

## **EXPLANATORY MEMORANDUM**

### **THE WELFARE SUPPLEMENTARY PAYMENT (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2017**

**S.R. 2017 No. 28**

#### **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 Article 137(5) of the Welfare Reform (Northern Ireland) Order 2015 (“the Order”) and is subject to draft affirmative procedure.

#### **2. Purpose**

- 2.1 These Regulations amend the Welfare Supplementary Payments Regulations (Northern Ireland) 2016, the Welfare Supplementary Payment (Loss of Disability-Related Premiums) Regulations (Northern Ireland) 2016, the Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016 and the Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations (Northern Ireland) 2016 which were introduced to mitigate impacts as defined in the document “A Fresh Start the Stormont Agreement and Implementation Plan” arising from the implementation of welfare reform.
- 2.2 The Regulations to be amended made provision for mitigation payments in respect of the Benefit Cap, the time limiting of Contributory Employment and Support Allowance and the introduction of Personal Independence Payment (as provided for in parts 3, 5 and 6 of the Order).

#### **3. Background**

- 3.1 The earlier Regulations provided for payments referred to as Welfare Supplementary Payments. Their introduction had its basis in measures brought forward by the Westminster Government which included a benefit cap to restrict the total benefits paid to a household to £500 per week (£26,000 per year) and a further benefit cap of £384.62 per week (£20,000 per year) for a family, the introduction of time limiting to Contributory Employment and Support Allowance and the introduction of Personal Independence Payment. Adherence to the normal parity provision for social security measures for single social security systems for the whole of the United Kingdom saw the introduction of similar provision in Northern Ireland. The Northern Ireland Executive sought and agreed transitional protection for those impacted by the welfare reforms for defined periods.

- 3.2 “A Fresh Start the Stormont Agreement and Implementation Plan” was agreed by the main political parties in Northern Ireland on 17 November 2015. This included agreement on the implementation of welfare reform in Northern Ireland. It also agreed that Professor Eileen Evason should lead a small working group to bring forward proposals for mitigating welfare reforms within an agreed financial envelope. The Executive agreed to implement the findings of the working group.
- 3.3 These Regulations make amendments to the Welfare Supplementary Payment Regulations which have been made to date to cover various circumstances which may arise for which provision has not yet been made.
- 3.4 Regulation 6 makes provision to recover overpayments arising from:
- customer fraud or error in relation to the underlying benefit which impacts on the rate of Welfare Supplementary Payment;
  - customer error in the payment where there is no underlying benefit;
  - departmental error; and
  - arrears of benefit arising from a successful appeal against the principal benefit by deduction of any Welfare Supplementary Payments made during the period of appeal.
- 3.5 The Department will use the means of recovery listed in Regulation 7 in the order in which they appear below, only moving onto the next method of recovery after the previous method has been exhausted:
- (i) early termination of further Welfare Supplementary Payments due;
  - (ii) deduction from benefits;
  - (iii) deduction from earnings; and
  - (iv) via the courts.
- Where possible, the Department’s preferred method of recovery will be to deduct the amount of any overpayment from any further Welfare Supplementary Payments due to the individual concerned (Regulation 8). The Department will deduct not only from the same category of payments in respect of which the overpayment arose but also, where possible, from other categories of Welfare Supplementary Payment payable to the individual concerned (Regulation 9).
- 3.6 The draft regulations differentiate between the rates of recovery from income-related benefits and non-income related benefits with deductions from income-related benefits being made at a lower rate (Regulation 10).
- 3.7 Where the Department has been unable to recover overpayments from those not in receipt of a benefit, a direct earnings attachment may be applied. This will entail the Department sending the employer a formal notice for each qualifying employee asking them to implement a direct earnings attachment (ie: to make deductions from the debtor’s earnings) (Regulation 11).

