

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CAPITAL DISREGARDS) (AMENDMENT)
REGULATIONS (NORTHERN IRELAND) 2019

S.R. 2019 No. 195

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Communities (“the Department”) 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 The purpose of this instrument is to allow back-payments of Armed Forces Independence Payment and Maternity Allowance to be ignored in the calculation of a claimant’s capital, across the full range of income-related social security benefits. The disregards will apply for a prescribed length of time from the date the arrears are received.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The regulations replicate the Universal Credit (Capital Disregards) (Amendment) Regulations (Northern Ireland) 2019.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is Northern Ireland.
- 4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Section 87 of the [Northern Ireland Act 1998](#) places a statutory duty on the Minister for Communities 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.

- 6.2 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 rate.
- 6.3 *The Welfare Reform Act 2012*¹ introduced a number of reforms which included the introduction of universal credit, a working age income-related social security benefit, and the abolition of income support, housing benefit, working tax credit, child tax credit and the income-related components of jobseeker’s allowance and employment and support allowance.
- 6.4 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](#) provided a time-limited 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](#) was made on 9 December 2015 making provision corresponding to the 2012 Act. [The Welfare Reform and Work \(Northern Ireland\) Order 2016](#) was made on 12 October 2016 making provision corresponding to the social security provisions of the 2016 Act.
- 6.5 Across the range of working-age income-related benefits (Income Support, income-based Jobseeker’s Allowance, Housing Benefit, income-related Employment and Support Allowance and Universal Credit), there are upper and lower capital limits at or above which a claimant’s entitlement, or the amount payable by way of that entitlement, can be affected.
- 6.6 Pension-age income-related benefits (Pension Credit and Housing Benefit for people who have attained the qualifying age for Pension Credit) have similar, but slightly different, rules. In Pension Credit, for example, there is no upper capital limit.
- 6.7 Capital, in general, means any and all savings and investments and the value of property and land owned but not occupied by the claimant. However, certain types of capital are wholly “disregarded” (excluded from the calculation of the claimant’s capital) either in whole or in part, the effect of which is to prevent awards of benefit from either ending or being reduced. The nature of the capital that attracts a disregard, and the extent of the disregard, is prescribed in the appropriate sets of regulations, along with the associated conditions (if any) that need to be satisfied.
- 6.8 This instrument makes changes to the following statutory instruments, to allow for back-payments of Armed Forces Independence Payment and Maternity Allowance to be disregarded across the full range of income-related social security benefits:
- the Income Support (General) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 459)² (“the IS Regulations”);
 - the Jobseeker’s Allowance Regulations (Northern Ireland) 1996 (S.R. 1996 No. 198)³ (“the JSA Regulations”);

¹ <http://www.legislation.gov.uk/ukpga/2012/5/contents>

² <http://www.legislation.gov.uk/nisr/1987/459/contents/made>

³ <http://www.legislation.gov.uk/nisr/1996/198/contents/made>

- the State Pension Credit Regulations (Northern Ireland) 2002 (S.R. 2002 No. 28)⁴;
- the Housing Benefit Regulations (Northern Ireland) 2006 (S.R. 2006 No. 405)⁵;
- the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 (S.R. 2006 No. 406)⁶;
- the Employment and Support Allowance Regulations (Northern Ireland) 2008 (S.R. 2008 No. 280)⁷ (“the ESA Regulations”);
- the Universal Credit Regulations (Northern Ireland) 2016 (S.I. 2016 No. 216)⁸; and
- the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016 (S.R. 2016 No. 226)⁹.

7. Policy background

What is being done and why?

Disregard of arrears of prescribed benefits - background

- 7.1 Across the range of income-related benefits arrears of prescribed benefits are wholly disregarded for a period of 52 weeks from the date of receipt. With Universal Credit (UC) the disregard only applies if the benefit concerned is not included as unearned income in the calculation of a claimant’s income¹⁰.
- 7.2 Where the amount to £5,000 or more, and become payable either as a result of official error or from an error in law, a longer disregard applies: in these circumstances, the arrears are normally disregarded for 52 weeks from the date of receipt or for the remainder of that award, whichever is the longer period. With UC, the longer disregard applies to benefit arrears of £5000 or more if the arrears would have attracted the longer disregard for the purposes of the other income-related benefits.

