

## EXPLANATORY MEMORANDUM TO

### The Social Security (Housing Costs Special Arrangements) (Amendment) Regulations (Northern Ireland) 2009

SR 2009 No. 426

#### 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 (c.7), the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)), the State Pension Credit Act (Northern Ireland) 2002 (c. 14) and the Welfare Reform Act (Northern Ireland) 2007 (c. 2) and is subject to the negative resolution procedure. The rule is due to come into operation on 5 January 2010.
- 1.3. The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations (Northern Ireland) 2008 (the principal Regulations - S.R. 2008 No. 503) made changes from 5 January 2009 to the Income Support (General) Regulations (Northern Ireland) 1987, the Jobseeker's Allowance Regulations (Northern Ireland) 1996, the State Pension Credit Regulations (Northern Ireland) 2003 and the Employment and Support Allowance Regulations (Northern Ireland) 2008 to introduce changes to the rules on payment of mortgage interest.
- 1.4. The changes that were introduced by this Statutory Rule from 5 January 2009 are as follows:
  - shorten the waiting period in Income Support, Jobseeker's Allowance and Employment and Support Allowance before full Support for Mortgage Interest (SMI) is paid. These changes shorten the period from 39 or 26 weeks to 13 weeks for new working age claims and change it from 8 weeks at 50% SMI to 13 weeks at full SMI for vulnerable customers;
  - increase the capital limit for new working age claims from £100,000 to £200,000;
  - allow certain claimants who are receiving help with mortgage interest and interest on other qualifying loans up to the higher capital limit of £200,000 and who claim State Pension Credit to retain entitlement to help up to the higher capital limit of £200,000;
  - introduce a "two year" time limit on SMI for some new Jobseeker's Allowance claims, with normal linking rules applying.

The above changes apply to new working age claims made after 4 January 2009 and to some repeat claimants where the person is entitled to Income Support, Jobseeker's Allowance or Employment and Support Allowance and is not required to be treated as being in receipt of the benefit under the

existing housing linking rules in connection with that entitlement. In addition they:

- set the Standard Interest Rate used as the basis of the SMI calculation at 6.08% (to be reviewed);
  - provide for those already serving a waiting period at 5 January to also benefit from these changes (SMI from 13 weeks, £200,000 capital limit and two year time limit) to address the cliff edge effect of these changes.
- 1.5. These changes were brought in urgently to help ensure that assistance could be focused on providing help more quickly to homeowners at a time when there had been a fall in both the number of people in employment and the employment rate and when household repossessions were rising. They are a temporary package of measures aimed at those directly affected by the current economic downturn and will be reviewed once the housing market conditions improve.

## **2. Purpose**

- 2.1. These Regulations make amendments to the principal Regulations to clarify how some of the rules should operate in practice. They also introduce a new provision in response to a recommendation in the Social Security Advisory Committee's report on its consultation on the changes. This provision will ensure that the enhanced level of support made available through the housing costs rules that were introduced from January 2009 apply to claimants who made or make claims to a relevant benefit on or after 5 January 2009. Specifically, those who would only have become entitled to a relevant benefit once eligible housing costs became payable will now be entitled to help under the 'new' rules introduced in January 2009.
- 2.2. These Regulations also amend the principal Regulations to ensure that:
- Claimants who were entitled to housing costs under the rules that existed before these provisions were introduced continue to receive housing costs under those 'old' rules where they move from one relevant benefit to another and there is no gap in their benefit entitlement.
  - Claimants who were entitled to housing costs under the rules that existed before 5 January 2009 cannot gain entitlement to the shorter waiting period and higher capital limit by breaking their claims for short periods of at least a day. These claimants will continue to receive housing costs under the rules that were in place before the principal Regulations came into operation.
  - Jobseeker's Allowance claimants who are subject to the 104 week limit on payment of housing costs cannot break their claims for a short period, such as one day, to access a further period of 104 weeks entitlement to housing costs.

