

EXPLANATORY MEMORANDUM

THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS NO. Y) REGULATIONS (NORTHERN IRELAND) 2011

S.R. 2011 No. 357

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under powers conferred by the Social Security Contributions and Benefits (Northern Ireland) Act 1992, the Social Security Administration (Northern Ireland) Act 1992, the Jobseekers (Northern Ireland) Order 1995, the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997, the Social Security (Northern Ireland) Order 1998, the State Pension Credit Act (Northern Ireland) 2002 and the Welfare Reform Act (Northern Ireland) 2007 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 The Statutory Rule will amend the following primary legislation:
 - the Social Security Administration (Northern Ireland) Act 1992; and
 - the Data Protection Act 1998
- 2.2 The Regulations will also amend the Income-related Benefit Regulations namely:
 - the Income Support (General) Regulations (Northern Ireland) 1987;
 - the Jobseeker's Allowance Regulations (Northern Ireland) 1996;
 - the State Pension Credit Regulations (Northern Ireland) 2003;
 - the Housing Benefit Regulations (Northern Ireland) 2006;
 - the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006; and
 - the Employment and Support Allowance Regulations (Northern Ireland) 2008.
- 2.3 The Regulations also make amendments to:
 - the Social Security Benefit Dependency Regulations (Northern Ireland) 1977;
 - the Statutory Sick Pay Regulations (Northern Ireland) 1982;

- the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987;
- the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995;
- the Social Security (Recovery of Benefits) Regulations (Northern Ireland) 1997;
- the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999;
- the Social Security (Work-focused Interviews for Lone Parents) Regulations (Northern Ireland) 2001;
- the Social Security (Work-focused Interviews) Regulations (Northern Ireland) 2003;
- the Social Security (Work-focused Interviews for Partners) Regulations (Northern Ireland) 2003;
- the Social Security (Habitual Residence Amendment) Regulations (Northern Ireland) 2004;
- the Social Fund Maternity and Funeral Expenses (General) Regulations (Northern Ireland) 2005;
- the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations (Northern Ireland) 2008;
- the Social Security (Incapacity Benefit Work-focused Interviews) Regulations (Northern Ireland) 2008;
- the Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations (Northern Ireland) 2008;
- the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010; and
- the Social Security (Contribution Conditions for Jobseeker's Allowance and Employment and Support Allowance) Regulations (Northern Ireland) 2010.

3. Background

- 3.1 Twice a year the Department puts forward a package of miscellaneous and non-controversial amendments to the income-related benefits Regulations.
- 3.2 The main purpose of these regulations is to correct, clarify, align or update various social security legislation (listed at paragraph 2.1 to 2.3) and further explained at paragraphs 3.3 to 3.37.

Amendment to the Social Security Administration (Northern Ireland) Act

- 3.3 There are many reciprocal agreements which currently provide for Incapacity Benefit and Severe Disablement Allowance, but not Employment and Support Allowance, to be paid to claimants outside the United Kingdom.

- 3.4 Claimants in the United Kingdom who are entitled to Incapacity Benefit are in the course of having their award reassessed, and, if they have limited capability for work, will have that award converted into an award of Employment and Support Allowance. This approach is commonly referred to as 'reassessment'. The policy intent is that this approach should apply equally to claimants who are living overseas in countries with whom the United Kingdom has an agreement in respect of Incapacity Benefit but where Employment and Support Allowance is not currently payable.
- 3.5 A necessary pre-requisite to the reassessment of claimants on Incapacity Benefit who are living overseas in countries where Employment and Support Allowance is not currently payable will be to modify regulations made under the Welfare Reform Act (Northern Ireland) 2007 in their application to Incapacity Benefit recipients in these countries. The Social Security Administration (Northern Ireland) Act 1992 (which provides the powers to modify legislation in relation to agreements with other countries) does not currently allow for the modification of regulations made under the Welfare Reform Act (Northern Ireland) 2007, which introduced Employment and Support Allowance. This change corrects this unintended omission.

Data Protection

- 3.6 A minor amendment is required to include a reference to the Welfare Reform Act (Northern Ireland) 2007 which introduced Employment and Support Allowance.

Social Security Benefit (Dependency) Regulations

- 3.7 A minor amendment is required to update regulations by removing an obsolete reference to outdated legislation.

Public Health Legislation

- 3.8 References in social security legislation to Public Health legislation needed updated to reflect recent changes which extended provision to prevent, protect against, control or provide a public health response to the incidence or spread of infection or contamination with chemicals or radiation which may pose a risk to others.

Ending the Worker Registration Scheme

- 3.9 The Worker Registration Scheme was introduced as a temporary measure to control access to the United Kingdom labour market. These controls had to be lifted on 30 April 2011, having been in operation for the maximum period of 7 years. As a consequence regulations are amended to remove references to the scheme.