Disregard of arrears of Armed Forces Independence Payment

- 7.3 From 8 April 2013, Personal Independence Payment (PIP) replaced Disability Living Allowance for people are aged 16 to 64 with a health condition or disability and who have difficulties with daily living or getting around (or both). From the same date, Armed Forces Independence Payment (AFIP) was introduced into the Armed Forces and Reserve Forces Compensation Scheme¹¹ as an alternative to PIP for service personnel and veterans who have been seriously injured as a result of service, and who meet the eligibility criteria.
- 7.4 The policy intention was – and remains – that, across the full range of income-related benefits, AFIP should be prescribed as a relevant benefit for the purposes of the arrears provisions described above. In the event, however, the instrument which

⁴ <http://www.legislation.gov.uk/nisr/2003/28/contents/made>

⁵ <http://www.legislation.gov.uk/nisr/2006/405/contents/made>

⁶ <http://www.legislation.gov.uk/nisr/2006/406/contents/made>

⁷ <http://www.legislation.gov.uk/nisr/2008/280/contents/made>

⁸ <http://www.legislation.gov.uk/nisr/2016/216/contents/made>

⁹ <http://www.legislation.gov.uk/nisr/2016/226/contents/made>

¹⁰ See regulation 66(1) of the Universal Credit Regulations (Northern Ireland) 2016

¹¹ The Armed Forces and Reserve Compensation Scheme is a no-fault compensation scheme for injury, illness or death caused by service in the UK Armed Forces (Regular and Reserve) on or after 6 April 2005. Compensation is paid for injuries which arise as a result of service, regardless of how they are sustained.

made changes to legislation in consequence of the introduction of AFIP¹² omitted to insert appropriate cross-references into the IS Regulations, the JSA Regulations and the ESA Regulations.

- 7.5. As a result, there is, currently, no dedicated disregard of arrears of AFIP, regardless of the amount or reason, within the three benefits in question, and the arrears are, instead, having to be disregarded under a separate provision relating to payments made to the claimant in consequence of any personal injury.
- 7.6 Whilst the Department is satisfied that, to date, no claimants have suffered any financial disadvantage as a result of the omissions, this instrument restores the policy intent by inserting dedicated disregards of arrears of AFIP into the three sets of Regulations.
- 7.7 Additionally, this instrument amends the Universal Credit Regulations (Northern Ireland) 2016 and the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016, to clarify that arrears of AFIP are disregarded for the purposes of Universal Credit as well.

Disregard of arrears of Maternity Allowance

- 7.8 Maternity Allowance (MA) is payable to pregnant women who are not entitled to Statutory Maternity Pay from their employer, or who are self-employed, or who have irregular employment. This instrument also prescribes Maternity Allowance (MA) as a relevant benefit for the purposes of the arrears provisions described above. This is because a historical error has come to light which may require arrears of MA to be paid, and prescribing MA as a relevant benefit will ensure that any claimants who may receive back payments will not be disadvantaged.
- 7.9 Additionally, this instrument amends the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016, to provide that arrears of MA under £5000 (which would not otherwise fall to be disregarded for the purposes of Universal Credit – see paragraph 7.1) are to be disregarded for 12 months from the date of receipt of the payment.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to the withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

¹²The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591) <https://www.legislation.gov.uk/uksi/2013/591/contents/made>

9. Consolidation

- 9.1 This instrument will be informally consolidated in the Law relating to Social Security (Northern Ireland) or (“Blue Volumes”). It will be available to the public at no cost via the internet at www.communities-ni.gov.uk/services/law-relating-social-security.

10. Consultation outcome

- 10.1 This measure has not been subject to public consultation.

11. Guidance

- 11.1 The appropriate guidance will be amended for staff and decision makers in advance of this instrument becoming operational.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no businesses are affected.

13. Regulating small business

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

14. Monitoring & review

- 14.1 Since the instrument makes no substantive changes beyond introducing additional disregards, no formal monitoring or review is planned.

15. Contact

- 15.1 Anne McCleary at the Department for Communities can answer any queries regarding the instrument. Telephone: 028 90823332 or e-mail: anne.mccleary@communities-ni.gov.uk
- 15.2 Anne McCleary, Director of Social Security Policy and Legislation Division, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Mims Davies, the Minister of Employment at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.