

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (NORTHERN IRELAND RECIPROCAL
ARRANGEMENTS) (AMENDMENT) REGULATIONS 2016

2016 No. 1050

1. Introduction

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

2. Purpose of the instrument

- 2.1 These Regulations give effect in Great Britain to amendments to the Memorandum of Reciprocal Arrangements relating to social security between Great Britain and Northern Ireland. The intention of the arrangements is to create, to the extent agreed by Ministers in the two territories, a single system of social security for the whole of the United Kingdom.
- 2.2 The Memorandum lists the legislation and benefits which are covered by the arrangements. This instrument makes two additions to the list of benefits to which the arrangements apply and provides for the conversion, into statutory awards, of extra-statutory payments of contributory employment and support allowance which are currently being made to persons who moved between Great Britain and Northern Ireland in the period before 6 April 2016.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Under the current devolution arrangements responsibility for social security in Northern Ireland rests with the Northern Ireland Assembly.
- 4.2 Section 87 of the Northern Ireland Act 1998 Act (“the 1998 Act”) <http://www.legislation.gov.uk/ukpga/1998/47/contents> places a duty on the Minister responsible for social security in Northern Ireland (currently the Minister for Communities) and the Secretary of State for Work and Pensions to consult with one another with a view to ensuring that the social security systems in the two jurisdictions continue to work, in effect, as a coherent single system for the whole of the United Kingdom (“the parity principle”).
- 4.3 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.

Also, when people move between the two territories, they should be able to enjoy the same entitlement to benefit generated by their National Insurance contributions and should not have to make another claim to the same benefit or return home if they wish to appeal an entitlement decision made in their home territory.

- 4.4 The parity principle is achieved through the drawing up of a Memorandum of Reciprocal Arrangements (the “Memorandum”) between the two jurisdictions. The arrangements are then given effect in Great Britain by regulations made by the Secretary of State under section 87(4) of the 1998 Act.
- 4.5 The current Memorandum is set out in the Schedule to the Social Security (Northern Ireland Reciprocal Arrangements) Regulations 2016
[http://www.legislation.gov.uk/uksi/2016/287/schedule/made effective from 6 April 2016](http://www.legislation.gov.uk/uksi/2016/287/schedule/made%20effective%20from%206%20April%202016).
- 4.6 This instrument gives effect to an exchange of letters between the ministers of the two territories which amends the Memorandum. The amendments will bring about the incorporation of income-based jobseeker’s allowance and bereavement support payment in the arrangements. They will also result in the conversion, into statutory awards, of extra-statutory payments of contributory employment and support allowance which are currently being made to persons who moved between the territories in the period before 6 April 2016.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is Great Britain.
- 5.3 Separate but corresponding regulations will be made for Northern Ireland by the Northern Ireland Department for Communities which will give effect there to the amendments to the Memorandum.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 The list of benefits covered by the reciprocal arrangements between Northern Ireland and Great Britain is being extended by this instrument to include two new entries: income-based jobseeker’s allowance (see paragraphs 7.2-7.3), and bereavement support payment (see paragraph 7.4). In addition, the instrument creates a statutory entitlement to contributory employment and support allowance for people currently receiving payments on an extra-statutory basis (see paragraphs 7.5-7.6).
- 7.2 Jobseeker’s allowance is a benefit for people who are currently out of work, capable of work, available for work and actively seeking employment. It has two strands – a contribution-based strand which is a personal benefit payable at a flat rate if the claimant has paid or been credited with sufficient National Insurance contributions in recent tax years; and an income-based strand which is payable if the claimant satisfies the conditions relating to their financial position.

- 7.3 In this, the structure of jobseeker's allowance exactly mirrors that of employment and support allowance which is a benefit for people who have limited capability for work on account of a physical or mental health condition. However, whereas both strands of employment and support allowance are included in the arrangements, only the contribution-based strand of jobseeker's allowance is included. This instrument addresses this anomaly by including the income-based strand in the Memorandum as well, thereby aligning the treatment of both benefits.
- 7.4 Bereavement support payment replaces the current system of bereavement benefits, including bereavement payment, bereavement allowance and widowed parent's allowance, for new claimants, from 6 April 2017. The existing bereavement benefits are already included in the reciprocal arrangements. This instrument inserts the replacement benefit from the date of its introduction.
- 7.5 Employment and support allowance has been covered by the reciprocal arrangements from 6 April 2016. However, any employment and support allowance claimants who moved between the two territories in the period before 6 April 2016, and who found themselves financially disadvantaged as a consequence of the previous omission of employment and support allowance from the arrangements (for example, because their National Insurance contributions were not recognised or because they had to make a new claim), have been receiving extra-statutory payments to make good any shortfall in the amount of their statutory entitlement.
- 7.6 This instrument regularises these payments. From 27 November 2016, these payments will be converted into statutory awards of contributory employment and support allowance in the new territory. The claimants in question will not need to make a fresh claim for benefit and will be treated as satisfying the relevant contribution conditions as at that date.

Consolidation

- 7.7 Informal consolidated text of instruments is available to the public free of charge via 'the National Archive' website <http://www.legislation.gov.uk/>.

8. Consultation outcome

- 8.1 Public consultation has not been carried out on these Regulations, as they are merely giving effect to an extension of the existing reciprocal arrangements which will facilitate the movement of claimants between the two territories.

9. Guidance

- 9.1 Instructions relating to the extension of the reciprocal arrangements are being developed for staff in the Jobcentre Plus offices who advise customers, and staff in benefit centres who determine benefit claims and administer awards.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is negligible. The purpose of this instrument is solely to extend the existing Memorandum of Reciprocal Arrangements to maintain the parity principle in social security between Great Britain and Northern Ireland.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

12.1 This legislation is not subject to any formal monitoring and review.

13. Contact

13.1 David Crowther at the Department for Work and Pensions (telephone 0114 293 4835; e-mail david.crowther@dwp.gsi.gov.uk) can answer any general queries regarding this instrument.

13.2 On the specific provisions, Trevor Pendergast at the Department for Work and Pensions (telephone: 020 7449 5639; e-mail Trevor.Pendergast@dwp.gsi.gov.uk) can answer any queries regarding the conversion of extra-statutory payments of contributory employment and support allowance; Lisa Sutherland at the Department for Work and Pensions (telephone 07827 280999; e-mail lisa.sutherland@dwp.gsi.gov.uk) can answer any queries regarding bereavement support payment; and David Crowther at the Department for Work and Pensions (contact details as above) can answer any queries regarding income-based jobseeker's allowance.