

EXPLANATORY MEMORANDUM TO

The Work and Families (Increase of Maximum Amount) Order (Northern Ireland) 2009

S.R. 2009 No. 317

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Employment and Learning ("the Department") to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 16 of the Work and Families (Northern Ireland) Order 2006 and is subject to the confirmatory resolution procedure.

2. Purpose

- 2.1. The Work and Families (Increase of Maximum Deposit) Order (Northern Ireland) 2009 ("the Order") increases the weekly limit payable for statutory redundancy pay from £350 to £380. This limit is also used to calculate certain awards made by industrial tribunals (including awards for unfair dismissal), and other amounts payable by the Department under employment legislation where an employer is insolvent.
- 2.2. Article 1 cites the name of the Order, the date on which it comes into operation and how certain phrases included in the Order are to be interpreted.
- 2.3. Article 2 substitutes new limits for the old limits and contains transitional provisions, specifically definitions for the "appropriate date", determining when the increased limits will apply.
- 2.4. Article 3 specifies that there will be no requirement to uprate the amounts covered by the Order during 2010. In the absence of this provision, the Department would be legally required to make an Employment Rights (Increase of Limits) Order (Northern Ireland) 2010.

3. Background

- 3.1. In 1999, an annual uprating formula was introduced which provides for the weekly limit used to calculate statutory redundancy and a range of other employment-related payments to be adjusted each year in line with Retail Prices Index (RPI), rounded up to the nearest £10.
- 3.2. In 2006, the principle of a one-off increase disregarding the RPI was accepted and set out in the Work and Families (Northern Ireland) Order 2006.
- 3.3. The Order now takes advantage of this one-off power to raise the weekly limit by an amount greater than the rate of inflation. The increase is a response to the difficult economic situation and the fact that statutory redundancy and similar payments can provide a safety net for workers. The increase will be

operative as of 1st October. As a result, the annual adjustment of limits in line with inflation, due to take place in February 2010, will be suspended on this occasion.

- 3.4. The provisions are parity measures and are being taken forward in order to ensure that those in receipt of relevant payments in Northern Ireland do not have a lesser entitlement than counterparts in Great Britain at a time of economic downturn. Were this measure not to be taken forward, and the normal rate-of-inflation change was applied instead, forecasts suggest that the weekly limit would fall from £350 to £340.

4. Consultation

- 4.1. No formal consultation exercise has been undertaken in respect of this Order; the measure was announced in the UK Budget and it is not the convention to consult on measures announced in this way. The Northern Ireland measure is designed to achieve parity. Failure to take it forward would be very likely to generate significant criticism, particularly at a time when redundancies are running at a high level.
- 4.2. The Department has informed key stakeholders of the change and the underlying rationale for it.

5. Equality Impact

- 5.1. An equality screening exercise has been carried out and has concluded that there are no differential impacts on section 75 groups. All those entitled under the Order's provisions, from whichever equality grouping they come, will see increased payments at a rate above the annual rate of inflation. There is no evidence to suggest that particular equality groups are more likely than others to experience the circumstances the Order is designed to address.

6. Regulatory Impact

- 6.1. A Regulatory Impact Assessment carried out by the Department has ascertained that there are costs to employers in the region of £1.9 to £2.7 million with Exchequer costs of between £800,000 and £1.3 million. The proposals are cost neutral for the Department and the Northern Ireland block as the cost of parity measures of this nature is met from central funds. Employees will benefit from these payments, which are in effect transfers from employees and the Exchequer, and so the net effect on the economy (costs minus benefits) will be zero, with the exception of implementation costs to employers of approximately £60,000. Implementation costs are costs associated with firms becoming aware of the rate increase in October 2009 and of the fact that the normal change to limits will not take place in 2010.

7. Financial Implications

- 7.1. As above.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department has received legal advice that the Order is intra vires and in the correct form. The provisions of the Order are therefore not considered to be in breach of Section 24.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. The Order applies only to Northern Ireland. A corresponding Order will come into force in Great Britain on 1 October 2009.
- 10.2. Given that employment legislation is a devolved matter, thought was given to the possibility of taking a course of action differing from that adopted in Great Britain.
- 10.3. Two main options were considered. The first involved allowing the normal uprating formula to take effect. However, this option was ruled out as it could have led to a fall in the weekly amount of £10, an undesirable outcome given the difficult economic situation.
- 10.4. An alternative option involved increasing the weekly limit by a different amount than that set in Great Britain. It was decided not to pursue this option as the rise of £30 is considered to represent a reasonable compromise between the expectations of business around minimising costs and those of unions and employees around providing a safety net in difficult circumstances.

11. Additional Information

- 11.1. Not applicable.