

EXPLANATORY MEMORANDUM

THE WELFARE SUPPLEMENTARY PAYMENT (LOSS OF DISABILITY PREMIUMS) REGULATIONS (NORTHERN IRELAND) 2016

S.R. 2016 No. xxx

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 introduce welfare supplementary payments 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 mitigations are consequential on the introduction of Personal Independence Payment (as provided for in Part 5 of the Order).

3. Background

- 3.1 The Regulations provide for payments referred to as welfare supplementary payments. Their introduction has its basis in measures brought forward by the Westminster Government which included the introduction of Personal Independence Payment to replace Disability Living Allowance for working age claimants only i.e. those aged 16 – 64. Adherence to the normal parity provision for social security measures for single social security systems for the whole of the UK will see the introduction of similar provision in Northern Ireland from 20 June 2016. As a result those in receipt of disability premiums or disability elements will be impacted. The Northern Ireland Executive sought and agreed transitional protection for those impacted by the 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 In its report the Welfare Reform Mitigations Working Group recommended that existing claimants who, as a result of being reassessed

from Disability Living Allowance to Personal Independence Payment, lost their severe disability, enhanced disability or standard disability premium or severe disability element in Working Tax Credit, should receive a supplementary payment to cover their financial loss for one year from the date entitlement ceases.

- 3.4 These Regulations make provision for these payments under Part 1 for the following categories:
- a) Loss of disability-related premiums for Income Support claimants
 - b) Loss of disability-related premiums for Jobseeker's Allowance claimants
 - c) Loss of disability-related premiums for Employment and Support Allowance claimants
 - d) Loss of disability-related element of Working Tax Credit
 - e) Loss of severe disability component of State Pension Credit

Regulation 3(3) stipulates that a claimant cannot be entitled to more than one supplementary payment under these regulations at a time.

- 3.5 Part 2 makes provision for existing Income Support claimants that lose entitlement to one or more of the prescribed disability premiums. In particular it establishes that to be eligible for a mitigation payment a claimant must be in receipt of Disability Living Allowance, Income Support and disability premium(s) at the date they are assessed for Personal Independence Payment. The claimant must also lose entitlement to one or more disability premiums following the decision on entitlement to Personal Independence Payment. Specific provisions are also made for claims to Income Support by a couple where either or both partners are assessed for Personal Independence Payment.
- 3.6 Regulation 7 makes provision for the amount of the mitigation payment under Part 2. This is equal to the award of the disability-related premium unless the claimant remains entitled to severe disability premium at a lower rate whereby the welfare supplementary payment will be the difference between the higher rate and the lower rate.
- 3.7 Payments will commence on the day immediately after the claimants entitlement to the disability-related premium terminates and ends one year later or on the date the mitigation scheme ends (31 March 2020), whichever comes first and will be paid every four weeks in arrears. Provision is also included within Part 2 for welfare supplementary payments to cease in cases where entitlement to Income Support ends or a subsequent disability-related premium is awarded.
- 3.8 Part 3 makes provision for existing Jobseeker's Allowance claimants that lose entitlement to one or more of the prescribed disability premiums. In particular it establishes that to be eligible for a mitigation payment a claimant must be in receipt of Disability Living Allowance, Jobseeker's

Allowance and disability premium(s) at the date they are assessed for Personal Independence Payment. The claimant must also lose entitlement to one or more disability premiums following the decision on entitlement to Personal Independence Payment. Specific provisions are also made for claims to Jobseeker's Allowance by a couple where either or both partners are assessed for Personal Independence Payment including claims made by joint-claim couples.

- 3.9 Regulation 16 makes provision for the amount of the mitigation payment under Part 3. This is equal to the award of the disability-related premium unless the claimant remains entitled to severe disability premium at a lower rate whereby the welfare supplementary payment will be the difference between the higher rate and the lower rate.
- 3.10 Payments will commence on the day immediately after the claimants entitlement to the disability-related premium terminates and ends one year later or on the date the mitigation scheme ends (31 March 2020), whichever comes first and will be paid every four weeks in arrears. Provision is also included within Part 3 for welfare supplementary payments to cease in cases where entitlement to Jobseeker's Allowance ends or a subsequent disability-related premium is awarded.
- 3.11 Part 4 makes provision for existing Employment and Support Allowance claimants that lose entitlement to one or more of the prescribed disability premiums. In particular it establishes that to be eligible for a mitigation payment a claimant must be in receipt of Disability Living Allowance, Employment and Support Allowance and disability premium(s) at the date they are assessed for Personal Independence Payment. The claimant must also lose entitlement to one or more disability premiums following the decision on entitlement to Personal Independence Payment. Specific provisions are also made for claims to Employment and Support Allowance by a couple where either or both partners are assessed for Personal Independence Payment.
- 3.12 Regulation 23 makes provision for the amount of the mitigation payment under Part 4. This is equal to the award of the disability-related premium unless the claimant remains entitled to severe disability premium at a lower rate whereby the welfare supplementary payment will be the difference between the higher rate and the lower rate.
- 3.13 Payments will commence on the day immediately after the claimants entitlement to the disability-related premium terminates and ends one year later or on the date the mitigation scheme ends (31 March 2020), whichever comes first and will be paid every four weeks in arrears. Provision is also included within Part 4 for welfare supplementary payments to cease in cases where entitlement to Employment and Support Allowance ends or a subsequent disability-related premium is awarded.

