

**EXPLANATORY MEMORANDUM TO**  
**THE TAXATION OF NORTHERN IRELAND WELFARE SUPPLEMENTARY**  
**PAYMENTS REGULATIONS 2017**

**2017 No. 338**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument exercises the power in section 44 of the Finance Act 2016 to amend Part 10 of the Income Tax (Earnings and Pensions) Act 2003 in order to include in Part 10 provisions for welfare supplementary payments which are paid by the Northern Ireland Executive.

2.2 This instrument sets out the tax status of these payments and ensures that taxation rules relating to welfare supplementary payments are the same as the rules relating to the benefit from which the eligibility to the payments is derived.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Select 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 procedure and has not been prayed against, consideration as to whether there are other matters of interest of the House of Commons does not arise at this stage.

**4. Legislative Context**

4.1 This instrument exercises the power in section 44 of the Finance Act 2016 to amend Part 10 of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA 2003"). This is the first use of the power in section 44.

4.2 These Regulations amend Part 10 of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA 2003") in order to make provision for welfare supplementary payments ("WSPs") which are paid by the Northern Ireland Executive, subsequent to changes in Northern Ireland welfare legislation.

4.3 Regulation 5 amends "Table A" in section 660 to include in Table A as taxable WSPs to which a person is entitled under the following provisions:

- Regulation 7 of the Welfare Supplementary Payments Regulations (Northern Ireland) 2016 S.R. (N.I.) 2016 No.178 ("the WSPR(NI) 2016") due to the loss of contributory employment and support allowance
- regulation 4 of the Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016 S.R.(N.I.) 2016 No. 253 ("the WSP(LCP)R(NI) 2016") due to the loss of carer's allowance,

- regulations 8 when the entitlement is due to meeting the condition in regulation 8 (2)(a) and 8 (2) (c) of the WSP(LCP)R(NI) 2017 due to the loss of carer premium when claiming either income support or jobseeker’s allowance,
  - regulation 12 of the WSP(LCP)R(NI) 2016 due to the loss of income support,
  - regulation 4, 5 and 6 of the Welfare Supplementary Payment (Loss of Disability Related Premiums) Regulations (Northern Ireland) 2016 S.R.(N.I.)2016 No. 254 (“the WSP(LDRP)R(NI) 2016”) due to the loss of disability related premium when claiming income support, and
  - regulation 11 to 15 of the WSP(LDRP)R(NI) 2016 due to the loss of disability related premium when claiming jobseeker’s allowance,
  - regulation 6 amends section 661 to include the WSPs to which entitlement derives from one of the benefits currently listed in section 661 and ensure that the WSPs added are taxed on the same basis as those benefits(that the amount taxable is the amount of the payment accruing in a tax year regardless of when it is paid).
- 4.4 Regulation 8 of this instrument amends section 665 of ITEPA 2003 to provide that when a person receives a welfare supplementary payment to which that person is entitled due to the receipt of Income Support, that a welfare supplementary payment is exempt from income tax except when that person is involved in a trade dispute – as defined in section 14 of the Jobseekers Act 1995 (trade disputes) or Article 6 of the Jobseekers (Northern Ireland) Order 1995 (trade disputes).
- 4.5 Regulations 9 to 11 amend sections 667 to 669 to include in the “taxable maximums” provisions (which relate to income support), WSPs to which a person is entitled due to the receipt of income support. Those provisions provide an upper limit to the amount of tax payable on receipt of income support. This ensures that any payment of such a WSP is included in the taxable maximum calculations relating to income support.
- 4.6 Regulations 13 and 14 amend sections 671 and 675 to include in the taxable maximums provisions (which relate to jobseeker’s allowance) WSPs to which a person is entitled due to the receipt of jobseeker’s allowance. Those provisions provide an upper limit to the amount of tax payable on receipt of jobseekers allowance. This ensures that any payment of such a WSP is included in the taxable maximum calculations relating to jobseeker’s allowance.
- 4.7 Regulation 15 amends “Table B” in section 677 to include in Table B as exempt from tax WSPs to which a person is entitled under the following provisions:
- regulation 2 of the Housing Benefit (Welfare Supplementary Payment) Regulations 2017 S.R. (N.I.) 2017 No. 35 due to loss of housing benefit,
  - regulation 4 of the WSPR(NI) 2016 due to loss of housing benefit,
  - regulations 4, 8, 13 and 14 of the Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations (Northern Ireland) 2016 S.R.(N.I.) 2016 No. 250 due to the loss of disability living allowance,
  - regulation 8 – when the entitlement is due to meeting the condition in regulation 8 (2)(b) of the WSP(LCP)R(NI) 2017 due to the loss of carer premium when claiming employment and support allowance,

- regulation 16 of the WSP(LCP)R(NI) 2017 due to the loss of the additional amount (carer) of state pension credit,
- regulations 20 to 22 of the WSP(LDRP)R(NI) 2016 due to the loss of disability related premium when claiming employment and support allowance,
- regulations 27 and 28 of the WSP(LDRP)R(NI) 2016 due to the loss of the disability related element when claiming working tax credits, and
- regulations 33 and 34 of the WSP(LDRP)R(NI) 2016 due to the loss of the severe disability component when claiming state pension tax credits.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

## **6. European Convention on Human Rights**

- 6.1 The Financial Secretary to the Treasury has made the following statement regarding Human Rights:

“In our view the provisions of ‘The Taxation of Northern Ireland Welfare Supplementary Payments Regulations 2017’ are compatible with the Convention rights.”

## **7. Policy background**

### *What is being done and why*

- 7.1 As part of an agreement to implement Welfare Reform equivalent to that established in the rest of the United Kingdom since 2012, the Northern Ireland Executive (‘NIE’) agreed to provide ‘transitional protection’ to claimants’ if their income is reduced compared to pre-reform levels.
- 7.2 This transitional support is in the form of supplementary payments, which will top up claimants’ benefits to the level of income they received prior to welfare reform.
- 7.3 The Government wants to ensure that these supplementary payments are treated fairly and consistently by the tax system. This means exempting from income tax those supplementary payments that mitigate tax-exempt benefits, while making clear that supplementary payments to mitigate taxable benefits remain subject to tax.
- 7.4 The amendments ensure that the supplementary payments are treated in the same way as the benefits they are either supplementing or replacing.
- 7.5 The Government wants to ensure that any supplementary payment replacing or supplementing income support, which accrues while a person is involved in a trade dispute is taxable.
- 7.6 In relation to supplementary payments where eligibility derives from eligibility to Income Support and Jobseeker’s Allowance, in many cases the supplementary payments will be replacing elements of the payable benefit (such as carers premium) which would otherwise have been included in the taxable maximum provisions (which provides an upper limit to the taxability of payments) . In order that recipients of WSPs be in the same position in terms of taxation as they would have been

previously, the WSPs should be included as an element in the taxable maximum calculation.

**8. Consultation outcome**

8.1 Consultation was not needed as this follows from agreed policy.

**9. Guidance**

9.1 No guidance will be published.

**10. Impact**

10.1 The impact on business, charities or voluntary bodies is expected to be negligible.

10.2 The impact on the public sector is expected to be negligible.

10.3 A Tax Information and Impact Note covering the changes made by this instrument was published last year alongside New Clause 9 of the Finance Bill 2016 and is available on the website at <https://www.gov.uk/government/publications/finance-bill-2016-report-stage>

**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 instrument does not include review provisions.

**13. Contact**

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