

EXPLANATORY MEMORANDUM TO

THE WELFARE REFORM AND WORK (NORTHERN IRELAND) ORDER 2016

2016 No. [XXXX] (N.I. [XX])

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Communities (Northern Ireland) (the Department) on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Order makes provision equivalent to ‘welfare reform provisions’ contained in the [Welfare Reform and Work Act 2016](#), with some exceptions where provisions were UK-wide and therefore already cover Northern Ireland. There are also some limited, Northern Ireland-specific changes, including powers which allow for the mitigation of certain reforms as agreed in the Stormont House and Fresh Start Agreements and in previous discussions between HM Government and the Northern Ireland Executive.
- 2.2 The Order confers powers on the Department 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 the Secretary of State 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 the mitigation of certain reforms, asset out in Articles 18, 19 and 20 of the Order, which are to be exercised by the Department for Communities.
- 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 The Northern Ireland Assembly has agreed that HM Government can introduce the Welfare Reform and Work (Northern Ireland) Order 2016 in order to implement welfare reform in Northern Ireland for the purpose of restoring parity between Northern Ireland and other parts of the UK, increasing employment, slowing the growth of the welfare budget, and rewarding hard work while increasing fairness.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This Order in Council is being progressed in order to deliver the quickest, most secure and effective means of implementing welfare reform in Northern Ireland and following the political impasse over reforms, returning the social security system in that jurisdiction to ‘near’ parity with that elsewhere in the UK. The Order will be laid

in draft for the approval of both Houses of Parliament and a number of provisions will come into force on the day after the day on which it is made by Her Majesty in Council, with the remainder to be commenced by Order in due course.

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only 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 Northern Ireland Minister with responsibility for social security 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 and Work Act 2016 introduced a number of welfare reforms including reducing the benefit cap to £20,000 outside Greater London, freezing certain social security benefits for four tax years, removing the work-related activity component in employment and support allowance, limiting the child element of Universal Credit to a maximum of two children and removing the distinction between the first and subsequent children in the rate of the child element, removing the limited capability for work element in Universal Credit, changes to conditionality for Universal Credit claimants who are responsible for young children, replacing current support for mortgage interest payments for benefit claimants with the offer of a recoverable interest-bearing loan and allowing the government to recover certain administrative costs incurred in relation to the Motability scheme - and any such scheme that is equivalent in purpose.
- 4.4 The Order allows for broadly equivalent reforms in Northern Ireland and also makes some minor changes to regularise powers required for the delivery of the mitigation schemes, agreed as part of the [Fresh Start Agreement](#) and outlined in Articles 135 and 137 of the [Welfare Reform \(Northern Ireland\) Order 2015](#).

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 set out in Section 3 under “Other matters of interest to the House of Commons”.
- 5.3 This instrument broadly replicates relevant 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 of State for Employment has made the following statement regarding Human Rights:

“In my view the provisions of the Welfare Reform and Work (Northern Ireland) Order 2016 are compatible with the Convention rights.”

7. Policy background

What is being done and why

7.1 The measures contained within this Order implement policies which were announced in the Summer Budget on 8 July 2015. The measures in the Order are intended to support the Government's commitments to increase employment; slow the growth of the welfare budget to help achieve a more sustainable welfare system and support the policy of rewarding hard work while increasing fairness for working households.

Benefit cap

7.2 Articles 101 and 102 of the Welfare Reform (Northern Ireland) Order 2015 provide for the introduction of the benefit cap in Northern Ireland. As in the rest of Great Britain, the intention of the cap is to increase incentives to work, promote fairness between the tax and welfare systems and help to reduce the financial deficit.

7.3 This Order removes the link between the level of the cap and average earnings and lowers the benefit cap, so that over a year workless households will no longer be entitled to receive more than £20,000 in benefit (£13,400 for single adults with no children).