- 3.14 Part 5 makes provision for existing Working Tax Credit claimants that lose entitlement to the severe disability element. In particular it establishes that to be eligible for a mitigation payment a claimant must be in receipt of Disability Living Allowance, Working Tax Credit and severe disability element at the date they are assessed for Personal Independence Payment. The claimant must also lose entitlement to the severe disability element following the decision on entitlement to Personal Independence Payment. Specific provisions are also made for claims to Working Tax Credit by joint-claim couples where either or both partners are assessed for Personal Independence Payment.
- 3.15 Regulation 29 makes provision for the amount of the mitigation payment under Part 5. This is equal to the award of the severe disability element.
- 3.16 Payments will commence on the day immediately after the claimants entitlement to the severe disability element terminates and ends one year later or on the date the mitigation scheme ends (31 March 2020), whichever comes first and will be paid every four weeks in arrears. Provision is also included within Part 5 for welfare supplementary payments to cease in cases where entitlement to Working Tax Credit ends or a subsequent disability-related premium is awarded.
- 3.17 Part 6 makes provision for existing State Pension Credit claimants that lose entitlement to the severe disability component. In particular it establishes that to be eligible for a mitigation payment a claimant must be in receipt of Disability Living Allowance, State Pension Credit and severe disability component at the date they are assessed for Personal Independence Payment. The claimant must also lose entitlement to the severe disability component following the decision on entitlement to Personal Independence Payment. Specific provisions are also made for claims to State Pension Credit by a couple where either or both partners are assessed for Personal Independence Payment.
- 3.18 Regulation 35 makes provision for the amount of the mitigation payment under Part 6. This is equal to the award of the severe disability component unless the claimant remains entitled to severe disability component at a lower rate whereby the welfare supplementary payment will be the difference between the higher rate and the lower rate.
- 3.19 Payments will commence on the day immediately after the claimants entitlement to the severe disability component terminates and ends one year later or on the date the mitigation scheme ends (31 March 2020), whichever comes first and will be paid every four weeks in arrears. Provision is also included within Part 6 for welfare supplementary payments to cease in cases where entitlement to State Pension Credit ends or a subsequent severe disability component is awarded.

- 3.20 Part 7 makes provisions for certain miscellaneous matters that will impact welfare supplementary payments under these Regulations. It contains provisions for the termination of mitigation payments including the outcome of an appeal not to award Personal Independence Payment, and a new or revised award of Personal Independence Payment. It also provides for the temporary cessation and re-instatement of mitigation payments in prescribed circumstances including couples.
- 3.21 Regulation 45 provides for reviewing a person's entitlement to a welfare supplementary payment.
- 3.22 A welfare supplementary payment is to be disregarded in the consideration of entitlement to social security benefits (regulation 46).
- 3.23 Regulation 47 defines entitlement by reference to residency and presence in Northern Ireland.
- 3.24 Regulation 48 allows periods of temporary absence from Northern Ireland to be deemed as presence for 4 weeks provided if at the beginning of the absence period that period was unlikely to exceed 52 weeks.
- 3.25 Regulation 49 allows temporary absence from Northern Ireland to be deemed as presence in Northern Ireland for the first 13 weeks of absence where a person is receiving medical treatment.

4. Consultation

- 4.1 The working group set up under the leadership of Professor Evason has 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 for disability-related premiums is based on providing protection for existing claimants for a period of one year in order that they do not experience financial disadvantage as a result.

Administration costs over the four years for all the mitigation measures are estimated to be £20m.

ITEM- WELFARE REFORM	16/17	17/18	18/19	19/20	Total (£m)
Additions to Benefit – Adult Disability Premium	1	6	12	8	27

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 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 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.