Notional Income

- 3.10 Within Income Support, Jobseeker's Allowance and Employment and Support Allowance a notional income rule is intended to apply so as to take account of income of which a claimant has deprived themselves to secure entitlement to or increase the amount of benefit to which they are entitled. When Employment and Support Allowance was introduced the notional income rule in Employment and Support Allowance also applied to claimants who had deprived themselves of income whilst claiming Income Support or Jobseeker's Allowance and then moved across to Employment and Support Allowance. Similar amendments should have been made to the Income Support/Jobseeker's Allowance notional income rules for claimants who deprive themselves of income whilst claiming Employment and Support Allowance and then move across to Income Support/Jobseeker's Allowance, however this was overlooked. Consequently, minor changes are required to include a reference to Employment and Support Allowance and Jobseeker's Allowance in the Income Support notional income rules and a reference to Employment and Support Allowance in the Jobseeker's Allowance notional income rules.

Increased Support for Skipton Fund beneficiaries

- 3.11 The Skipton Fund provides financial help to people who have been infected with hepatitis C as a result of National Health Service treatment. These payments are afforded a number of disregards in social security legislation. A new charitable trust, 'the Caxton Foundation', funded by the Department of Health, was established on 28th March 2011 in order to provide additional discretionary financial support to this group. These Regulations make the necessary amendments to ensure payments from the Caxton Foundation benefit from the same disregards as those from the existing Skipton Fund.

Run-on of Enhanced Disability Premium

- 3.12 There is an 8 week run-on period in which the Enhanced Disability Premium may continue to be included in an award of IS or JSA or form part of the claimant's applicable amount in Housing Benefit following the death of the child or young person in respect of whom the premium applied, provided that Child Benefit is being paid in respect of that child for 8 weeks following the child's death. This amendment clarifies that this run-on period applies whether it is the claimant or the partner who receives Child Benefit.

Third Party Deductions

- 3.13 The aim of the Third Party Deduction Scheme is to help the most vulnerable claimant group who have experienced problems budgeting their income. Where a portion of benefit is deducted to be paid to a third party to discharge an obligation to that third party, the regulations currently provide that where contribution-based Jobseeker's Allowance or

contributory Employment and Support Allowance is in payment, that deduction can only be made in cases where there would, if that benefit were not in payment, also be an underlying entitlement to income-based Jobseeker's Allowance or income-related Employment and Support Allowance at the same rate. Regulations have been amended to clarify that where those benefits are in payment together with an income element top-up of those benefits and the income element is insufficient for the deduction to be made, the whole entitlement can be taken into account in determining whether it is sufficient for the making of such a deduction.

Reduction in time for completion and return of medical questionnaires

- 3.14 These Regulations make amendments to reduce the overall time allowed for the completion and return of medical questionnaires issued for claims, and awards of, Incapacity Benefit (form IB50) and ESA (form ESA50) from 6 weeks to 4. The medical questionnaires are issued to gather information relating to the claimant's ability to perform certain activities, and thereby help the decision maker determine whether the claimant has limited capability for work.
- 3.15 A reminder will now be sent to the claimant 3 weeks after the date of issue of the questionnaire, rather than 4. This change will apply only to questionnaires issued on or after 31 October 2011.

Jobseeker's Allowance and remunerative work

- 3.16 There is a reference to a saving provision which has been revoked and not replaced in the Income Support Regulations. As Income Support no longer has transitional protection on remunerative work hours for those receiving Income Support prior to 1992, this amendment removes the obsolete reference.

Partner conditionality

- 3.17 Currently there is no provision to exempt one member of a joint-claim couple from Jobseeker's Allowance conditionality on grounds of Limited Capability for Work, unless they actually claim Employment and Support Allowance. This amendment allows Jobseeker's Allowance joint claimants who are unable to meet Jobseeker's Allowance conditionality because they have limited capability for work, to be exempted from those work conditions without the need to make a claim to Employment and Support Allowance. They will be able to demonstrate their limited capability for work by providing suitable medical evidence, without the need to be assessed using the work capability assessment.

Housing costs – excess income/capital linking rule

- 3.18 A housing costs linking provision exists for claimants who claim income-related benefits and who are not entitled because their income exceeds the amount of benefit payable. In these circumstances claimants can be treated

as being in receipt of the income-related benefit so that it counts towards the qualifying period for support for mortgage interest. This amendment clarifies the intention that this linking rule applies where the person's income is equal to or exceeds the amount of benefit payable.

