

EXPLANATORY MEMORANDUM TO

The Social Security (Miscellaneous Amendments No. 3) Regulations (Northern Ireland) 2017

S.R. 2017 No.242

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 sections 122(1)(a) and (d), 123(1)(e), 129A(2), 131(1), 132(3) and (4)(b), 132A(3) and 171(1) and (3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, sections 5(1)(k) and 165(1) and (4) of the Social Security Administration (Northern Ireland) Act 1992, Article 14(1) and (4)(b) of the Jobseekers (Northern Ireland) Order 1995, Articles 11(6) and 74(1) of the Social Security (Northern Ireland) Order 1998, section 59 of, and paragraphs 4(5) and 20(1) of Schedule 7 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, sections 2(3)(b), 12(2) and (3), 15(3) and (6)(b) and 19(1) and (3) of the State Pension Credit Act (Northern Ireland) 2002 and section 17(1) and (3)(b) of the Welfare Reform Act (Northern Ireland) 2007, and is subject to the negative resolution procedure.

2. Purpose

- 2.1. This Statutory Rule makes consequential amendments to certain social security Regulations so that references to the current differences in qualifying ages for state pension for men and women are removed or replaced with more general terms. These amendments also future-proof the legislation in question against any future changes to state pension qualifying age therefore avoiding the requirement for any future amendments.
- 2.2. This Statutory Rule also makes an amendment to the Income Support (General) Regulations (Northern Ireland) 1987 to ensure that a small number of people with severe conditions who have been entitled to Income Support (IS) since 2009 do not lose their entitlement in consequence of the exercise to move people from Disability Living Allowance (DLA) to Personal Independence Payment (PIP), in prescribed circumstances.
- 2.3. An amendment is also made to the State Pension Credit Regulations (Northern Ireland) 2003 so that the rules on eligibility for the Savings Credit for people in polygamous marriages are aligned with the eligibility to Savings Credit for couples.
- 2.4. Finally, this Statutory Rule makes amendments to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 to correct an error in the drafting of a provision which provides an increased earnings disregard for allowable

child care charges; and to add a requirement that claimants report an absence of 4 weeks or more outside Northern Ireland to the Department.

3. Background

- 3.1. A number of Regulations refer to “the age of 65” when, in fact, they mean pensionable age. These references will therefore be replaced with “pensionable age” across a number of Statutory Rules. This ensures that the regulations are future proofed against any further changes to state pension qualifying age.
- 3.2. Prior to 30 December 2009, certain people were eligible for Income Support (IS) if they were receiving a payment of Disability Living Allowance (DLA) which included the highest rate care component. However, since that date no-one has been able to make a new claim for IS simply for that reason.
- 3.3. However, those claimants who were entitled to IS on 30 December 2009 because they were in receipt of DLA, remain entitled as long as they continue to satisfy the conditions of entitlement for that category. But they are not entitled to IS indefinitely – as soon as they stop receiving DLA, or start receiving DLA which no longer includes the highest rate care component, they will lose their entitlement to IS, unless they satisfy another reason for receiving it.
- 3.4. This Rule extends the list of categories of person who may be entitled to IS to include claimants who currently enjoy the transitional protection, in the circumstances where they transfer from DLA to PIP, without a break, and provided their award of PIP includes the daily living component at the enhanced rate (this being the rate which most closely corresponds to the highest rate care component of DLA). This thereby ensures that the small number of claimants concerned will continue to be entitled to IS, as is the policy intent.
- 3.5. The amendment to the State Pension Credit Regulations 2003 brings the rules on eligibility to the Savings Credit for people in polygamous marriages into line with eligibility to the Savings Credit for certain mixed-age couples.
- 3.6. Savings Credit is only available where either the claimant or partner has been entitled to the Savings Credit immediately before 6 April 2016 and has been continuously available since that date. This Rule amends the regulations so that this will also apply to people in polygamous marriages.
- 3.7. This Rule makes two additional amendments to the Housing Benefit (persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 to correct a drafting error, and add a requirement for a claimant to notify the Department about an absence from home, where that absence is outside Northern Ireland.
- 3.8. This Rule also makes an amendment to the regulation which provides for an increased earnings disregard in respect of allowable child care charges. One of the reasons for receiving this additional disregard is where the claimant’s partner can be treated as “incapacitated”. The definition of “incapacitated” currently includes a reference to an award of the ‘support

component' in the claimant's Housing Benefit (HB) payment. This is a reference to the support component awarded to working age HB recipients who are also receiving Employment and Support Allowance. However, this isn't replicated in pension age HB. Therefore, an amendment is required to this provision to refer to being in the support group which will ensure that the policy intent behind this provision continues.

4. Consultation

4.1. This policy has not been subject to public consultation.

5. Equality Impact

5.1. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department conducted a screening exercise and concluded that the changes did not have any significant implications for equality of opportunity. In light of this, the Department considered that an equality impact assessment was 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. None.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department has also considered its obligations under section 24 of the Northern Ireland Act 1998, and considers that these Regulations are not incompatible with the 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 any 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. This Statutory Rule mirrors the provisions of the corresponding Social Security (Miscellaneous Amendments No. 5) Regulations 2017 (S.I. 2017/1187) which were made in Great Britain on 30 November 2017, and come into force in part from 21 December 2017 and in part from 6 December 2018 respectively. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions in line with section 87 of the Northern Ireland Act 1998. It was, therefore necessary to make the Regulations during the period of interregnum of the Assembly.

11. Additional Information

11.1. Not applicable.