

EXPLANATORY MEMORANDUM TO

The Social Security (Miscellaneous Amendments No. 4) Regulations (Northern Ireland) 2009

SR 2009 No. 338

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 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 Regulations: 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. To avoid repetition, these Regulations are referred to throughout this memorandum as the income-related benefit Regulations.
- 2.2. The Regulations also make minor amendments to the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 to clarify that Employment and Support Allowance and Pension Credit claimants have one month, or such longer period as the Department considers reasonable in order to correct a defective claim, from the date they are first advised of the defect.

3. Background

- 3.1. Twice a year the Department puts forward a package of miscellaneous and non-controversial amendments to the income-related benefit Regulations.
- 3.2. The legislative context for the main amendments to the income-related benefits listed above is outlined at paragraphs 3.3 to 3.6, most of the minor changes to clarify, update and correct regulations are outlined in paragraphs 3.7 to 3.16.
- 3.3. The main purpose of these Regulations is to ensure that from October 2009, expenses paid to people ("Service Users") who, as part of a service user group, are consulted about services provided, will be fully disregarded when calculating entitlement to Income Support or other income-related benefits. The Regulations will extend entitlement to Income Support from October 2009 to single parents who have a child placed with them prior to

adopting and will also ensure that from April 2010 child maintenance payments will be fully disregarded, when calculating entitlement to Income Support or other income-based benefits.

- 3.4. Treatment of payments made to Service Users: Public authorities are increasingly involving citizens in designing, reviewing and monitoring policies and services in line with the government's approach to public sector reform. The term 'Service Users' is used as a shorthand definition for people who are consulted in this way. Current regulations allow for certain expenses paid to volunteers to be disregarded as long as they receive no other payment for their involvement. There is, however, an increasing trend for Service Users to be paid for their involvement as well as receiving payment of expenses incurred. This can mean that people on means-tested benefits or earnings replacement benefits risk being excluded from such civic participation. This is because if they receive a payment for attendance then such expenses will fall to be treated as income. These amendments to the income-related benefit Regulations will ensure that Service Users who receive payment for attendance will receive a full disregard of any expenses received. For Service Users who are not paid for their participation these Regulations will also ensure that payments will not be assumed when calculating benefit entitlement.
- 3.5. Single parents who have a child placed with them pre-adoption: Single foster parents are able to claim Income Support. However, currently the Income Support regulations do not provide similar entitlement to single people who have a child placed with them prior to adoption and this provision will amend the Income Support Regulations to include this group of people.
- 3.6. Providing a full disregard of any child maintenance payments: The Welfare Reform White Paper, published on 10 December 2008, confirmed that a full child maintenance disregard would be introduced from April 2010 across all the income-related benefits. These Regulations will amend the income-related benefit Regulations to ensure that payments of child maintenance are fully disregarded when calculating entitlement.
- 3.7. Abated payments of war disablement pension: The income-related benefit Regulations each provide for a specific weekly disregard of a Guaranteed Income Payment paid to those formerly in the Armed Forces who are disabled. The disregard also applies to payments of a survivors Guaranteed Income Payment paid to widows, widowers or surviving civil partners. The appropriate disregard can continue to apply if these payments are abated by a payment made under the Armed Forces Pension Scheme 1975 or 2005. These regulations will amend the income-related benefit Regulations to apply these same rules to a payment made under the Ministry of Defence Early Departure Payments Scheme.
- 3.8. Working Tax Credits - amendment to clarify attribution of income: The income-related benefit Regulations have specific rules for how income should be treated and cross references ensure that each of these rules link to each other. However, a cross reference was omitted when tax credit attribution was first introduced. These Regulations will correct this omission.