Revision of decisions

- 3.19 These Regulations add new provisions to allow revision of certain decisions made subsequent to decisions (including 'conversion decisions' made as part of the reassessment exercise) that a claimant is not entitled to Employment and Support Allowance which are subsequently overturned on appeal. They ensure that full arrears of Employment and Support Allowance may be paid as appropriate in these circumstances.

Quarterly Work-focused Interviews for lone parents where youngest child is aged 4/5

- 3.19 These Regulations increase the frequency of mandatory work-focused interviews for lone parents entitled to Income Support who are aged 18 or over and have a child of 4 or 5, from 6-monthly to quarterly. This amendment is made in anticipation of proposed changes to Income Support entitlement being introduced so that lone parents will no longer be entitled to Income Support on grounds of lone parenthood when their youngest child reaches age 5 (instead of age 7 at present). The amendment is intended to ensure that lone parents who will be affected by the proposed changes to Income Support entitlement can prepare for the transition from Income Support to Jobseeker's Allowance or Employment and Support Allowance as soon as possible.

Work-focused Interviews – Sanctions application and uprating

- 3.20 When a claimant (for Income Support, Incapacity Benefit, Employment and Support Allowance, Severe Disablement Allowance) or a claimant's partner (for Employment and Support Allowance, severe Disabled Allowance, Income Support, Carer's Allowance) fails to attend or participate in a Work-focused Interview, or to take part in work-related activity when required to do so and they do not have good cause, in most cases their benefit is reduced until they meet the relevant requirement.
- 3.21 Some of the relevant regulations are unclear as to whether a sanction that is still in effect should be increased when rates of benefit are uprated. This amendment brings the regulations which provide for Work-focused Interviews for Income Support, Incapacity Benefit and Severe Disablement Allowance claimants in line with the approach taken in relation to Jobseeker's Allowance and Employment and Support Allowance cases.

Treatment of payments made to Service Users

- 3.22 Service Users are those citizens who are consulted by public authorities in designing, reviewing and monitoring policies and services. Regulations were amended in 2009 to provide easements so that Service Users who receive payment for attendance will have payments for expenses disregarded. This included amendments to the notional income rules for working age income-related benefits in respect of payments to service users which are paid to a third party. However, an equivalent amendment was not made to the State Pension Credit notional income rules which means that they are inconsistent with the working age benefits in this respect. In order to align the Income-related benefits these Regulations these Regulations allow Service Users in receipt of State pension Credit, whose payment in respect of their service user activity is paid to a third party on their behalf, to have that payment ignored.

Capital disregard for Pension Credit

- 3.23 This regulation aligns the State Pension Credit capital disregard rules with the existing provision in the working age income-related benefits so that a specific disregard is introduced in relation to any direct payments made for health care.

Transitional protection and the Habitual Residence Test

- 3.24 These Regulations include Employment and Support Allowance in the list of benefits afforded transitional protection from the Habitual Residence Test. The test, which effectively has to be met once it has been established that a person has a right to reside in the United Kingdom, must be satisfied for a claimant to be eligible for an income-related benefit. This measure allows claimants to be deemed to have satisfied the test and enables them to move freely between the specified benefits without being required to re-satisfy the test each time, provided there is no break in entitlement.
- 3.25 An additional amendment modifies regulations to protect, from the effective date of a conversion decision made in the course of reassessment, the position of those claimants who, prior to the effective date, are already benefiting from transitional protection from the Habitual Residence Test and whose Incapacity Benefit award qualifies for conversion to Employment and Support Allowance, or whose awards fail to qualify for conversion, appeal, and become entitled to Employment and Support Allowance, pending the outcome of the appeal.

Removing references to the Family Premium Baby Element

- 3.26 These Regulations remove all obsolete references to the Family Premium Baby Element.

Amending the rules for the relaxation of the first contribution condition for Employment and Support Allowance

- 3.27 Amendments were made to the contribution conditions for Employment and Support Allowance and Jobseeker's Allowance, which provided that, in order to be eligible for either benefit, a claimant must have paid National Insurance contributions for 6 months in one of the two tax years preceding the benefit year in which the claim was made. They also allowed the relevant contribution conditions to be relaxed for certain cases in prescribed circumstances. However, it was recently identified that the amendment that allowed this is invalid. These Regulations revoke the defective regulation and address the defect by substituting a new paragraph into the Employment and Support Allowance Regulations.

Termination of Employment and Support Allowance award following outcome of appeal

- 3.28 There are cases where a claimant has appealed against a decision which embodies a determination that they do not have limited capability for work, and has been awarded Employment and Support Allowance (on the basis that they are treated as having limited capability for work), pending the outcome of the appeal. The amendments clarify the date from which the award of Employment and support Allowance is to be terminated, following receipt of the Tribunal notification that the appeal has been dismissed.
- 3.29 The amendment also provides for the date from which entitlement to Employment and Support Allowance (where awarded following an appeal, pending the hearing) is to be terminated, in the circumstances where the notice of appeal has not been forwarded to the Tribunal and the appellant has notified the Department he does not wish the appeal to continue.