- 3.8 The Department may use court action to recover overpayments of Welfare Supplementary Payments (Regulation 12)
- 3.9 The Department may also recover overpayments by making deduction from any back-dated benefit awarded as a result of a revision, supersession or appeal (Regulation 13).
- 3.10 Regulation 16 replaces Regulation 4(7) of the Welfare Supplementary Payments Regulations (Northern Ireland) 2016 and this aligns Welfare Supplementary Payments with Housing Benefit except for Northern Ireland Housing Executive properties.
- 3.11 Regulation 17 inserts Regulation 4B to the Welfare Supplementary Payments Regulations (Northern Ireland) 2016 and sets the effective date of any change of circumstances to be the same as the effective date of a change to Housing Benefit.
- 3.12 Regulation 18 inserts Regulations 4C to the Welfare Supplementary Payments Regulations (Northern Ireland) 2016 and allows Welfare Supplementary Payments to be made to a Landlord's agent and to a person nominated on behalf of a claimant.
- 3.13 Regulation 19 inserts Regulation 4D to the Welfare Supplementary Payments Regulations (Northern Ireland) 2016 and ceases the Welfare Supplementary Payment when there is no longer any entitlement to Housing Benefit.
- 3.14 Regulation 20 inserts Regulation 4E to the Welfare Supplementary Payments Regulations (Northern Ireland) 2016 and ceases the Welfare Supplementary Payment when the Benefit Cap no longer applies
- 3.15 Regulation 21 inserts Regulation 4F to the Welfare Supplementary Payments Regulations (Northern Ireland) 2016 and treats a member of a couple who has not been the actual recipient of benefits as if they were so that member could be eligible for a Welfare Supplementary Payment should the couple separate.
- 3.16 Regulation 22 inserts Regulation 4G to the Welfare Supplementary Payments Regulations (Northern Ireland) 2016, Regulation 26 inserts Regulation 8A to the Welfare Supplementary Payments Regulations (Northern Ireland) 2016, Regulation 35 inserts Regulation 44B to the Welfare Supplementary Payment (Loss of Disability-Related Premiums) Regulations (Northern Ireland) 2016 and Regulation 46 inserts Regulation 22B to the Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016 to disregard sanctions.
- 3.17 Regulation 23 inserts Regulation 4H to the Welfare Supplementary Payments Regulations (Northern Ireland) 2016 and allows the sharing of information with the Northern Ireland Housing Executive.

- 3.18 Regulation 25 replaces Regulation 7(4) of the Welfare Supplementary Payments Regulations (Northern Ireland) 2016 and allows payments to be made to those who continue on a credits only Employment and Support Allowance claim as a result of being affected by the time limiting of contributory Employment and Support Allowance.
- 3.19 Regulation 27 inserts Regulation 9A to the Welfare Supplementary Payments Regulations (Northern Ireland) 2016 and sets the effective date of the Welfare Supplementary Payment to be the same as the effective date of a claimant's change in Employment and Support Allowance.
- 3.20 Regulation 28 inserts Regulation 10A to the Welfare Supplementary Payments Regulations (Northern Ireland) 2016, Regulation 34 inserts Regulation 44A to the Welfare Supplementary Payment (Loss of Disability-Related Premiums) Regulations (Northern Ireland) 2016, Regulation 45 inserts Regulation 22A to the Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016, Regulation 53 inserts Regulation 21A to the Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations (Northern Ireland) 2016 and allows a Welfare Supplementary Payment to be paid to a person nominated to receive payment on a claimant's behalf.
- 3.21 Regulation 29 inserts Regulation 10B to the Welfare Supplementary Payments Regulations (Northern Ireland) 2016, Regulation 36 inserts Regulation 44C to the Welfare Supplementary Payment (Loss of Disability-Related Premiums) Regulations (Northern Ireland) 2016 and Regulation 49 inserts Regulation 22E to the Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016 and allows the sharing of information with Her Majesty's Revenue and Customs.
- 3.22 Regulation 32 inserts Regulations 38A-38D to the Welfare Supplementary Payment (Loss of Disability-Related Premiums) Regulations (Northern Ireland) 2016 and allows the appropriate allocation of the Welfare Supplementary Payment if a couple separates.
- 3.23 Regulation 33 inserts Regulation 39(2A) to the Welfare Supplementary Payment (Loss of Disability-Related Premiums) Regulations (Northern Ireland) 2016 and allows a Welfare Supplementary Payment for loss of disability-related premium to continue where a claimant loses a Personal Independence Payment appeal but is subsequently entitled to a Welfare Supplementary Payment because their case is conflict related.
- 3.24 Regulation 39 inserts Regulations 3(4)-(6) into the Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016 and sets a priority order for carer payments to ensure that the correct amount of Welfare Supplementary Payment is paid.