Freezing certain social security benefits for four tax years

7.4 This Order implements the announcement in the 2015 Summer Budget that certain social security benefits would be frozen for four tax years starting from the tax year ending in April 2017. The benefits to be frozen are the main rates of Income Support, Jobseeker's Allowance, Employment and Support Allowance, Housing Benefit and Universal Credit; and the work-related activity group component of Employment and Support Allowance, the work-related activity element included in the calculation of the applicable amount in Housing Benefit and the limited capability for work element of Universal Credit.

Removing the work-related activity component in Employment and Support Allowance

7.5 Employment and Support Allowance (ESA) is an income-replacement benefit for people of working age and is currently the main income-replacement benefit for those who cannot work because of a health condition or disability. Article 9 of this Order removes provision for payment of the ESA work-related activity component.

7.6 The intention is that regulations will include provision for claimants who are already in receipt of the work-related activity component at the point of change to continue to receive that component. The regulations will also provide that other existing ESA claimants will be able to receive the component.

Changes to the child element of Universal Credit

7.7 Universal Credit provides a new single system of means-tested support for people of working age who are in or out of work. Currently, the 'child element' of the Universal

Credit award is payable to claimants in respect of each child or qualifying young person for whom they are responsible. This includes a higher rate in respect of the first child or qualifying young person, and a lower rate in respect of the second and each subsequent child or qualifying young person.

- 7.8 This Order limits the child element of Universal Credit to include amounts in respect of a maximum of two children or qualifying young persons and to remove the distinction between the first and subsequent children in the rate of the child element. This limit will not apply to the additional amount that is paid in respect of a child or qualifying young person who is disabled and the Order allows this additional amount to be paid for each disabled child or young person for whom the claimant is responsible. Regulations in due course will provide for exceptions to the limiting of the amount of child element to a maximum of two children. There will also be regulations in due course to allow for transitional arrangements for families already in receipt of child element.

Universal Credit: limited capability for work

- 7.9 Universal Credit provides a new single system of means-tested support for people of working age who are in or out of work. Universal Credit will gradually replace income-related Employment and Support Allowance as it is rolled out and becomes available in Northern Ireland.
- 7.10 Article 11 removes the provision in the Welfare Reform (Northern Ireland) Order 2015 for the Universal Credit limited capability for work element to be paid to claimants with limited capability for work. Regulations will, in due course, set out the arrangements for those claimants already in receipt of the element at the point of change.

Universal Credit - work related requirements

- 7.11 Conditionality is a core principle of Universal Credit and the basic principle is that people who can, must look for work in return for benefit. Conditionality refers to the requirements for claimants to engage in activities which increase their chances of obtaining paid work (or more or better paid work).
- 7.12 Conditionality for responsible carers of children will operate as follows once current legislation replicating the conditionality set out in the original Welfare Reform Act 2012 comes into force in Northern Ireland:
- responsible carers with a child under 1 are subject to no work-related requirements,
 - those with a child aged 1 to 5 are subject to work-focused interview requirements,
 - those with a child aged 5 and over are subject to all work-related requirements unless their circumstances mean they fall into one of the other groups (for example because of a health condition).
- 7.13 This Order amends conditionality for responsible carers as follows:
- those with a child aged 3 or 4 should be subject to all-work related requirements;
 - those with a child aged 2 should be subject to work-focused interview requirements and work preparation requirements; and

- those with a child aged 1 should remain subject to work-focused interview requirements only.

Loans for mortgage interest etc

- 7.14 The Order will replace the existing legislative provisions that allow owner-occupiers in receipt of an income-related benefit to claim additional help towards their mortgage payments. This form of assistance will be replaced by the offer of a loan subject to individuals satisfying certain requirements, including that they must receive appropriate information about the terms of the loan. The Order also enables the the Department to secure a charge on the individual's property as security for the loan. The provision of help with mortgage interest in the form of a loan rather than a benefit will ensure that the risk of repossession continues to be mitigated while providing better value for the taxpayer.
- 7.15 This Order will enable interest-bearing loans to be made to eligible owner-occupiers in respect of their liability to make payments in respect of their home, in particular mortgage interest payments. Those entitled to receive income support, income-based jobseeker's allowance, income-related employment and support allowance, State Pension Credit or Universal Credit will be eligible to receive a loan.

