EXPLANATORY MEMORANDUM TO

THE BEREAVEMENT SUPPORT PAYMENT (No. 2) REGULATIONS (NORTHERN IRELAND) 2019

S.R. 2019 No. 181

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 29(1)(c), (2), (3), (4)(a) and (7), 31(1) and (3), and 51(6) of the Pensions (Northern Ireland) Act 2015, and is subject to the confirmatory resolution procedure.

2. Purpose

2.1. These Regulations revoke and re-enact the Bereavement Support Payment Regulations (Northern Ireland) 2019 which would otherwise cease to have effect by virtue of section 51(3)(b) of the Pensions Act (Northern Ireland) 2015 (c.5).

2.2. The Pensions Act (Northern Ireland) 2015 makes provision for a new social security benefit, Bereavement Support Payment, for surviving spouses and civil partners after 6 April 2017.

2.3. The Bereavement Support Payment (No. 2) Regulations (Northern Ireland) 2019 set out the details of the new scheme, and in particular specify the amount to be paid, the duration of the payments, entitlement position for prisoners and territories in which a person must reside in order to receive the new benefit.

3. Background

3.1. Those already in receipt of bereavement benefits will continue to receive their current benefit over the lifetime of the award.

3.2. The new Bereavement Support Payment is part of the overall welfare reform agenda, and aims to provide a more effective and supportive system, without encouraging long-term benefit dependency.

3.3. The previous system of bereavement benefits is complex, and comprises three different benefits. These are:

- Bereavement Payment – A £2,000 tax-free lump sum intended to help with expenses arising on bereavement. To qualify the recipient must generally be under state pension age and, in addition, the deceased must have paid sufficient National Insurance contributions in any one tax year during their working life.
- Bereavement Allowance – A taxable weekly benefit payable for up to 52 weeks to widows/widowers aged between 45 and pensionable age without dependent children. Payments are age related. The amount of Bereavement Allowance payable to a widow/widower aged between 45 and 54 is related to their age at date of entitlement. The weekly rate is reduced by 7% for each year they are younger than 55 when they become entitled, so they get a 93% rate at age 54, falling to 30% at age 45. Those age 55 or over at the date of entitlement get the full rate of Bereavement Allowance.
- Widowed Parents Allowance – A taxable weekly benefit payable to widows/widowers with dependent children for whom the surviving spouse is eligible to receive Child benefit.

3.4. To qualify for Bereavement Allowance or Widowed Parents Allowance the deceased spouse must have paid sufficient National Insurance contributions. For the standard basic rate (100%) of benefit, the late spouse/civil partner must have had fewer qualifying years for about 90% of the years in their working life. If they had fewer qualifying years than the number needed for the standard basic rate a smaller basic rate will be paid, provided that the number of their qualifying years was at least a quarter of their working life.

3.5. Bereavement Support Payment is designed to both simplify bereavement provision and to extend eligibility to those under 45 without dependent children. A surviving spouse will be entitled to receive the full payment if

their spouse or civil partner paid the relevant amount of National Insurance contributions for any one year prior to their death.

3.6. Bereavement Support Payment will be paid for a maximum of 19 months (1 initial larger plus 18 subsequent smaller monthly payments) from the date of death. Recipients with dependent children will receive a maximum of an initial larger payment of £3,500 and 18 subsequent monthly payments of £350 (higher rate) and those without dependent children will receive a maximum larger payment of £2,500 and 18 monthly instalments of £100 (standard rate). A person who is pregnant when her spouse died will receive the higher rate. Payments will be made on a calendar monthly basis.

3.7. A claimant will stop receiving Bereavement Support Payment will stop if:

3.7.1. The claimant reaches State Pension Age;

3.7.2. The claimant is convicted of a criminal offence and sent to prison;

3.7.3. The claimant dies.

3.8. Unlike the current bereavement benefits, a claimant can get Bereavement Support Payment at the same time as other benefits without incurring a reduction in any of their other benefits. In addition, payments will not be counted as benefit income when calculating the maximum amount of benefit a person can be paid. Payments will not cease if the claimant remarries or forms a new civil partnership.

