EXPLANATORY MEMORANDUM TO

The State Pension Credit (Additional Amount for Child or Qualifying Young Person) (Amendment) Regulations (Northern Ireland) 2018

S.R. 2018 No.135

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Communities 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 sections 2(3)(b) and 19(1) to (3) of the State Pension Credit Act (Northern Ireland) 2002 and is subject to the negative resolution procedure.

1.3 The rule is due to come into operation on 1st February 2019.

2. Purpose

2.1 Support for low income pensioners with responsibility for children is currently provided through Child Tax Credit, which is being abolished in accordance with the Welfare Reform (Northern Ireland) Order 2015 ("the 2015 Order"). The purpose of the Regulations is to ensure support for children continues to be provided for low income pensioners by introducing a new additional amount within Pension Credit.

3. Background

3.1 The 2015 Order provided for reforms, which will, over time, replace current income-related benefits and tax credits for people under the Pension Credit qualifying age, and will include the eventual abolition of Child Tax Credit. Currently there is no provision for children in Pension Credit and support for pensioners with responsibility for a child or qualifying young person (QYP) is provided through Child Tax Credit. A commitment was made that, once Child Tax Credit was abolished, support for low income pensioners with responsibility for children would be provided by Pension Credit.

3.2 These Regulations introduce that support by providing for an additional amount to be added into the Guarantee Credit element of Pension Credit for those who have responsibility for a child or QYP, as determined in accordance with a new Schedule 2A which is to be inserted into the State Pension Credit Regulations (Northern Ireland) 2003. It is important that support should continue to be available for low income pensioners who have responsibility for a dependent child or QYP after Child Tax Credit has been abolished. Pension Credit is the income-related benefit that ensures low income pensioners can receive a standard minimum income, and it is therefore logical that support for children for low income pensioners be provided through Pension Credit.

3.3 To ensure consistency across the benefits, the support for children in Pension Credit will broadly replicate the amounts of Child Tax Credit. A Pension Credit recipient will be awarded an additional amount for each child or QYP for whom they are responsible, with a higher additional amount awarded for a child with a disability.

When the additional amount for a child or QYP is payable

3.4 If the claimant is currently getting Child Tax Credit then that will continue until they have a change of circumstance that ends their award, or until they are migrated to Pension Credit as part of a phased process ahead of the abolition of tax credits.

3.5 An additional amount will be awarded to claimants of Pension Credit who have responsibility for a child or QYP as part of the Guarantee Credit element of their Pension Credit award. This additional amount will not be awarded if the claimant has an award of a tax credit.

3.6 Because of the way that tax credits currently operate, it is necessary for the Regulations to define when claimants are to be treated as having an award of tax credits for the purpose of determining whether the additional amount of Pension Credit should be awarded. HMRC will continue to award tax credits for the period during which the customer is allowed to renew their claim following the end of the tax year.

3.7 The additional amount of Pension Credit will not be awarded during the renewal period, however it can be awarded after this period if a renewal claim for tax credits is not made and tax credits cease.

3.8 In some circumstances, the tax credit claim can be reinstated after the period for renewals has passed when payments have ceased. In these cases the claimant would no longer be entitled to an additional amount for a child or QYP within their Pension Credit.

The definition of a child or QYP and determining responsibility for a child or QYP

3.9 For the purpose of these Regulations a "child" means someone under the age of 16, whilst a QYP is a person who has reached the age of 16 but not the age of 20, and has enrolled or been accepted in full-time, non-advanced education or approved training before the age of 19. This is the existing definition in State Pension Credit Regulations (Northern Ireland) 2003.

3.10 A person will be treated as responsible for a child or QYP who normally lives with them. However they cannot be treated as responsible if they are living together with a QYP as a couple.

3.11 In situations where a child or QYP resides with two or more people who are not a couple, only one person can be treated as responsible for a child or QYP, and that is the person who has the main responsibility. The Regulations allow them to nominate which of them has the main responsibility. The Department has the discretion to decide who has main responsibility if no agreement can be made or where it is considered that the nomination does not reflect the arrangements for the child or QYP.