Definition of 'the most recent past period of limited capability for work'

- 3.30 This amendment inserts a definition of 'the most recent past period of limited capability for work' to clarify that it includes any earlier periods of limited capability for work of which the 'most recent past period' is treated as a continuation, by virtue of either of the linking rules. This protects the position of the claimant, who has short spells of limited capability for work which collectively (under the linking rules) exceed 13 weeks, so they do not have to serve any waiting days at the start of the new award.

Employment and Support Allowance during imprisonment

- 3.31 The Regulations include a minor change to correct a reference to clarify the rules around suspension of payment of a contributory allowance during imprisonment or detention in legal custody.

Employment and Support Allowance and Severe Disability Premium

- 3.32 To be entitled to a Severe Disability Premium within Employment and Support Allowance a claimant and/or partner must be in receipt of Disability Living Allowance (care component) or the claimant's partner must be in receipt of Attendance Allowance. It was originally assumed an Employment and Support Allowance claimant could not receive Attendance Allowance because that benefit is only paid to pension age claimants. However, within Employment and Support Allowance Attendance Allowance has a wider meaning than the benefit itself and includes certain other allowances or payments made to assist with the care of a disabled person, which an Employment and Support Allowance claimant could be receiving.
- 3.33 So as not to exclude these claimants from entitlement to a Severe Disability Premium these Regulations include receipt of an Attendance Allowance, for a claimant, as a condition of entitlement to the Severe Disablement Premium.

Mortgage Interest Run On: 2 year restriction on mortgage interest payments

- 3.34 Mortgage Interest Run On (MIRO) enables claimants who have been receiving housing costs, included as part of their Jobseekers Allowance, to be treated as not in remunerative work for 4 weeks, with the result that they technically become entitled to Income Support for this period. Under rules introduced on 5 January 2009, for claimants receiving income-based Jobseeker's Allowance, there is a 104 week limit on payment of mortgage interest. This limit does not apply where the claimant or their partner was entitled to Employment and Support Allowance or Income Support before one of them becomes entitled to Jobseeker's Allowance and 12 weeks or less has elapsed since the last day of that entitlement and the first day of entitlement to Jobseeker's Allowance. However, it was not the policy intention that a person who is only entitled to IS because of the 4 week period of MIRO should be exempt from the 104 week limit. This amendment clarifies the policy intention.

Supersession of Employment and Support Allowance conversion decisions

- 3.35 These Regulations make a number of minor amendments to the regulations that underpin the reassessment exercise. Under the exercise, all individual conversion decisions (decisions that a claimant's existing award either qualifies or fails to qualify for conversion into an award of Employment and Support Allowance) take effect from a future 'effective date' designed to fall in line with the claimant's existing payment cycle.
- 3.36 In cases that qualify for conversion, we need to have regard to the effect of material changes of circumstance (those that affect the amount of the existing award of benefit and which might thereby affect the calculations on which the amount of the 'converted' award was based) which arise in the period between the conversion decision being made and the date it

takes effect. These Regulations provide for conversion decisions to be superseded to give effect to such changes. The provisions apply both where the Department is notified of the material change *before* the effective date and where, *on or after* the effective date, the Department is notified of any change of circumstances which occurred before that date and which would have been relevant to the existing award(s).

- 3.37 There is also a minor amendment to restore the policy intent by providing that where a claimant is in receipt of an award of Employment and Support Allowance pending the outcome of an appeal against a conversion decision to the effect that a claimant's existing award fails to qualify for conversion into an award of Employment and Support Allowance, and the appeal is successful, their entitlement to the pending-appeal award terminates from the first day of the benefit week following the date on which the Department receives the Tribunal's notification of the outcome of the appeal.

4. Consultation

- 4.1 The Social Security Advisory Committee were consulted and were in agreement that they did not require the proposals for these Regulations to be formally referred.

5. Equality Impact

- 5.1 The changes proposed do not provide a new benefit or service but correct, clarify, align or update various social security Statutory Rules.
- 5.2 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on these legislative proposals and has concluded that the proposals 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 do not impose any new costs on business, charities or voluntary bodies.

7. Financial Implications

- 7.1 There are no significant costs to the Department to implement these proposals.

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 The corresponding Great Britain Regulations are the Social Security (Miscellaneous Amendments) (No.3) Regulations 2011 (S.I. 2011/2425) and come into force on 31 October 2011. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.