

EXPLANATORY MEMORANDUM TO

**THE EMPLOYMENT AND SUPPORT ALLOWANCE AND THE HOUSING
BENEFIT (TRANSITIONAL PROVISIONS) (AMENDMENT)
REGULATIONS (NORTHERN IRELAND) 2020**

S.R. 2020 No. 45

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 sections 122(1)(d), 131(1) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and paragraphs 7(1)(a) and (2)(d) and 8(c) of Schedule 4 to, the Welfare Reform Act (Northern Ireland) 2007, and is subject to the negative resolution procedure.

2. Purpose

- 2.1. These Regulations remove the 5 April 2020 end date for Employment and Support Allowance transitional additions from the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 (the “Existing Awards Regulations”).
- 2.2. The Existing Awards Regulations ensure that no-one sees a cash loss at the point that their award is converted from an incapacity benefit to Employment and Support Allowance (“ESA”) by awarding a transitional addition (“TA”) to compensate for any difference in their award as a result of the conversion. The regulations also provide for the TA to be reduced by increases in the claimant’s ESA and stipulate that TAs will cease altogether on 5 April 2020.
- 2.3. This amendment removes the stipulated end date for TAs, allowing them to continue until naturally eroded to nil, the ESA claim is closed or in the case of income-related ESA, claimants’ awards are migrated to Universal Credit (“UC”).

3. Background

- 3.1. Migration of the existing awards of incapacity benefits (Incapacity Benefit, Severe Disablement Allowance and Income Support on incapacity grounds) to Employment and Support Allowance (ESA) began in October 2010. Claimants whose award of ESA was lower than their previous award when converted to ESA, were awarded a transitional addition (TA) equal to that difference.
- 3.2. The Existing Awards Regulations allowed for TAs to be reduced by increases in the claimant's benefit, most commonly at the annual up-rating, or if a change in circumstances meant their benefit increased, and stipulated the protection in ESA would cease completely on 5 April 2020. Reducing a TA by any increase in their ESA applicable amounts means that claimants may see no change in their benefit income, until the value of the TA has been reduced to nil.
- 3.3. Subsequent to the Existing Awards Regulations coming into operation TAs did not reduce as much as forecast. As the number estimated to be receiving a TA in 2020 is higher than forecast, the end date of April 2020 is no longer appropriate. This amendment allows the protection of TAs to continue until naturally reduced to nil, the ESA claim is closed or claims are migrated to UC.
- 3.4. These Regulations also ensure that those ESA claimants who also receive a transitional amount of Housing Benefit will continue to do so after 5 April 2020.

4. Consultation

- 4.1. There is no requirement to consult in relation to these Regulations.

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 proposals for these Regulations and concluded that they do not have significant implication for equality of opportunity or good relations. In light of this, the Department considered 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. A breach of parity in this matter may incur financial costs, both in the loss of benefit savings and in administration costs, which would have to be met by the Northern Ireland Executive from the Northern Ireland block grant.

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 that 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. These Regulations are equivalent to the Employment and Support Allowance (Transitional Provisions) (Amendment) Regulations 2020 (S.I. 2020/102) which were made in Great Britain on 30th January 2020, and came into force on 27th February 2020 and the Housing Benefit (Transitional Provision) (Amendment) Regulations 2020 (S.I. 2020/288) which were made in Great Britain on 12th March 2020, and will come into force on 4th April 2020.

11. Additional Information

11.1. Not applicable.