

EXPLANATORY MEMORANDUM

THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS NO.2) REGULATIONS (NORTHERN IRELAND) 2013

S.R. 2013 No. 246

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 (Northern Ireland) Order 1998, 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 makes miscellaneous amendments and minor changes to the Regulations relating to income-related benefits and other relevant social security regulations. The reason for these amendments include the necessary omission of obsolete and redundant provisions and the requirement for necessary corrections and updates to regulations intended to maintain, clarify or restore policy intention. This Statutory Rule will amend the Income-related Benefit Regulations namely:
 - 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;
- 2.2 The Regulations will also make amendments to:
 - the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999;
 - the Social Security (Immigration and Asylum) Consequential Regulations (Northern Ireland) 2000; and
 - the Social Security (Credits) Regulations (Northern Ireland) 1975.

3. Background

- 3.1 Twice a year the Department puts forward a package of miscellaneous and non-controversial amendments to social security regulations. This is the second package of minor miscellaneous changes to the income-related benefit Regulations during 2013.
- 3.2 The main purpose of these regulations is to correct, clarify, align or update various pieces of social security legislation (listed at paragraph 2.1 and 2.2). The background and reasons for these amendments are further explained below at paragraphs 3.3 to 3.15.

Employment exempt from benefit entitlement rules

- 3.3 Regulation 45 of the Employment and Support Regulations (Northern Ireland) 2008 provides for certain types of employment to be exempt from rules under which work affects entitlement to benefit. The current layout of this regulation has become awry following an amendment made by the Social Security (Miscellaneous Amendments No.4) Regulations (Northern Ireland) 2010. A minor amendment is now being made to address the previous drafting error and restore clarity.

Credits for periods covered by compensation payments

- 3.4 Following a change to legislation in 2009, the Department disregards nearly all earnings from remunerative work that ends before an award of income related benefit begins. People who receive compensation payments, such as redundancy awards, are no longer treated as being in remunerative work for the period covered by the payment. Regulation 8A of the Social Security (Credits) Regulations (Northern Ireland) 1975 describes the circumstances under which a national insurance credit can be awarded for unemployment.
- 3.5 Regulation 8A(4) deals with such awards in circumstances where compensation payments have been made. This regulation cross refers to Regulation 52(3) of the Jobseekers Allowance Regulations (Northern Ireland) 1996. As Regulation 52(3) no longer refers to compensation payments and people can no longer be excluded from JSA in that circumstance, regulation 8A(4) has become redundant. Regulation 2 of these regulations will therefore omit this reference from the Social Security (Credits) Regulations.

Amendments to a benefit claim by the claimant

- 3.6 Problems can arise with written claims to benefits where a customer appears to have made a mistake on their claim; most commonly with the date. If the claim has been taken over the phone there is no problem, the member of staff can discuss the information with the customer to make sure that it is what they intend and that it is correct. However, in cases

where the original claim is made in writing, although a member of staff may phone the customer to discuss what appears to be a mistake, if the customer wants to amend their claim they must do this in writing. This proposal will give customers who claim in writing the opportunity to amend their claim by telephone if they wish, or by another method that the Department may determine. It will make the claims process more efficient, thereby simplifying and speeding up the process for both the Department and customers.

Part-week payments of severe disability premiums in ESA

- 3.7 Currently there are provisions that enable Income Support claimants to receive payments of severe disability premium for part-week home leave from a care home. Regulations need to be amended to align Employment and Support Allowance provisions with Income Support in accordance with policy intent.

General housekeeping amendments to ESA Regulations

- 3.8 A series of housekeeping amendments are proposed for the Employment and Support Regulations (Northern Ireland) 2008. These amendments will improve clarity and reinstate consistency with related regulations which themselves have been amended over time. The amendments will also remove redundant references to repealed regulations.

42 Day entitlement rule for non-EEA migrants

- 3.9 Amendments are required to a number of benefit regulations to remove a provision which entitles non-EEA migrants to receive income-related benefits for up to 42 days if there is a temporary disruption to their income from abroad. Non-EEA nationals are not generally entitled to income-related benefits because they are subject to immigration control. However, under a special provision, some existing income-related benefits can be paid for up to a maximum of 42 days where there has been a disruption to the receipt of funds from abroad, provided there is a reasonable expectation that the supply of those funds will be resumed.
- 3.10 The 42-day benefit rule has been mainly intended for non-EEA national students and pensioners. It is now a rarely used provision as potential claimants have recourse to other private sources of funds, such as credit or additionally earnings from part-time work, to tide them over until resumption of their funds from abroad. They may also seek assistance from their Embassy in the event that their funds from home are cut off. The provision has not been used in recent years. Claims to benefit under the 42-day rule cannot be separately identified from other claims. However, investigations have revealed that the use of this provision is very infrequent and has not been used at all in the last two years. These amending regulations therefore omit this provision from the existing benefit regulations.

Replacement of “exceptional leave to enter or remain” references in regulations

- 3.11 There are several related proposed amendments to replace the now redundant term “exceptional leave to enter or remain” (ELR) with the new Home Office “leave” terminology. These amendments are to ensure that those persons who would have come under the former ELR category are covered by the new wording – exceptional leave, or limited leave in the case of victims of domestic violence. The effect is to treat those who have been granted such leave as being habitually resident.

Persons from Abroad – Montserrat and Zimbabwe

- 3.12 The current income-related benefit regulations contain a provision that exempts people who have left Montserrat since November 1995 because of volcanic activity from the Habitual Residence Test. They have been immediately entitled to income-related benefits on arrival in the UK provided they meet the other conditions of entitlement. Department for Communities and Local Government (DCLG) have a similar provision in their regulations that allows immediate access to social housing and homelessness assistance.
- 3.13 In May 2002 Montserratians (along with other British overseas territories citizens) were automatically granted British citizenship. So, with the proposed amendments to omit this provision, Montserratians arriving in the UK will be able to qualify for income-related benefits on the same basis as other British citizens coming here for the first time (i.e. once they have satisfied the Habitual Residence Test).
- 3.14 The proposed amendments will also omit similar provisions to treat vulnerable British Citizens who were unable to support themselves or return to the UK from Zimbabwe without assistance as habitually resident when they arrived here. This assistance measure was time-limited so it applied only to those persons who accepted an offer to return from Zimbabwe on or after 28 February 2009 and arrived in the UK before 18 March 2011.

Definition of a care home

- 3.15 Paragraph 4 of Schedule 8A to the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 allow for deductions from pension credit to pay for miscellaneous accommodation costs when a person resides in a care home as defined in regulation 15(7) of the State Pension Credit (Northern Ireland) Regulations 2003. That definition was inadvertently repealed when the capital limit in state pension credit was increased to £10,000. An equivalent definition is therefore needed to enable deductions to continue to be made from a person's weekly benefit.

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, clarify, align or update various pieces of social security legislation.
- 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 new costs on business, charities or voluntary bodies.

7. Financial Implications

- 7.1 There are no significant costs to the Department to implement these proposals.

8. Section 24 of the Northern Ireland Act 1998

- 8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the Rule—
- (a) is not incompatible with any of the Convention rights,
 - (b) is not incompatible with Community law,
 - (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and
 - (d) does 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 main corresponding Great Britain Regulations are the Social Security (Miscellaneous Amendments) (No. 3) Regulations 2013 (S.I. 2013/2536).
- 10.2 Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.