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DRAFT STATUTORY RULES OF NORTHERN IRELAND

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**2016 No.**

**The Welfare Supplementary Payment (Loss of Disability-Related Premiums) Regulations (Northern Ireland) 2016**

**PART 7**

Miscellaneous

**Termination of welfare supplementary payment on determination of appeal against refusal of personal independence payment**

**39.**—(1) This regulation applies where a person appeals (within the meaning of Article 13 of the 1998 Order<sup>(1)</sup>) against the refusal of personal independence payment referred to in Parts 2, 3, 4, 5 or 6.

(2) Welfare supplementary payment under those Parts must cease to be paid from the day after the first payment of welfare supplementary payment following the date on which the decision notice of the appeal tribunal is received by the Department.

(3) Where a person is granted leave to make an appeal from a decision of the appeal tribunal to refuse personal independence payment to the Commissioner, further welfare supplementary payment under those Parts is payable as set out in paragraphs (4) and (5).

(4) The period during which further welfare supplementary payment is payable commences on the day following the day that leave to appeal to the Commissioner is granted.

(5) The period during which welfare supplementary payment is payable ends—

- (a) after the first payment following the date on which the decision of the Commissioner is received by the Department, or
- (b) on 31st March 2020,

whichever is first to occur.

**Termination of welfare supplementary payment on change in personal independence payment**

**40.**—(1) Welfare supplementary payment must cease to be paid to a person if there is a change in the entitlement to personal independence payment of—

- (a) the person, or
- (b) (subject to paragraph (2)), where the person is a member of a couple, the other member of that couple.

(2) Paragraph (1)(b) does not apply if the other member of the couple was not entitled to personal independence payment on the date welfare supplementary payment commenced.

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(1) Article 13 was amended by paragraph 19 of Schedule 6 and Schedule 9 to [S.I. 1999/671](#) and Article 4(2) of [S.I. 2014/886](#)

(3) Payment must cease from the day after the first payment of welfare supplementary payment following that change.

(4) In this regulation, a change in entitlement to personal independence payment includes—

- (a) personal independence payment being awarded where it was not previously awarded, and
- (b) a change in the award of personal independence payment.

#### **Temporary cessation of the underlying benefit**

**41.**—(1) This regulation applies where—

- (a) welfare supplementary payment ceases to be paid to a person because an underlying benefit ceases to be paid,
- (b) the person makes a new claim for that underlying benefit,
- (c) that claim is made within 12 weeks of the original underlying benefit ceasing, and
- (d) that claim is successful.

(2) Welfare supplementary payment restarts from the date that entitlement to the underlying benefit restarts.

(3) The period between welfare supplementary payment ceasing and restarting counts towards the maximum 1 year period in which welfare supplementary payment is payable.

(4) Subject to paragraph (5), where a person is a member of a couple, paragraph (1)(b) is satisfied if either member of the couple makes the claim.

(5) Paragraph (4) does not apply if the other member of the couple was not entitled to personal independence payment on the date welfare supplementary payment commenced.

(6) In this regulation “underlying benefit” means income support, income-based jobseeker’s allowance (within the meaning of Article 3(4) of the Jobseekers (Northern Ireland) Order 1995), employment and support allowance (under section 1(2)(b) of the Welfare Reform Act (Northern Ireland) 2007), working tax credit or state pension credit.

#### **Temporary cessation of an underlying benefit with equivalent disability-related premium**

**42.**—(1) This regulation applies where—

- (a) welfare supplementary payment ceases to be paid to a person because an underlying benefit (“the original underlying benefit”) ceases to be paid,
- (b) the person makes a new claim for a different underlying benefit,
- (c) the different underlying benefit has an equivalent disability-related premium to the premium, element or amount (as the case may be) in respect of which welfare supplementary payment was being paid,
- (d) that claim is made within 12 weeks of the original underlying benefit ceasing, and
- (e) that claim is successful.

(2) Welfare supplementary payment restarts from the date that entitlement to the different underlying benefit starts.

(3) The amount of welfare supplementary payment is equal to the welfare supplementary payment in respect of the premium, element or amount (as the case may be) associated with the original underlying benefit.

(4) The period between welfare supplementary payment ceasing and restarting counts towards the maximum 1 year period in which welfare supplementary payment is payable.

(5) Subject to paragraph (6), where a person is a member of a couple, paragraph (1)(b) is satisfied if either member of the couple makes the claim.

