

EXPLANATORY MEMORANDUM TO

The Social Fund Maternity and Funeral Expenses (General) (Amendment) Regulations (Northern Ireland) 2010

SR 2010 No. 378

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 and the Social Security Administration (Northern Ireland) Act 1992 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Statutory Rule makes amendments to the Social Fund Maternity and Funeral Expenses (General) Regulations (Northern Ireland) 2005 (“the principal Regulations”) and the Social Security Claims and Payments Regulations (Northern Ireland) 1987 (“the Claims and Payments Regulations”). The amendment to the principal Regulations will extend entitlement to a Sure Start Maternity Grant to those people awarded residence orders; an order freeing a child for adoption; guardians and those who have adopted a child under a recognised adoption which takes place outside the United Kingdom. Entitlement is also extended to add a father (or other parent) who is not the mother's partner at the time a Sure Start Maternity Grant is claimed but who is responsible for the child. Amendments will also ensure against double provision.
- 2.2. The Claims and Payments Regulations are amended in relation to the prescribed time for claiming a Sure Start Maternity Grant and updates definitions for consistency with other legislation.

3. Background

- 3.1. The purpose of the Sure Start Maternity Grant is to help people on certain income related benefits or tax credits with the expenses associated with a new baby. The grant is £500 for each child expected, born, adopted or the subject of a parental order.
- 3.2. It is payable to claimants or the partners of claimants who have an award of Income Support, income based Jobseeker’s Allowance, income related Employment and Support Allowance, Pension Credit, Child Tax Credit at a rate higher than the family element or Working Tax Credit that includes the disability or severe disability element.
- 3.3. It is payable when the claimant, their partner or a member of the family is pregnant, or has given birth to a child, or the claimant or partner has adopted a child who does not exceed the age of twelve months at the date of the claim for the Grant, or has been granted a parental order following a surrogate birth. In addition the claimant or partner has to have received

advice from a health professional on child health and welfare or where the claim is made in advance of the birth, maternal health.

- 3.4. In November 2005 the Court of Appeal gave a decision on the “Francis” case. In that case, Sara Francis claimed a Sure Start Maternity Grant in respect of her nephew for whom she had been granted a residence order as the child’s mother was unable to look after him. Payment was refused as having a residence order did not meet the requirements for entitlement to a Sure Start Maternity Grant. She appealed to the Court of Appeal on the grounds that her situation was analogous to a person with an adoption order and not to allow a payment constituted discrimination by virtue of Article 14 of the European Court of Human Rights. The Court of Appeal found in favour of the claimant and granted a declaration that Ms Francis was entitled to a Sure Start Maternity Grant in respect of her nephew for whom she had a residence order. The Court decided it was not possible to interpret the regulations in a non-discriminatory way and held that Regulations should be amended to ensure equal treatment.
- 3.5. The Rule extends the scheme in order to provide for other categories of carers with parental responsibility. As well as residence orders there are also other orders and arrangements that place the claimant or partner in an analogous position to natural or adoptive parents. These are those carers with guardianship, recognised adoptions carried out outside the United Kingdom and those who have a child placed with them for adoption and that child does not exceed the age of twelve months at the date of the claim for the Grant. Equivalent orders and arrangements made in England and Wales, Scotland, the Channel Islands and the Isle of Man may satisfy the entitlement conditions.
- 3.6. Currently there is no provision in the legislation to provide for a Sure Start Maternity Grant to be paid to a parent when the mother dies in childbirth nor where two people have never been partners, the mother leaves the baby with the natural father who does not require a residence order as he is named on the birth certificate. This Rule amends the legislation to ensure equal treatment for lone fathers.
- 3.7. The Rule makes changes to the principle Regulations to insert definitions of orders giving parental responsibility and extends eligibility to those carers with parental responsibility and to lone fathers (or other parent) and also recasts the duplicate payment provisions to reflect these changes.
- 3.8. The Rule provides that in cases where a Sure Start Maternity Grant has already been paid to the mother or member of her family, a second grant can be paid in respect of a child to a guardian, person who has been granted a qualifying order (an adoption order, residence order or parental order), has adopted under recognised adoption arrangements, or has had a child placed with them for adoption. However a second Grant cannot be made to someone who has already received one for that child or who was a member of that person’s family at the time the first Grant was claimed
- 3.9. This Rule also amends the Claims and Payments Regulations in relation to the prescribed time for claiming a Sure Start Maternity Grant and updates

the definition of “actual date of confinement” and “confinement” for consistency with other legislation.

4. Consultation

- 4.1. The Social Security Advisory Committee was content with the amendments to the equivalent Great Britain Regulations.

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 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 additional number of claimants who will qualify for a Maternity Grant of £500 as a result of this legislative change will be minimal.

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 Fund Maternity and Funeral Expenses (General) (Amendment) Regulations (Northern Ireland) 2010 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.