- 3.9. Payments of Retainers: The income-related benefit Regulations were amended from October 2007 to ignore certain final earnings such as holiday pay and pay in lieu of notice. Retainer payments, however, continued to be taken into account in the normal way. These Regulations clarify that retainer payments include statutory guarantee payments and payments made where a person has been suspended on medical or maternity grounds continue to be taken into account in the normal way.
- 3.10. Removal of an obsolete War Pensions provision: The definition of “chronically sick or disabled” in the Income Support Regulations currently cross references to Article 21 of the Services Pension Order. This is not required because the regulations include reference to Mobility Supplement which is more appropriate. These regulations remove the unnecessary reference.
- 3.11. Failure to take part in work-focused interview provisions: Employment Support Allowance Regulations allow claimants who fail to attend a work-focused interview and who can show good cause not to be sanctioned. One reason for determining good cause, is if the physical or mental condition of the claimant made it “impossible” to attend. However a similar provision in the Incapacity Benefit Regulations uses the word “impracticable”. This discrepancy has resulted in a much harder test for Employment Support Allowance recipients. These regulations will amend the Employment Support Allowance Regulations so that the wording is aligned with that for Incapacity Benefit.
- 3.12. Alignment across the income-related benefit Regulations when a customer travels abroad to receive medical treatment: Employment and Support Allowance Regulations allow claimants to continue to be entitled to benefit during the first 26 weeks of a temporary absence from Northern Ireland when they travel abroad for medical treatment. However continuing benefit entitlement is dependant upon permission being granted by the Department before leaving the country which is not necessary for recipients of Income Support and Jobseeker’s Allowance. These Regulations will amend the Employment and Support Allowance Regulations to align with Income Support and Jobseekers Allowance Regulations.
- 3.13. Housing costs – full time students and absences outside of a period of study: The income-related benefit regulations allow people (including students who are in hospital, but who are outside their period of study) to be treated as occupying a dwelling as their home and receive housing costs, even if they are not living in that property. However, the Income Support and Employment and Support Allowance Regulations have two definitions of “period of study”, and one of these do not allow students to be outside a “period of study”. Because this definition has been used to cross refer to the housing provision, help with housing costs cannot be granted, in the circumstance described above. These Regulations will amend the Income Support and Employment and Support Allowance Regulations to cross refer to the correct definition.
- 3.14. Young persons discharged from detention: Young persons discharged from detention and estranged from parents are able to make a claim to

Jobseeker's Allowance, following the end of the child benefit extension period. However, one regulation states that the date of entitlement can be from the day the young person is discharged, whilst another regulation states that this can only be the day following discharge. These Regulations will amend the Jobseeker's Allowance Regulations to allow entitlement to begin on the day of discharge from detention.

- 3.15. Reference to Children Act legislation: The income-related benefit Regulations were recently amended to remove references to specific Children Act legislation which was thought to be redundant. However it has since been identified that one of the relevant provisions does still apply in respect of Scotland. These Regulations will correct this error
- 3.16. Alignment of notional income disregards : The Income Support, Jobseeker's Allowance and Employment and Support Allowance Regulations provide that where a claimant or partner lives in a care home, an Abbeyfield Home or an independent hospital, any payment made by someone else for some or all of the cost of maintaining them in that home should be treated as possessed by the claimant or partner. These Regulations will align the Jobseeker's Allowance Regulations with the Income Support and Employment and Support Allowance Regulations to disregard such payments when made by a health authority .

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 simplify the benefit system by providing a disregard to child maintenance payments and service user expenses and clarify the rules for war pensions that have been abated.. The remainder of the changes correct, clarify or update the income-related benefit Regulations and also make some minor amendments to the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987.
- 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 additional costs or savings on business, charities or voluntary bodies.

7. Financial Implications

- 7.1. The changes which will introduce the full child maintenance disregard has a financial cost. This is currently estimated at £1.125m for Northern

Ireland. The financial costs of the remainder of these changes are neutral as any costs or savings will be negligible.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department has also considered its obligations under section 24 of the Northern Ireland Act 1998. It is the Department's judgement that the Social Security (Miscellaneous Amendments No. 4) Regulations (Northern Ireland) 2009 are not incompatible with the Convention rights, are not incompatible with Community law, do not discriminate against any person or class of person on the ground of religious belief or political opinion and do 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 Regulations mirror the Great Britain Regulations and are in keeping with the principal of parity between Northern Ireland and Great Britain in social security matters.

11. Additional Information

11.1. Not applicable.