3.12 A person is to be treated as not responsible for a child or QYP during a period for which they are looked after by an authority. This is subject to an exception for planned short term breaks, or one of a series of such breaks, for the purpose of providing the responsible person with a period of respite.

3.13 There is also an exception for periods where the child or QYP is placed with, or continues to live with, their parent or a person who has parental responsibility for them. Parental responsibility is defined in the Regulations.

3.14 A person cannot be treated as responsible for a child or QYP for any time that the child or QYP is a prisoner, as defined in the State Pension Credit Regulations (Northern Ireland) 2003.

Temporary absences of the child or QYP

3.15 A claimant is to be treated as not responsible for a child or QYP if they are away from the claimant in Northern Ireland if the absence is likely to exceed a specified period. There are separate rules for absences outside Northern Ireland.

3.16 Where a child or QYP is absent from the claimant but remains within Northern Ireland the claimant can still be treated as responsible for them as long as the absence is not expected to be for more than 52 weeks. If it was known at the start of the absence that it will exceed 52 weeks, responsibility will cease from the start of the absence, unless there are exceptional circumstances, for example that the child or QYP is in hospital and the absence is not expected to be substantially longer than 52 weeks.

3.17 If the absence is outside Northern Ireland, then the length of time for which a claimant is treated as responsible varies according to the circumstances as detailed below:

- Up to and including 4 weeks where the absence is not expected to exceed 4 weeks.
- Up to and including 8 weeks where the absence is not expected to exceed 8 weeks and is connected with the death of the claimant's partner, another child or QYP usually living with the claimant, or in connection with the death of a close relative of the claimant or a usual member of the household and it is unreasonable to expect a return within 4 weeks,
- Up to and including 26 weeks where the absence is not expected to exceed 26 weeks and the child or QYP is required to undergo treatment for an illness, has to go into convalescence or care as a result of treatment for an illness, or is accompanying the claimant or the claimant's partner whilst they are in care or convalescence.

Death of a child or QYP

3.18 Where a child or QYP dies, there will be a run-on period of 8 weeks, to allow the claimant time to adjust to their new circumstances. This aligns with the rules that apply in Housing Benefit in order to achieve consistency of treatment across the two benefits, which can be received at the same time.

The amount payable

3.19 The following weekly rates will be payable:

- each child or QYP :-£53.34
- further amount for disability:-£29.02
- further amount for severe disability or a child that is certified as severely sight impaired or blind by a consultant ophthalmologist:-£88.34
- eldest child or QYP born before 6th April 2017:-£63.84.

4. Consultation

4.1 As this change is a direct consequence of the introduction of Universal Credit the Department for Communities has not consulted on these Regulations specifically. The Department for Communities consulted extensively about the implications of the wider reforms in the Welfare Reform Bill (which fell in Northern Ireland) consultation process, and 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.

4.2 The Department for Work and Pensions presented the proposals to the Social Security Advisory Committee on 8th November 2017, the Committee decided not to refer them for consultation. A few technical changes were made to the Regulations following feedback from the Committee.

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 any significant implications for equality of opportunity. In light of this, the Department considers that an equality impact assessment is not necessary.

5.2 Every social security policy is designed to meet a specific need. In this case it is designed to ensure support for children continues to be provided to low income pensioners with responsibility for children by introducing a new additional amount within Pension Credit when it is no longer available through Child Tax Credit.

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 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 State Pension Credit (Additional Amount for Child or Qualifying Young Person) (Amendment) Regulations (Northern Ireland) 2018 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. E.U. Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 The Regulations mirror the Great Britain Regulations the State Pension Credit (Additional Amount for Child or Qualifying Young Person) (Amendment) Regulations 2018 No. 676 which are to come into force on 1st February 2019. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions provided for in section 87 of the Northern Ireland Act 1998. It was therefore necessary to make this statutory rule during the period of interregnum of the Assembly.

11. Additional Information

11.1 Not applicable