EXPLANATORY MEMORANDUM TO

The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2010

SR 2010 No. 69

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 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 Income Support Regulations"); the Jobseeker's Allowance Regulations (Northern Ireland) 1996 ("the Jobseeker's Allowance Regulations"); the State Pension Credit Regulations (Northern Ireland) 2003 ("the State Pension Credit Regulations"); the Housing Benefit Regulations (Northern Ireland) 2006 ("the Housing Benefit Regulations"); the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 ("the Housing Benefit SPC Regulations"); and the Employment and Support Allowance Regulations (Northern Ireland) 2008, ("the Employment and Support Allowance Regulations"). For simplicity these Regulations are referred to in this memorandum as the income-related benefits Regulations.

2.2. The Regulations also make minor amendments to the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987; the Social Security (Recovery of Benefits) Regulations (Northern Ireland) 1997; the Social Fund Maternity and Funeral Expenses (General) Regulations (Northern Ireland) 2005 and the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations (Northern Ireland) 2008.

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 Statutory Rules (listed at paragraph 2.1. and 2.2) from April 2010.

3.3. Most of the amendments correct or update the income-related benefits Regulations.

Of the remainder, three simplify the benefit system by:
(1) providing disregards in respect of payments made by “MFET Limited”, which is a new funding stream that is being introduced to run alongside the existing Macfarlane Trust and the Eileen Trust;
(2) increasing the age at which certain notional income is taken into account when calculating entitlement to benefits; (“notional income” is income that a customer is not getting but would be available if they were to claim it); and
(3) restoring the policy intention in the State Pension Credit Regulations in relation to the treatment of foreign state retirement pensions.

3.4. The “MFET Limited”disregard:
Payments that are derived from the new company “MFET Limited” are to be disregarded (or exempted from the compensation recovery schemes) in the same way as payments derived from the existing Macfarlane and Eileen Trusts. “MFET Limited”is a new funding stream that is being introduced to run alongside the existing Macfarlane Trust and the Eileen Trust, established out of funds provided by the Secretary of State, for the benefit of persons who have acquired HIV as the result of treatment with NHS blood or blood products.

3.5. Treatment of notional non-state pension income:
Where a person aged at least 60 would otherwise be entitled to a private or occupational pension but does not claim it, the Department must, when calculating benefit entitlement, take account of the pension to which they would be entitled were they to apply for it. This is called notional non-state pension income. The amendments to Regulations will allow notional non-state pension income to be taken into account from the date that a person reaches the qualifying age for State Pension Credit rather than the age of 60.

3.6. The treatment of foreign state pensions in State Pension Credit:
When deciding a State Pension Credit claim consideration is given to setting an Assessed Income Period, usually for 5 years. During that period, apart from known or estimated annual increases, the income taken into account as part of the claimant's “retirement provision” is fixed.
“Retirement provision” is income and savings that a customer has arranged during their working life to support themselves during retirement but it does not include State Pension which is derived from mandatory National Insurance contributions.
Foreign state retirement pension should be treated in the same way as “income from an overseas arrangement” and consequently form part of the State Pension Credit customer’s retirement provision. At present a foreign state retirement pension that becomes payable during an Assessed Income Period is ignored.
This is contrary to the policy intention, which is that a foreign state retirement pension should be treated like a foreign social security benefit, which affects State Pension Credit in the same way as a domestic state pension, in that increases can affect the amount of State Pension Credit at the point of change rather than at the end of the Assessed Income Period. The amendments to the State Pension Credit Regulations will restore the policy intention.

3.7. The remainder of these amendments make minor miscellaneous changes to the income-related benefits Regulations.
In summary, they will:
(i) amend the Income Support Regulations to ensure that: (a) by inserting a reference to income-related employment and support allowance, the higher rate couple personal allowance may be awarded, where one member of a couple is aged under 18 and sick; and (b) all young people who have left local authority accommodation have access to income support regardless of where in Britain, they have ceased to live;
(ii) amend the Housing Benefit Regulations to ensure that a young person under age 21 undertaking non advanced full-time education has access to Housing Benefit as long as they were enrolled in, accepted or started the course before the age of 19;
(iii) insert a definition of "volunteer" into the Income Support and Jobseeker's Allowance Regulations to ensure consistency with the Employment and Support Allowance Regulations and avoid any ambiguity;
(iv) amend the Jobseeker's Allowance Regulations to insert the meaning of "last day of the course";
(v) amend the Jobseeker's Allowance Regulations joint-claim provisions to reflect the increase to 39 weeks, of the Maternity Allowance pay period;
(vi) correct the Jobseeker's Allowance regulations to ensure that a couple with one member age under 18 entitled to a severe hardship payment of Jobseeker's Allowance receives the same amount of benefit as a couple where the member under the age of 18 is in a prescribed group;
(vii) amend the working age Housing Benefit Regulations to take into account as income, any training allowance which is paid as a substitute for Employment and Support Allowance; and insert a clear definition of "special account" into the Housing Benefit Regulations to disregard certain payments made to Employment and Support Allowance claimants receiving or who have received assistance under the self-employment route; and
(viii) amend other social security legislation to refer to the new funding stream ("MFET Ltd.") that is being introduced to run alongside the existing Macfarlane Trust and the Eileen Trust.

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 or clarify the treatment of income or capital in the income-related benefits Regulations.

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 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. 2) 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.