

EXPLANATORY MEMORANDUM TO
THE WELFARE REFORM (NORTHERN IRELAND) ORDER 2015

2015 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order makes provision equivalent to the [Welfare Reform Act 2012](#) and will implement the reforms contained in that Act in Northern Ireland, with some limited specific changes, including top up powers and a different sanctions regime, as agreed in the Stormont House Agreement and in previous discussions between the Government and the NI Executive.

2.2 The Order confers powers on the Northern Ireland Department for Social Development to make regulations with respect to the reforms in Northern Ireland. Transitory provision in the Order allows the Secretary of State to exercise the vast majority of these powers in the first instance to secure the introduction of the reforms, after which he may make an order transferring the powers back to the Department. The only exception to this is in relation to the powers to make provision for discretionary financial assistance set out in Articles 135 and 137 of the Order, which are to be exercised by the Department for Social Development.

2.3 The Belfast Agreement recognised social security as an area where parity with the rest of the United Kingdom is normally maintained. This is reflected in the Northern Ireland Act 1998 where, although social security, child support and pensions are not designated as excepted or reserved matters, specific provision was made to ensure that the systems in the two jurisdictions could continue to work, in effect, as coherent single systems.

2.4 To achieve this, the [Welfare Reform Bill](#) was introduced in the Northern Ireland Assembly in October 2012, but it was not passed following a Petition of Concern in May 2015. The Northern Ireland Assembly has agreed that the Government can legislate in order to implement welfare reform in Northern Ireland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Order in Council is being progressed in order to deliver the quickest, most secure and effective means of implementing welfare reform in Northern Ireland. The Order was laid in draft for the approval of both Houses of Parliament following Royal Assent for the Northern Ireland (Welfare Reform) Act 2015 and comes into force on the day after the day on which it is made by Her Majesty in Council.

Other matters of interest to the House of Commons

3.2 The territorial application of this entire instrument is to Northern Ireland.

- 3.3 The consent of the Northern Ireland Assembly was sought in accordance with the convention that Parliament will not normally legislate on a devolved matter except with the agreement of the devolved legislature. This consent was provided on 18 November 2015. The ongoing legislative competence of the Northern Ireland Assembly will not be affected as the areas of Social Security and Child Support still remain formally devolved to Northern Ireland.

4. Legislative Context

- 4.1 Section 87 of the Northern Ireland Act 1998 <http://www.legislation.gov.uk/ukpga/1998/47/section/87> 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. It also reassessed incapacity benefits claimants for Employment and Support Allowance, improved the Work Capability Assessment and made sure housing support is fair.
- 4.4 The Order allows for the introduction of broadly equivalent reforms in Northern Ireland.

5. Extent and Territorial Application

- 5.1 The Order extends to Northern Ireland, except where it makes amendments to instruments with wider extent, in which case the provisions will have the same extent as the instrument they are amending.
- 5.2 The territorial application of this instrument is set out under Section 3 under “Other Matters of interest to the House of Commons”.
- 5.3 This instrument broadly replicates welfare reform provisions which apply in other parts of the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Rt. Hon. Priti Patel MP, Minister for Employment, has made the following statement regarding Human Rights:
- “In my view the provisions of the Welfare Reform (Northern Ireland) Order 2015 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 In the Programme for Government 2011-15 the Northern Ireland Executive outlined its commitment to growing a sustainable economy and investing in the future. This

would be achieved by creating opportunities, tackling disadvantage and improving health and well-being and the Northern Ireland Executive recognised that Welfare Reform is part of this process.

- 7.2 The Minister for Social Development introduced a Welfare Reform Bill to implement the Government’s Welfare Reform Act 2012 on 1 October 2012. In line with commitments made by the Northern Ireland Executive under the Stormont House Agreement, this Bill was subsequently amended. The Bill proceeded through First, Second, Committee and Consideration Stages but, following a Petition of Concern, failed to pass at Final Stage on 26 May 2015.
- 7.3 As such, the welfare reform changes brought in by the Welfare Reform Act 2012 in GB have not been taken forward in Northern Ireland and the pre-existing benefit system has been maintained. There have been some changes to the Northern Ireland benefits system since 2012, such as changes in respect of habitual residence and extended periods of sickness. It was possible to introduce these by way of regulations as they were not reliant on the primary powers contained in the Assembly Welfare Reform Bill which fell.
- 7.4 As part of “A Fresh Start: The Stormont Agreement and Implementation Plan”, published on 17 November 2015, the Northern Ireland Executive agreed that the Government should legislate (with the consent of the Northern Ireland Assembly) to make provisions on welfare reform, including those included in the Welfare Reform Act 2012, in Northern Ireland.
- 7.5 The Order in Council also makes provision for agreed Northern Ireland-specific welfare-related administrative flexibilities and top-ups, including a slightly different sanctions regime and the ability for welfare payments to be made to claimants on a fortnightly rather than on a monthly basis. This will restore parity, simplify the current benefit system and incentivise people on benefits to start paid work or increase their hours. The far-reaching changes brought by the Order should make the system fairer and more affordable, reduce poverty, worklessness and welfare dependency.
- 7.6 As set out in the Fresh Start agreement, the Executive has agreed to allocate a total of £585 million from Executive funds over four years to ‘top-up’ the UK welfare arrangements in NI with a review planned for 2018-19. This sum incorporates the present discretionary fund and is set out in the table below.
- 7.7 The Executive will establish a small working group under the leadership of Professor Eileen Evason to bring forward proposals within this financial envelope (including administrative costs). The Executive has agreed to implement the findings of the working group.