(6) Paragraph (5) does not apply if the other member of the couple was not entitled to personal independence payment on the date welfare supplementary payment commenced.

(7) In this regulation “underlying benefit” means income support, income-based jobseeker’s allowance (within the meaning of Article 3(4) of the Jobseekers (Northern Ireland) Order 1995), employment and support allowance (under section 1(2)(b) of the Welfare Reform Act (Northern Ireland) 2007), working tax credit or state pension credit.

(8) For the purposes of this regulation, the following are equivalent disability-related premiums—

- (a) disability premium under paragraph 11 of Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987(2),
- (b) disability premium under paragraph 13 of Schedule 1 to the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(3),
- (c) disability premium under paragraph 20G of Schedule 1 to the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(4).

(9) For the purposes of this regulation, the following are equivalent disability-related premiums—

- (a) severe disability premium under paragraph 13 of Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987(5),
- (b) severe disability premium under paragraph 15 of Schedule 1 to the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(6),
- (c) severe disability premium under paragraph 20I of Schedule 1 to the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(7),
- (d) severe disability premium under paragraph 6 of Schedule 4 to the Employment and Support Allowance Regulations (Northern Ireland) 2008(8),
- (e) severe disability element under regulation 17 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(9),
- (f) the additional amount (in respect of the appropriate minimum guarantee) prescribed under regulation 6(4) of the State Pension Credit Regulations (Northern Ireland) 2003 for persons treated as severely disabled persons.

(10) For the purposes of this regulation, the following are equivalent disability-related premiums—

- (a) enhanced disability premium under paragraph 13A of Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987(10),

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(2) Relevant amending regulations are S.R. 2003 No. 191, S.R. 2003 No. 413, S.R. 2007 No. 154 and S.R. 2010 No. 103

(3) Paragraph 13 was amended by regulation 3(8)(c) of S.R. 2007 No. 154 and regulation 5(5)(c) of S.R. 2010 No. 103

(4) Paragraph 20G was amended by regulation 3(8) of S.R. 2007 No. 154 and regulation 5(5)(h) of S.R. 2010 No. 103

(5) Relevant amending instruments are S.R. 1988 No. 146, S.R. 1992 No. 6, S.R. 1993 No. 218, S.R. 1993 No. 373, S.R. 1994 No. 327, S.R. 1994 No. 474, S.R. 2000 No. 74, S.R. 2002 No. 80, S.R. 2002 No. 323, S.R. 2011 No. 291, S.I. 2013/3021 and S.R. 2014 No. 275

(6) Paragraph 15 was amended by regulation 4(3)(a) of S.R. 2000 No. 74, regulation 3(8)(d) of S.R. 2000 No. 154, regulation 5(4) of S.R. 2002 No. 80, regulation 3 of S.R. 2002 No. 323, regulation 5(3)(a) of S.R. 2011 No. 291, regulation 17(7)(c) of S.I. 2013/3021 and regulation 3(2)(b) of S.R. 2014 No. 275

(7) Paragraph 20I was amended by regulation 5(4)(b) of S.R. 2002 No. 80, regulation 3 of S.R. 2002 No. 323, regulation 3(8)(j) of S.R. 2007 No. 154, regulation 5(3)(b) of S.R. 2011 No. 291, regulation 17(7)(h) of S.I. 2013/3021 and regulation 3(2)(e) of S.R. 2014 No. 27

(8) Paragraph 6 was amended by regulation 11(3) of S.R. 2011 No. 291 and regulation 21(14) of S.R. 2011 No. 357

(9) Paragraph 17 was amended by paragraph 28(6) of the Schedule to S.I. 2013/388 and paragraph 24(6) of the Schedule to S.I. 2013/591

(10) Relevant amending regulations are S.R. No. 367, S.R. 2003 No. 195, S.R. 2011 No. 135 and S.R. 2011 No. 357

- (b) enhanced disability premium under paragraph 15A of Schedule 1 to the Jobseeker's Allowance Regulations (Northern Ireland) 1996(11),
- (c) enhanced disability premium under paragraph 20IA of Schedule 1 to the Jobseeker's Allowance Regulations (Northern Ireland) 1996(12),
- (d) enhanced disability premium under paragraph 7 of Schedule 4 to the Employment and Support Allowance Regulations (Northern Ireland) 2008.