Expenses of paying sums in respect of vehicle hire etc

- 7.16 The Motability scheme leases and hires vehicles to disabled persons in receipt of a qualifying benefit. The Government facilitates this arrangement by diverting the benefit payments of participating claimants to Motability Operations Ltd, so they do not have to collect the money themselves. This is of direct benefit to Motability.
- 7.17 The cost of administering these payments varies annually, although it currently stands at under £40,000. Although Motability has indicated they are willing to pay these costs, the Government does not currently have the power to recover them. The Order enables the Department to make regulations for doing so. Motability is supportive of this and has provided assurance that the expenses incurred will be absorbed by the scheme and not result in any changes to customer pricing.
- 7.18 Although Motability is currently the only organisation running a discounted vehicle scheme for Disability Living Allowance and Personal Independence Payment claimants, the provisions would apply to any scheme that is equivalent in purpose.

Regulations as to payments under Articles 135 and 137 of the 2015 Order

- 7.19 The Department's policy for Discretionary Support (Article 135) is to ensure a necessary but temporary response to particular and pressing needs facing the most vulnerable. It aims to address the high level risk to their health, safety and / or well being and assist them to avoid falling further into unmanageable debt and greater dependency.
- 7.20 This Order enables the recovery of such payments by deduction from social security benefits
- 7.21 Article 76 of the Welfare Reform (Northern Ireland) Order 2015 ("2015 Order") provided for the abolition of community care grants and crisis loans for living expenses and household items. This means the removal of a facility to provide discretionary support payments as part of the Social Security system. The Discretionary Support Scheme is the Northern Ireland Executive's response to the continued provision of such support (see Article 135 of the 2015 Order).

- 7.22 The Department will be making mitigation payments under Article 137 of the Welfare Reform (Northern Ireland) Order 2015 to claimants impacted by the introduction of the welfare reforms set out in that Order, in line with what has been agreed by the NI Executive in the Belfast and Fresh Start Agreements to protect the most vulnerable in society and alleviate potential hardship. The amendments in this Order extend the scope of these powers to also cover those impacted by the further 2016 reforms contained in it. They also refine the specific provisions for the recovery of any payments paid in excess of entitlement and will align this process with existing arrangements for the recovery of social security benefits. The amendment will also allow the Department to make provision for the use and sharing of social security data for the purposes of administering mitigation payments and to provide for appeals of departmental decisions to an appeal tribunal.

Payments for persons affected by the Social Sector Size Criteria

- 7.23 Article 75 of the Welfare Reform (Northern Ireland) 2015 Order alters the calculation of Housing Benefit entitlement in Northern Ireland, with the introduction of the Social Sector Size Criteria. Under Social Sector Size Criteria under-occupancy restrictions are put in place for both new and existing working age Housing Benefit or Universal Credit claimants living in the social rented sector.
- 7.24 The introduction of the Social Sector Size Criteria restriction means that the Housing Benefit or the Universal Credit housing component would be restricted for tenants occupying a larger property than their household size warrants.
- 7.25 In the Fresh Start Agreement, the Executive reaffirmed its commitment that the Social Sector Size Criteria would not be applied in Northern Ireland.
- 7.26 The Social Sector Size Criteria will now be introduced along with a mitigation scheme, designed to alleviate the impact of the measure. It is intended that the Social Sector Size Criteria and corresponding mitigation scheme will be operative with effect from 2nd January 2017.
- 7.27 There are a number of issues specific to Northern Ireland which point to the need for mitigation, such as the profile of the housing stock where social sector tenants are more likely to be under occupying and the segregated nature of some residential areas.
- 7.28 The under-occupancy restriction, in Housing Benefit or the Universal Credit housing component, will apply to both **new and existing** working age claimants in the social rented sector.
- 7.29 This Order will enable the Department to make mitigation payments to those households negatively impacted by the introduction of the Social Sector Size Criteria from 2nd January 2017 to 31st March 2020.