- 3.25 Regulation 40 inserts Regulations 5A to the Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016 and allows for the Welfare Supplementary Payment to be reduced or to cease if there is a change in the amount of contributory benefit or if there is a new claim to a contributory benefit.
- 3.26 Regulation 42 inserts Regulation 21A to the Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016 to cease Welfare Supplementary Payments if a carer is awarded the daily living component of Personal Independence Payment.
- 3.27 Regulation 43 inserts Regulation 21B to the Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016 to cease Welfare Supplementary Payments on the death of a carer in couple cases.
- 3.28 Regulation 38 inserts a definition of couple to Regulation 2(1) and Regulation 47 inserts Regulation 22C to the Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016 to reduce Welfare Supplementary Payments if a claimant forms a couple with someone in receipt of an income-related benefit.
- 3.29 Regulation 48 inserts Regulation 22D to the Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016 to allow payments to continue to be paid to the person who was a carer if a couple separate.
- 3.30 Regulation 50 inserts Regulation 32 to the Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016 and Regulation 54 inserts Regulation 30 to the Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations (Northern Ireland) 2016 to require claimants to report a change of circumstances in respect of residency and periods when a person may be in hospital, in a care home or in prison.
- 3.31 Regulation 52 amends Regulation 7(2), 12(2) and 20(2) of the Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations (Northern Ireland) 2016 to set effective dates for any changes of circumstances that impact Welfare Supplementary Payments.

#### **4. Consultation**

- 4.1 The working group set up under the leadership of Professor Evason consulted widely on the Working Group's Report and the Department is solely implementing its recommendations.

## **5. Equality Impact**

- 5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on proposals for these Regulations and concluded that they do not have significant implications for equality of opportunity. In light of this, the Department considers that an equality impact assessment is not necessary.

## **6. Regulatory Impact**

- 6.1 These Regulations do not require a Regulatory Impact Assessment as they impose only minimal costs on business, charities or voluntary bodies.

## **7. Financial Implications**

- 7.1 The figures in the table below represent costs estimated by reference to existing cases.

Welfare Supplementary Payments in respect of Benefit Cap are based on providing protection for existing claimants for up to four years so that they do not experience financial disadvantage as a result of the Benefit Cap.

- 7.2 Welfare Supplementary Payments for loss of Carer Payments, loss of Disability-Related Premiums and loss of Disability Living Allowance are based on providing protection for existing claimants for a period of up to one year so that they do not experience financial disadvantage as a result of being impacted by the introduction of Personal Independence Payment.
- 7.3 Administration costs over the four years for all the mitigation measures are estimated to be £20m.

| <b>ITEM- WELFARE REFORM</b>                                          | <b>16/17</b> | <b>17/18</b> | <b>18/19</b> | <b>19/20</b> | <b>Total (£m)</b>     |
|----------------------------------------------------------------------|--------------|--------------|--------------|--------------|-----------------------|
| <b>Benefit Cap – exemption for families</b>                          | <b>1</b>     | <b>8</b>     | <b>8</b>     | <b>8</b>     | <b>25<sup>1</sup></b> |
| <b>Contributory Employment and Support Allowance – time limiting</b> | <b>17</b>    | <b>7</b>     |              |              | <b>24</b>             |
| <b>Additions to Benefit – Adult Disability Premiums</b>              | <b>1</b>     | <b>6</b>     | <b>12</b>    | <b>8</b>     | <b>27</b>             |
| <b>Carers</b>                                                        | <b>2</b>     | <b>7</b>     | <b>7</b>     | <b>2</b>     | <b>18</b>             |
| <b>Loss of Disability Living Allowance</b>                           | <b>2</b>     | <b>29</b>    | <b>32</b>    | <b>32</b>    | <b>94*</b>            |
|                                                                      |              |              |              |              | <b>188</b>            |

**\* figure due to rounding**

## **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 the Rule—
- (a) is broadly compatible with any of the Convention rights,
  - (b) is broadly compatible 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.

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<sup>1</sup> The original allocation of £25m over the 4 years may be reduced as mitigation for Carers was no longer required after Carers were exempt from the Benefit Cap when it was introduced in Northern Ireland on 31 May 2016.

## **10. Parity or Replicatory Measure**

10.1 There is no equivalent provision being made for Great Britain.

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.