficient Class 1 contributions to make that year a qualifying year, the Child Benefit credits would not be needed.

- 3.14 As noted in paragraph 3.4 above, credits that count towards new State pension are provided for in regulations. Those regulations are in Part 8 of the 2015 Regulations, which makes provision for crediting earnings or contributions for specific cases and circumstances such as parenting and caring, service spouses on accompanied postings, receipt of working tax credit or universal credit and, in relation to men born before 6 December 1953, those under State pension age who have reached the State pension age for a woman born on the same day.
- 3.15 Part 8 of the 2015 Regulations also makes provision to allow certain credits awarded for tax years starting before 6 April 2016 under the Social Security (Credits) Regulations (Northern Ireland) 1975 (“the 1975 Regulations”) to count towards new State pension entitlement.
- 3.16 Decisions on whether a person is eligible for credits are for the Department to make as part of the determination of a claim for benefit, or following an application for a credit. Under provisions in Article 16 of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999, this decision-making function, including arrangements for reviewing and revising such decisions, has been delegated to Her Majesty’s Revenue and Customs (HMRC), with the sole exception of decisions on applications for caring for at least 20 hours a week. However, the decision about whether, and if so, the extent to which, the credits are needed to make a tax year a qualifying one for benefit entitlement purposes is made by decision-makers: this decision will be made once the person claims the relevant benefit.
- 3.17 The right of appeal already exists in respect of decisions about eligibility for credits covered by the 1975 Regulations. The amendment made by Article 3 extends appeal rights to decisions as to whether a person is to be credited with earnings or contributions under Part 8 of the 2015 Regulations.

4. Consultation

- 4.1 There is no requirement to consult on this Rule. The changes are purely technical amendments which are required to ensure the continued operation of existing business processes.

5. Equality Impact

- 5.1 The provisions of the 2015 Act were the subject of a full Equality Impact Assessment. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has screened these proposals and has concluded that they do not have any additional implications for equality of opportunity.

6. Regulatory Impact

6.1 The Rule does not require a Regulatory Impact Assessment as it does not impose any new costs on business, charities or voluntary bodies.

7. Financial Implications

7.1 The new State Pension has been designed to cost no more overall than the current system.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that this Order –

- (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.

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 The corresponding Great Britain Order (S.I. 2016 No 931) came into force on 16 September 2016. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions provided for in section 87 of the Northern Ireland Act 1998.