Cost of Work Allowance

- 7.30 A recommendation of the Fresh Start Agreement was to appoint a Working Group to consider ways in which to mitigate some of the effects of proposed Welfare Reform. The recommendations of this Welfare Reform Mitigations Working Group were endorsed by the Northern Ireland Executive on 21 January 2016.
- 7.31 One of the recommendations was to implement a 'Cost of Working Allowance'. The Working Group recommended that families and others, depending on the resources available, claiming Working Tax Credit or Universal Credit should be entitled to

supplementary payments in recognition of the expenses that those in employment incur.

- 7.32 The detail of the scheme will be contained in the regulations which this Article gives the power to make through the Assembly procedure.

Consolidation

- 7.33 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.

8. Consultation outcome

- 8.1 The Order has not been subject to any formal consultation, because it restores a long standing agreement of parity between the Northern Ireland and GB social security systems. The Department will consult on differences between the Order and the Welfare Reform and Work Act 2016, including aspects relating to the mitigations to be put in place.

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 negligible impact on business, charities or voluntary bodies.
- 10.2 There is an impact on the public sector finances as these measures change the fiscal position, both in the provision of additional support, such as through the conditionality changes, but also in the amount of benefits paid out to claimants. Changes to benefit payments will result from both lower entitlements and through any behavioural change that sees increased movement into work. The measures are part of the welfare reform package that will restore parity with the rest of the UK and contribute toward sustainable finances for the executive through reduced welfare spend.
- 10.3 Impact Assessments have been prepared for this instrument, covering changes in conditionality, changes to the child element of Universal Credit, implementation of the benefit cap and removal of the ESA Work-Related Activity Component and the UC Limited Capability for Work element. These are published alongside the Explanatory Memorandum on the legislation.gov.uk website. Further Impact Assessments will be published alongside the regulations to be made under the powers of the Order.
- 10.4 The main groups affected by changes to the child element of Universal Credit will be those currently in receipt of tax credits or Universal Credit who choose to have a first or a third or subsequent child after April 2017 and households with children who make a new claim to Universal Credit after April 2017. It is estimated that by 2020/21, 19,770 households will be affected by the two child limit, and 33,840 by the Removal of the Family Premium. This is a static estimate and does not account for any behavioural change of households.

- 10.5 Impact estimates relating to the lowering of the benefit cap do not take into account the expected behavioural changes from reform. In a static environment an estimated additional 2,040 households could be affected by the benefit cap changes in the implementation year of 2016/17. However, all households taking action to move into work will be unaffected by the changes.
- 10.6 None of the current ESA caseload will be affected by the removal of the ESA Work-Related Activity Component as it will only apply to new claims made after commencement. Similar protections will apply to those receiving the UC Limited Capability for Work element. In addition, all those in the ESA Support Group and Universal Credit Limited Capability for Work and Work-Related Activity Group will be unaffected, accounting for around 70 per cent of the ESA caseload. No families will see a cash loss as a result of the policy. Those who may be affected will be those claiming ESA from April 2017 and have limited capability for work, which is expected to build up to around 5,530 individuals by March 2021. The notional loss to each family is expected to be around £29.05 a week, presented in 2016/17 prices.
- 11. Regulating small business**
- 11.1 The legislation does not apply to activities that are undertaken by small businesses.
- 12. Monitoring & review**
- 12.1 In line with the arrangements for the Welfare Reform (Northern Ireland) Order 2015 the Department will produce and publish a report on the operation of that Order no later than 3 years after the Order is made. Changes resulting from this Order will be captured by that report.
- 13. Contact**
- 13.1 Anne McCleary at the Department for Communities Telephone: 028 90819984 or email: anne.mccleary@communities-ni.gov.uk can answer any queries regarding the instrument.