Year	2016-17	2017-18	2018-19	2019-20
Agreed Amount	£135m	£150m	£150m	£150m
Welfare	£75m	£90m	£90m	£90m
Tax Credits	£60m	£60m	£60m	£60m

- 7.8 The Order in Council will introduce a legislative framework that will provide for more detailed rules to be set out in regulations. Like the Welfare Reform Act 2012, it therefore contains regulation-making powers and measures to implement welfare reform in Northern Ireland. These include the reforms made in Great Britain by the Welfare Reform Act 2012; the various flexibilities agreed in the Stormont House Agreement (including provisions that allow for Executive-funded top-up payments to be made), the amendments agreed by the parties during the passage of the Assembly's Bill and a small number of minor changes made during the preparation of the Order.
- 7.9 The actual introduction of the reforms is an operational issue for the Social Security Agency in Northern Ireland. The Government will continue to work closely with the Executive on the implementation of this latest agreement; essentially Westminster could bring through all Social Security Regulations flowing from the Order but the Northern Ireland Assembly will have responsibility for the top-up schemes. As referenced above the detail of these schemes is currently being considered by a panel.

Consolidation

- 7.10 This Order does not consolidate any existing pieces of Northern Ireland statute; it provides a framework for the introduction of new welfare reform measures in Northern Ireland and as such introduces new powers and provisions onto the Northern Ireland statute book rather than consolidating existing legislation. It also makes various consequential amendments to a number of other pieces of statute (most of which have application only in Northern Ireland) in order to facilitate the introduction of the reforms set out in the Order.

8. Consultation outcome

- 8.1 Although the Order has not been subject to any formal consultation, the original Welfare Reform Bill (which the drafting of the Order substantially mirrors, subject to the flexibilities and amendments referred to in paragraph 7.5 above) was referred to the Social Development Committee (the Committee) for consideration on completion of the Second Stage of the Bill on 9 October 2012. It was also considered by an Ad Hoc Committee on Conformity with Equality and Human Rights Requirements which was established on 20 November 2012 and submitted its report to the Assembly on 22 January 2013; during which time the scrutiny of the Bill by the Social Development Committee was suspended.
- 8.2 The Ad Hoc Committee made recommendations which it considered would promote the continued monitoring of equality and human rights considerations. While members believed that the Committee's scrutiny revealed a number of areas of concern which included ensuring that claimants of Universal Credit have the right to opt for payment of benefit on a bi-monthly basis, putting in place an assessment process for the determination of entitlement to Personal Independence Payments and not applying sanctions in situations where no reasonable alternative accommodation is available, they concluded that they could not identify any specific breaches of equality or human rights within the Welfare Reform Bill. The report is available on the Assembly's website <http://www.niassembly.gov.uk/Documents/Ad-Hoc-Welfare-Reform-Committee/Report/NIA921115.pdf>

9. Guidance

- 9.1 The Order contains enabling powers allowing for the implementation for the various welfare reforms in Northern Ireland and the detail of these reforms will be set out in

regulations made under the Order. Guidance for advisers and decision makers in relation to the detail of the reforms will be available when the regulations are laid.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The Northern Ireland Executive published Impact Assessments alongside the Northern Ireland Assembly Bill (www.dsdni.gov.uk/articles/welfare-changes-impact-assessments) which included the impact on the public sector.
- 10.3 Impacts will be updated alongside the regulations to be made under the powers of the Order.

11. Regulating small business

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

12. Monitoring & review

- 12.1 The Department for Social Development must, not later than 3 years after the Order is made, publish a report on the operation of the Order.

13. Contact

- 13.1 Elizabeth Allen at the Department for Work and Pensions Telephone: 020 7449 7103 or email: Elizabeth.Allen@dwp.gsi.gov.uk can answer any queries regarding the instrument.