### 3. Background

- 3.1 This rule is intended to extend the enhanced help with housing costs introduced by the principal Regulations to claimants who were unintentionally excluded from this help. It gives effect to a recommendation of the Social Security Advisory Committee that the package of support should be extended to claimants in the waiting period who, for the purposes of their benefit claim, have income in excess of permitted benefit levels. As a result, the waiting period will now be 13 weeks and housing costs will now be paid up to a limit of £200,000 instead of the £100,000 limit provided for by the rules that existed before 5 January 2009. In the case of those who claim a Jobseeker's Allowance, the 104 week limit on payment of housing costs may also apply.
- 3.2 Those affected by the changes made by this rule are new claimants who made their claims on or after 5 January 2009 who were or are not entitled to benefit before qualifying for housing costs because their income or capital exceeds permitted levels and who, due to their particular circumstances, are treated as entitled to benefit during the waiting period. This amendment cannot have effect retrospectively. So, the Department intends to set up a scheme, to help address any potential shortfalls, details of which will be published in due course.

**For example**, a single person claimed Income Support on 23 March 2009. The person was already receiving Statutory Sick Pay of £79.15 a week from 8 January 2009, which exceeded their Income Support rate (applicable amount) of £64.30. The Income Support claim would have been disallowed because the person's income exceeded the applicable amount of £64.30. Under the current legislation, this person is treated as entitled to income support but has to wait 39 weeks before they receive help with housing costs up to the capital limit of £100,000. Once the amendments are introduced housing costs would be payable up to a capital limit of £200,000 and after a waiting period of 13 weeks from the benefit week including 22 June.

- 3.3 Claimants who were in a waiting period on 4 January 2009 and who were not at that time in receipt of a relevant benefit are excluded from these changes. This is because it was necessary to focus the available resources on those *receiving* relevant benefits on 4 January 2009.
- 3.4 The changes made by this rule also mean that claimants who reclaim benefit or who move from one benefit to another for example, from Income Support to an Employment and Support Allowance or a Jobseeker's Allowance, where there is no break in claim, will no longer be able to receive housing costs under the principal Regulations, in particular interest on capital of up to £200,000. They include, for example, lone parents who are no longer entitled to Income Support due to the age of their youngest child and who move to a Jobseeker's Allowance. It was never intended that these claimants should be able to access increased support in these circumstances and this amendment is intended to restore that policy intention.
- 3.5 These Regulations also ensure that a repeat claimant who is in continuous receipt of a Jobseeker's Allowance cannot access a new 104 week period

of payment of housing costs contrary to the policy intention. Claimants making repeat claims to a Jobseeker's Allowance where there is a break in entitlement during which they are not treated as entitled to benefit under a housing linking rule are required to serve a 13 week waiting period to qualify for help with mortgage interest and would be able to start a new period of up to 104 weeks.

#### **4. Consultation**

- 4.1 At their meeting on 4 March 2009 the Social Security Advisory Committee decided to consult on the Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (S.I. 2008/3195 -Northern Ireland equivalent the principal Regulations - S.R. 2008 No. 503) and these set of amending Regulations. The consultation period ended on 3 April 2009 and the Committee subsequently issued its report on 13 May 2009. The Department for Work and Pensions have confirmed that no comments were received on these amendments in responses to that consultation. The Committee expressed concern about aspects of the existing regulations and a copy of the formal response by the Westminster Government to the Social Security Advisory Committee's consultation can be found at: <http://www.opsi.gov.uk/>

#### **5. Equality Impact**

- 5.1 The amendments introduced by these Regulations will restore the original policy intention and so are in keeping with the earlier screening on the Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations (Northern Ireland) 2008. As the impact of the unintended effects is judged to be minimal no change is required to the earlier screening.

#### **6. Regulatory Impact**

- 6.1 These Regulations do not require a Regulatory Impact Assessment as they will not impose any additional costs or savings on business, charities or voluntary bodies.

#### **7. Financial Implications**

- 7.1 No financial implications.

#### **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 (Housing Costs Special Arrangements) (Amendment) 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 those made in Great Britain and are in keeping with the principle of parity between Northern Ireland and Great Britain in social security matters. It is proposed that the Regulations come into operation on 5 January 2010.

**11. Additional Information**

- 11.1 Not applicable.