EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (PAYMENTS ON ACCOUNT OF BENEFIT) REGULATIONS (NORTHERN IRELAND) 2016
2016

2016 No. 223

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Social Development (Northern Ireland) on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations make provision for two new types of payment on account of benefit to replace the loans available through the current system and the criteria which the Department must use when determining whether or not to make them.

2.2 The new types of payment on account introduced by these Regulations are:

- Advances of benefit: these will replace Interim Payments and Social Fund Crisis Loan alignment payments for Universal Credit and legacy benefit claimants (covered in Part 2 of the regulations); and
- Budgeting Advances: which replace Social Fund Budgeting Loans for eligible Universal Credit claimants (covered in Part 3 of the Regulations).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 87 of the Northern Ireland Act 1998 places a statutory duty on the Minister for Social Development and the Secretary of State for Work and Pensions to consult with one another with a view to securing a single social security system for the United Kingdom. Section 88 of the 1998 Act makes provision for financial adjustments to support the maintenance of these parity arrangements.

4.2 Underpinning the parity principle, is the argument, that, as people in Northern Ireland pay the same rates of income tax and National Insurance contributions as people in Great Britain; they are entitled to the same rights and benefits paid at the same rates.

4.3 The Welfare Reform Act 2012 introduced a number of reforms including Universal Credit, Personal Independence Payment, the Jobseeker's Allowance Claimant Commitment and a cap on the amount of benefits working age people can receive.

4.4 On 17 November 2015 "A Fresh Start: The Stormont Agreement and Implementation Plan" was agreed by the main political parties in Northern Ireland. Included in this agreement was the approach agreed by the Executive and HM Government to implementing welfare reform in Northern Ireland. The Northern Ireland (Welfare Reform) Act 2015 provides a power for Her Majesty to legislate on social security, child support and certain matters related to employment and training in Northern Ireland by Order in Council. Any such Order in Council may then confer power on the Secretary of State or a Northern Ireland department to make further provision regarding these matters by regulations or order. The Welfare Reform (Northern Ireland) Order 2015 (the "2015 Order") was made on 9 December 2015 and regulations stemming from the Order, to implement the various welfare reforms set out in the Welfare Reform Act 2012 in Northern Ireland, are now being brought forward.

4.5 Section 134(1)(b) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, which provides the legislative basis for the existing Discretionary Social Fund, is repealed by Article 76(1) of the 2015 Order. This covers Budgeting Loans, Crisis Loans and Community Care Grants. The Commencement Order relating to the abolition of the Discretionary Social Fund, will have a saving provision for Budgeting Loans to continue until people in receipt of Income Support, income-based Jobseeker's Allowance and income-related Employment and Support Allowance migrate to Universal Credit.

4.6 To dovetail with this, Article 106 of the 2015 Order broadens the existing regulation making powers in the Social Security Administration (Northern Ireland) Act 1992 to make payments on account of benefit and these Regulations are made both under those powers and those in the Social Security (Northern Ireland) Order 1998 in the context of appeals.

5. Extent and Territorial Application

5.1 The extent of this instrument is Northern Ireland only.

5.2 The territorial application of this instrument is Northern Ireland.

5.3 These regulations replicate for Northern Ireland the legislation that applies to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 Universal Credit will help to remove the complexities of the current benefits system. Instead of income-based Jobseeker's Allowance, Housing Benefit, Child Tax Credit, Income Support, Working Tax Credit, and income-related Employment and Support Allowance as separate benefits, Universal Credit will be a single means-tested benefit for people both in and out of work.

7.2 The current systems of loans available under the Discretionary Social Fund and the provisions that allow for Interim Payments of benefits will also be abolished. The provisions in these regulations ensure continuity of these services in a way that reflects the design and purpose of Universal Credit, encourages financial independence and is anticipated to be both simpler and more cost effective to administer.

Universal Credit Advances and Short Term Benefit Advances ("Advances of Benefit")

7.3 Advances of benefit for Universal Credit and legacy benefit claimants will be known administratively as "Universal Credit Advances" and "Short Term Benefit Advances", (although not so termed on the face of the Regulations). These will replace both Social Fund Crisis Loan alignment payments and existing Interim Payments of benefit. They will help ensure that those with an immediate financial need have access to funds when making a new benefit claim or, for those already in receipt of benefit, following a change of circumstances which results in a significant increase in the amount of benefit award.