**Termination of welfare supplementary payment where couple becomes entitled to disability-related premium**

43.—(1) This regulation applies where—

- (a) a person (A) is entitled to welfare supplementary payment,
- (b) A forms a couple with another person (B) who is not entitled to welfare supplementary payment, and
- (c) A or B (or A and B in the case of a joint-claim couple as referred to in Part 3, or a joint claim as referred to in Part 5) are awarded—
  - (i) disability-related premium referred to in Part 2, 3 or 4
  - (ii) disability-related element referred to in Part 5, or
  - (iii) severe disability component referred to in Part 6.

(2) Welfare supplementary payment must cease to be paid from the date A or B (or A and B in the case of a joint-claim couple or a joint claim) are entitled to the disability-related premium, disability-related element or severe disability component (as the case may be).

**Persons forming a couple where there are equivalent disability-related premiums**

44.—(1) This regulation applies where—

- (a) a person A is entitled to welfare supplementary payment,
- (b) a person B is entitled to welfare supplementary payment,
- (c) the welfare supplementary payments of A and B are in respect of equivalent disability-related premiums,
- (d) A and B form a couple, and
- (e) A or B (or A and B in the case of a joint-claim couple as referred to in Part 3, or a joint claim as referred to in Part 5) are awarded an underlying benefit.

(2) Where the underlying benefit has an equivalent disability-related premium to the premium, element or amount (as the case may be) A and B were originally entitled to, then—

- (a) A is entitled to welfare supplementary payment of an amount equal to 50% of that equivalent disability-related premium, and
- (b) B is entitled to welfare supplementary payment of an amount equal to 50% of that equivalent disability-related premium.

(3) Where the new underlying benefit does not have an equivalent disability-related premium to the premium, element or amount (as the case may be) A and B were originally entitled to, then there is no change in welfare supplementary payments to A and B.

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(11) Paragraph 15A was amended by regulation 4(c)(ii) of S.R. 2000 No. 367, regulation 3(8)(e) of S.R. 2007 No. 54, regulation 7(7)(a) of S.R. 2011 No. 135, regulation 10(10) of S.R. 2011 No. 357 and regulation 17(7)(d) of S.I. 2013/3021

(12) Paragraph 20IA was amended by regulation 4(c)(v) of S.R. 2000 No. 367, regulation 3(8)(k) of S.R. 2007 No. 154, regulation 5(5)(i) of S.R. 2010 No. 103, and regulation 17(7)(i) of S.I. 2013/3021

(4) In this regulation “equivalent disability-related premiums” and “underlying benefit” have the same meaning as in regulation 42.

### **Review**

**45.**—(1) The Department must establish procedures for reviewing a person’s entitlement to welfare supplementary payment under these Regulations.

(2) The procedures established must—

- (a) provide for a review to be carried out on the application of any person,
- (b) provide for the manner of making the application.

(3) The procedures may, in particular, provide for—

- (a) the consideration of the applicant’s entitlement to welfare supplementary payment by up to three persons nominated by the Department,
- (b) the preparation of a report by these persons setting out their conclusions in relation to the applicant’s entitlement to welfare supplementary payment and their recommendation as to the manner in which the matter should be finally determined.

### **Disregards**

**46.** No account must be taken of entitlement to welfare supplementary payment in considering a person’s entitlement to benefit under a statutory provision relating to social security (irrespective of the name or nature of the benefit).

### **Residency**

**47.** A person is not entitled to welfare supplementary payment unless the person—

- (a) is ordinarily resident in Northern Ireland; and
- (b) is present in Northern Ireland.

### **Temporary absence from Northern Ireland**

**48.**—(1) Subject to regulation 49, where a person is temporarily absent from Northern Ireland, the person is treated as present in Northern Ireland for the purpose of these Regulations for the first 4 weeks of absence.

(2) A person is temporarily absent from Northern Ireland if, at the beginning of the period of absence, the person’s absence is unlikely to exceed 52 weeks.

### **Temporary absence from Northern Ireland to receive medical treatment**

**49.**—(1) Where a person is temporarily absent from Northern Ireland, the person is treated as present in Northern Ireland for the purposes of these Regulations for the first 13 weeks of that absence, where—

- (a) the person’s absence is solely in connection with arrangements made for the medical treatment of the person for a disease or bodily or mental disablement which commenced before the person left Northern Ireland; and
- (b) the arrangements referred to in sub-paragraph (a) relate to medical treatment—
  - (i) outside Northern Ireland,
  - (ii) during the period whilst the person is temporarily absent from Northern Ireland, and

(iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.

(2) In this regulation “temporarily absent” has the same meaning as in regulation 48(2).