3.9. The amount of benefit received will not be means tested and the payments will not be taxable. This is on the grounds that it is designed to support people with the additional costs of bereavement, rather than to support everyday living costs.

3.10. Bereavement Support Payment shifts the focus of bereavement benefits to a short-term source of support providing help with the more immediate costs caused by the death of a spouse/civil partner. It is not intended as an income replacement benefit.

3.11. As this claimant group is vulnerable, there will be a three-month time-limit from the date of death within which to make a claim for Bereavement Support Payment. If a claim is received after the three-month time-limit, payments can

start three months before the date of claim. This time limit is extended to 12 months for the initial higher payment to ensure that claimants do not miss out on this help.

4. Consultation

4.1. The Great Britain Pension Act 2014, and the Northern Ireland equivalent, the Pensions Act (Northern Ireland) 2015, followed a UK-government consultation document published in December 2011 entitled Bereavement Benefit for the 21st Century which sought views on proposals to reform the current system.

4.2. The summary of responses to the consultation published in July 2012 concluded that "overall respondents welcomed the suggestion of simplifying the payment system for bereavement benefits".

4.3. The responses to the consultation played a major part in the design of the new benefit including the decision to make most of the payments as a series of instalments instead of as a single lump sum, more generous provision for those with dependent children and the decision that the new benefit will not be taxable.

4.4. In November 2015 the Social Security Advisory Committee ("SSAC") produced a report entitled Bereavement Benefit Reform looking at the support available for the bereaved and the anticipated impacts of Bereavement Support Payment. Again, the reforms were welcomed, however recommendations were made that the Department for Work and Pensions consider extending the duration of payments further than 12 months and extending the new benefit to cohabitees.

4.5. In March 2016 the Work and Pensions Select Committee also produced a report, this time looking at the Department's proposals for benefits to support the bereaved. The report was entitled Support for the bereaved. The recommendations mirrored those of the SSAC, however the recommendation on extending duration went further to recommend a payment period of 18 months.

4.6. After having considered these recommendations from both committees, the Department for Work and Pensions decided to accept the recommendation to

extend the payment period from the proposed 12 months. This ensures that the payments do not end on the anniversary of the death, which could have created extra distress for the claimant.

4.7. The Department for Work and Pensions designed the payment structure to consist of a maximum of an initial higher payment to be followed by 18 smaller monthly instalments.

5. Equality Impact

5.1. A final equality impact assessment on the Pensions Bill was published by the Department for Communities on 7 April 2014, which included the reform of bereavement benefits.

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 Bereavement Support Payment Regulations 2017 (S.I. 2017/410) which were laid in Great Britain before Parliament under section 54(2)(a) of the Pensions Act 2014, for approval by resolution of each House of Parliament on 12 January 2017, made on 15 March 2017, and come into force on 6 April 2017. In line with the long-standing policy of parity in social security, the Regulations in Northern Ireland should be made as soon as possible after the Great Britain Statutory Instrument was made and brought into operation on the same date as the Great Britain instrument. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions provided for in section 87 of the Northern Ireland Act 1998.

10.2. The Regulations were made, and brought into operation on 29th September 2019. They revoke and re-enact the Bereavement Support Payment Regulations (Northern Ireland) 2019 which would otherwise cease to have effect by virtue of section 51(3)(b) of the Pensions Act (Northern Ireland) 2015 (c.5).

10.3. Under section 51(3)(b) regulations cease to have effect unless approved by resolution of the Assembly within 6 months of coming into operation. It was, therefore necessary to make the Regulations during the period of interregnum.

11. Additional Information

11.1. All customer communications have been reviewed and updated and a new application form has been developed for the new benefit. Additionally the Department has developed appropriate instructions and scripts for staff who deliver and advise on bereavement benefits. These are already available.

11.2. Information on the scheme is already available on nidirect (https://www.nidirect.gov.uk/).