7.4 When someone makes a new claim for benefit[1], they may encounter a period of financial need before receiving their first payment of benefit (either because they have no or limited financial resources available to them for the period until their benefit payment is due to be paid or where their claim cannot be determined immediately). Advances of Benefit are designed to help claimants who are in financial need through that period by providing an advance of their future benefit award, which would then be recovered from subsequent payments of benefit. Advances of Benefit can also be made:

- to claimants who have experienced a change of circumstances that will significantly increase the amount of benefit to which they are entitled; or
- in cases where it is impractical for benefit to be paid on the due date (e.g. due to a technical problem in processing the claim or payment).

7.5 To make an Advance of Benefit to a person, the Department must be satisfied that they are in financial need. Financial need is defined as "a serious risk of damage to the health or safety" of the claimant or a member of their family. Part 2 of the Regulations enables payment of Advances of Benefit to be made. This includes for example when a claim has not yet been determined but it appears likely that the conditions of entitlement are satisfied and there is financial need. Regulation 4(2) provides that Advances of Benefit are not to be made where there is an appeal pending in relation to the benefit for which the advance has been applied for.

7.6 Part 2 also details the requirement for a written notice to be given to the claimant about how the advance will be recovered, and that Advances of Benefit may be offset against future payments of benefit. It also allows for payments on account to be made by direct credit transfer.

7.7 These new provisions are designed to strike a balance between providing support to those who need it and discouraging dependency on the benefit system and long-term repayment of loans, encouraging claimants to take more personal financial responsibility for themselves. Details on the size of awards and repayment periods will be covered in guidance.

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1 The provisions also apply where there is no legal obligation to actually make a claim for the benefit concerned and where the Department can make a benefit entitlement decision without a formal claim. For example, certain Pension claims and in Universal Credit where entitlement had ceased for a short period due to an increase in earnings, but those earnings have now fallen.

Budgeting Advances

7.8 Budgeting Advances aim to help low income families pay intermittent expenses, such as the need to buy essential items like furniture or household equipment, or expenses related to, for example, maternity or starting work.

7.9 Budgeting Advances will be available to those entitled to Universal Credit and will replace Budgeting Loans which are available currently under existing legislation to those on income-related benefits (Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance and Pension Credit). Budgeting Loans will continue to be available to all such claimants until their benefit claims have either been closed or, where appropriate, they have been migrated to Universal Credit. Budgeting Advances will ensure that those with the lowest incomes claiming Universal Credit will continue to have access to an alternative source of funds to high-cost lending in order to cope with emergencies and unforeseen expenses.

7.10 Part 3 of the Regulations enables payment of Budgeting Advances to be made to a person who is in receipt of Universal Credit. The Regulations specify that the claimant must have been receiving Universal Credit or a relevant income-related benefit (Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance or Pension Credit) for a continuous period of at least 6 months prior to making the application (except where the expense necessarily relates to obtaining or retaining employment). The 6 month period mirrors the current criteria for obtaining a Budgeting Loan (Regulation 12).

7.11 To ensure that Budgeting Advances are available only to those on the lowest incomes (just as access to existing Budgeting Loans is restricted to those receiving income-related benefits for people working less than 16 hours a week). There is a maximum earnings threshold during the six month period prior to making the application for eligibility for a Budgeting Advance. This will be £2,600 for single claimants and £3,600 for couples.

7.12 Two further conditions are provided to ensure that households can afford repayments and to prevent long-term debt. These are that:

- claimants will need to have repaid an outstanding Budgeting Advance before a further Budgeting Advance is awarded; and
- taking into account debts and other liabilities, the Department must be satisfied that the Budgeting Advance can reasonably be expected to be recovered.

7.13 The minimum amount payable is £100 and the regulations set out the maximum amounts payable. The maximum amount depends on whether the Universal Credit claim is in respect of a single person or a couple, and on whether the claimant is responsible for any children or qualifying young people (Regulation 15).

7.14 The amount of a Budgeting Advance would be reduced by any capital in excess of £1,000. The treatment of capital follows a similar provision in the present Budgeting Loans provided by the Discretionary Social Fund scheme. If this would reduce the amount of the Budgeting Advance otherwise payable to less than £100, then no advance is payable.

7.15 The main differences between Budgeting Advances and the current Budgeting Loans scheme are:

- The current scheme allows a claimant to take-out multiple loans up to a maximum debt limit. These loans can only be recovered one at a time in date order, with the oldest collected first. This means there is little incentive for claimants to anticipate needs and budget for themselves, and has led to claimants hovering at their maximum debt limit at levels of debt that many take a number of years to repay. The Budgeting Advances scheme ensures that households can afford repayments and prevents long term debt arising by limiting claimants to one Budgeting Advance at a time, which must be repaid before another Budgeting Advance can be considered. This is intended to encourage improved budgeting and personal financial responsibility, and should help claimants make the transition to work by preparing out of work households for the realities of budgeting for themselves on a monthly income.
- Decision Makers' guidance will set out a maximum recovery period of 12 months to minimise the length of time the claimant will be in debt, extendable to 18 months in exceptional circumstances. This compares with a maximum 104 weeks recovery period for a Budgeting Loan under the Discretionary Social Fund.

