

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (PENALTY NOTICE)
(AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2016

2016 No. 63

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 form of notices given to those who accept the offer of an administrative penalty as an alternative to prosecution as a consequence of changes made to the administrative penalties in primary legislation. The Regulations provide that the notice reflects –
- the change of the percentage of the amount of the overpayment that constitutes the administrative penalty from 30% to 50%; and
 - the introduction of new provisions in the Northern Ireland (Welfare Reform) Act 2015 that apply the minimum administrative penalty of £350 to cases where there are grounds to prosecute a benefit offence but it does not result in an overpayment (e.g. the act or omission is discovered before payment is made).

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 arguments 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 the various welfare reforms set out in the Welfare Reform Act 2012 in Northern Ireland are now being brought forward.

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 These regulations replicate for Northern Ireland the legislation that applies to Great Britain. Equivalent provision was made for Great Britain in regulation 5 of the [Social Security \(Miscellaneous Amendments\) Regulations 2014](#) (S.I. 2014 No. 591).

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 These Regulations amend the [Social Security \(Penalty Notice\) Regulations \(Northern Ireland\) 1997](#) to address changes introduced by Articles 115 (penalty in respect of benefit fraud not resulting in overpayment) and 116 (penalty amount) of the [Welfare Reform \(Northern Ireland\) Order 2015](#) (“the Order”). As a consequence the notice given to those who accept the offer of an administrative penalty as an alternative to prosecution is being amended.
- 7.2 Administrative penalties may be offered as an alternative to a prosecution in certain cases where there has been benefit fraud. In particular, the changes allow for an administrative penalty to be offered in cases of attempted benefit fraud, for the minimum amount of an administrative penalty to be £350 or where the minimum is not applicable 50% of the amount overpaid whichever is greater (up to a maximum of £2,000). The provisions also made consequential changes reflecting the new legal authority for recovering certain benefit overpayments.
- 7.3 On the acceptance of an offer of an administrative penalty the Department is required to give the claimant written notice of the conditions pertaining to the agreement. The content of the notice is prescribed in the [Social Security \(Penalty Notice\) Regulations](#)

[\(Northern Ireland\) 1997](#) (S.R. 1997 No.514). These Regulations amend the 1997 Regulations to provide that the notice reflects –

- the change of the percentage of the amount of the overpayment that constitutes the administrative penalty from 30% to 50%; and
- the introduction of new provisions in the [Welfare Reform \(Northern Ireland\) Order 2015](#) (SI 2015/2006 (NI 1)) that apply the minimum administrative penalty of £350 to cases where there are grounds to prosecute a benefit offence but it does not result in an overpayment (e.g. the act or omission is discovered before payment is made).

7.4 In Great Britain the period a person is allowed to consider withdrawing from the agreement to accept an administrative penalty was reduced to 14 days. The Northern Ireland Executive decided the duration of the period a person in Northern Ireland is allowed to consider withdrawing from any agreement to accept an administrative penalty should remain 28 days.

Consolidation

7.5 This instrument will not be informally consolidated in the GB Law Relating to Social Security (or “Blue Volumes”), as the legislation applies only to Northern Ireland.

7.6 However 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 Department for Social Development consulted extensively about the implications of the wider reforms in 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.

8.2 The Department for Social Development published an [Equality Impact Assessment](#) on the proposals contained in the draft Bill.

9. Guidance

9.1 A Communications Plan is in place to communicate the new Welfare Reform “fraud provisions” to internal and external audiences.

9.2 Internal activity will focus on ensuring Single Investigation Service (SIS) staff are aware of the new provisions and penalties. It is 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, in particular. Activities proposed include information on Departmental intranets and bulletins and instructions to staff.

9.3 External activity will focus on ensuring information on fraud penalties are delivered at point of contact via NI Direct website <https://www.dsdni.gov.uk/articles/new-fraud-and-error-powers>, and potentially will include information 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 (Citizen’s Advice, the Law Centre Northern Ireland etc).

9.4 External activities proposed include-

- NI Direct website –update of existing information on relevant pages or sections of “benefit fraud consequences”
- DSD Corporate site –update of fraud publication Penalties Policy.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is negligible. 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.
- 10.3 An Impact Assessment has not been prepared for this instrument.

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 through the normal avenues of guidance enquiries received from the Northern Ireland Department’s offices and correspondence from members of the public.

13. Contact

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