***Other Financial Support:* Discretionary Support Scheme**

7. 18 As proposed by the Minister for Social Development and provided for in the Welfare Reform (Northern Ireland) Order 2015 (Article 135) there is provision for a Discretionary Support Scheme in Northern Ireland. It is intended that the Discretionary Support Scheme (DSS) will replace assistance previously available under the Social Fund. This new scheme will provide further options of assistance to households on low incomes.

7.19 The scheme was included in the report 'Welfare Reform Mitigations Working Group' produced by Professor Eileen Evason in January 2016 that was presented to and endorsed by the NI Executive. Detail of the Scheme including how it will work, what it will provide assistance for, and access and eligibility will be included in the Regulations that will be brought forward separately by the NI Social Security Agency (SSA) in the Department through the NI Assembly.

Other amendments made by the Regulations

7.20 Regulation 19(1) revokes Part 2 of the Social Security (Payments on Account, Overpayments and Recovery) Regulations (Northern Ireland) 1988 (S.R.1988/142) (https://www.dsdni.gov.uk/services/law-relating-social-security) under which payments on account of benefit (known as Interim Payments) are currently made. However, regulation 19(2) contains a saving provision, so that those provisions continue to apply for applications made before regulation 19(1) comes into force and to payments on account made pursuant to such applications.

7.21 Decisions on payments on account do not carry a right of appeal because they are discretionary in nature. Regulation 20 makes an amendment to Schedule 2 to the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 (SI 1999/162) (decisions against which no appeal lies) so that the scope of those regulations includes decisions made under these regulations.

Consolidation

7.22 This instrument will be informally consolidated in the NI equivalent of the GB Law Relating to Social Security (or "Blue Volumes"), as the legislation applies only to Northern Ireland. It will be available to the public at no cost via the internet at: https://www.dsdni.gov.uk/services/law-relating-social-security .

8. Consultation outcome

8.1 The Department for Social Development consulted on the implications of the wider reforms as part of the Welfare Reform Bill consultation process, including a public consultation on the equality impact assessment. The Department has also discussed informally with stakeholders to ensure that the operational implications are fully understood and that processes are in place to ensure that the change is implemented correctly in Northern Ireland.

8.2 The policy proposals relating to Universal Credit and the new Discretionary Support Scheme were put to the NI Assembly's Social Development Committee as part of the Assembly's consideration of the proposed Welfare Reform Bill (Northern Ireland) 2012. In response to its call for evidence the Committee received written submissions from 55 organisations and individuals. The Committee took oral evidence from 31 organisations including the Department. The Committee were content with and welcomed the overarching policy proposals for the new Discretionary Support Scheme.

9. Guidance

9.1 Before these Regulations come into force detailed guidance on both regulatory and operational changes will be provided to staff and decision makers within the Northern Ireland Social Security Agency (NI SSA). Procedures will be updated, staff trained and notification letters amended before these regulations are brought into operation.

9.2 After these regulations are laid changes will be made to the Decision Makers Guide (DMG) which is also available free on the DSD internet at: https://www.dsdni.gov.uk/articles/decision-makers-guide.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible. This measure is part of the welfare reform package that will restore parity with the rest of the UK and contribute toward sustainable finances for the Executive. The provision of funds through loans will be extended into UC via this instrument. The differences in policies are not substantive, but emphasise personal responsibility in finance through limits on multiple borrowing and repayment periods.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring and review

12.1 The operation of the Regulations will continue to be reviewed through the normal avenues of guidance enquiries received from the Department's offices and correspondence from members of the public.

12.2 In addition the Welfare Reform (Northern Ireland) Order 2015 makes specific provision for a duty on the Department to conduct and publish a report on the operation of the Order. This must be produced within 3 years of the making of the Order. The Department is required to lay the report before the Northern Ireland Assembly.

12.3 Northern Ireland social security legislation normally maintains parity with changes made by the Department for Work and Pensions.

13. Contact

13.1 Anne McCleary at the Department for Social Development can direct any queries regarding the instrument. Telephone: 028 90819973 or email: caroline.banks@dsdni.gov.uk.