Draft Regulations laid before the Assembly under Articles 135 & 136(5) of the Welfare Reform (Northern Ireland) Order 2015, for approval by resolution of the Assembly.

DRAFT STATUTORY RULES OF NORTHERN IRELAND

2016 No. 0000

WELFARE REFORM

The Discretionary Support Regulations (Northern Ireland) 2016

Made - - - -

Coming into operation in accordance with regulation 1

The Department for Communities in exercise of the powers conferred by Articles 135 & 136(5) of the Welfare Reform (Northern Ireland) Order 2015(**a**), and now vested in it(**b**), makes the following Regulations.

In accordance with Article 135(5) of that Order, a draft of these Regulations was laid before, and approved by a resolution of, the Assembly.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Discretionary Support Regulations (Northern Ireland) 2016 and shall come into operation on the commencement of Article 76 of the Welfare Reform (Northern Ireland) Order 2015.

Discretionary Support Awards

2. Discretionary support may be awarded in accordance with the provisions of these Regulations.

Interpretation

3. In these Regulations–

"annual income threshold" means the amount calculated in accordance with regulation 15(2);

"appropriate office" means an office of the Department or any other place designated by the Department in relation to any case or class of case as a place to, or which, any claim, notice, document, evidence or other information may be sent, delivered or received for the purposes

(**a**) S.I. 2015 No. 2006 (N.I. 1)
(**b**) S.R. 2016 No. 76

of these Regulations and includes a postal address specified by the Department for that purpose;

"child" means a person under the age of 16;

"claim" means a claim for a discretionary support award;

"claimant" means a person and any member of a couple who makes a claim, or on behalf of whom a claim is made, for a discretionary support award;

"close relative" means a member of a couple, parent, stepparent, grandparent, parent-in-law, son, step-son, son-in-law, daughter, step-daughter, daughter-in-law, brother, sister, or if any of the preceding persons is one member of a couple, the other member of that couple;

"couple" means—

(a) subject to paragraph (e) a man and a woman who are married to each other and are members of the same household;

(b) a man and a woman who are not married to each other but are living together as husband and wife;

(c) two people of the same sex who are civil partners of each other and are members of the same household;

(d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners; or

(e) in a case where a person is a member of a polygamous marriage, that person and the member of the polygamous marriage to whom that person was first married,

and for the purposes of paragraph (d) two people of the same sex are regarded as living together as if they are civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex;

"disaster" means a sudden and calamitous event causing loss of possessions or property;

"discretionary support award" means either an award of a grant or a loan;

"discretionary support inspector" means a person appointed by the Department in accordance with Article 136 of the Welfare Reform (Northern Ireland) Order 2015;

"discretionary support officer" means an officer of the Department, acting under its authority and executing functions of the Department in relation to the provisions of discretionary support;

"discretionary trust" means a Trust where the Trust assets or the income from them, are allocated entirely at the Trustees' discretion to any one or more of several beneficiaries or class of beneficiaries. The primary intended beneficiary must have no absolute right to either the capital or the income;

"grant" means a non-repayable discretionary support payment;

"income" includes the income of the other member of a couple and means the remuneration or profits derived from—

(a) employment under a contract of service or in an office, including elective office;

(b) a trade, profession or vocation;

(c) any other paid work; or

(d) any payments made in accordance with benefit legislation;

"immediate family" means members of a household for whom the claimant has financial responsibility;

"loan" means an interest free repayable discretionary support payment;

"parent" includes a guardian, any person acting in the place of a parent, any other person having parental responsibility for a child and any person having care of a child;

"the Order" means the Welfare Reform (Northern Ireland) Order 2015;

"young person" means a person over the age of 16, but under the age of 18, except where the young person is over the age of 18 and their parents are in receipt of child benefit.

PART 2

Claims

Making a claim for a discretionary support award

4.—(1) Claims for a discretionary support award may be made in such manner as the Department may accept as sufficient in any particular case.

(2) Claims may be made in writing on the prescribed form and shall be completed in accordance with the instructions on the form.

(3) Every claim shall be communicated, delivered or sent to an appropriate office.

(4) The Department may require a person who wishes to make a claim for discretionary support to attend for interview at an office of the Department and to make the claim to a discretionary support officer.

(5) The Department shall give the claimant reasonable notice of the date, time and place at which such an interview is to take place.

Date of claim

5. In the case of a claim—

(a) made by telephone, the date of the claim is the date of the telephone call to the Department;

(b) made in writing, the date of the claim is the date the claim is received in an appropriate office;

(c) made in person, the date of the claim is the date of the meeting with the discretionary support officer.

Evidence and information in connection with a claim

6. The Department shall require the claimant to supply such further information or evidence in connection with the claim, or any questions arising out of it, as it considers appropriate.

Person unable to act

7. If a claim for discretionary support is made by or on behalf of a person ("P"), who is unable for the time being to act, the claim shall be made by—

(a) a person who has been appointed to act on P's behalf by the Department under regulation 33(1) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**a**); or

(b) a person who has been appointed, with a general power or a power to claim or receive benefit, by P under the Powers of Attorney Act (Northern Ireland) 1971(**b**), the Enduring Powers of Attorney (Northern Ireland) Order 1987(**c**) or otherwise.

(**a**) S.R. 1987 No. 465
(**b**) 1971 c. 33 (NI)
(**c**) S.I. 1987/1627 (N.I.16)

Decision to award a loan or a grant

8.—(1) Where a claimant applies for a discretionary support award under regulation 4 a discretionary support officer may determine the claim as a claim for a loan or a grant.

(2) In making a decision in relation to a discretionary support award a discretionary support officer shall take into account any guidance issued by the Department.

Withdrawal of a claim

9. A person who has made a claim may withdraw it at any time before a determination has been made on it, in such manner as the Department may accept as sufficient in any particular case, and any such notice of withdrawal shall have effect when it is received.

PART 3

Eligibility

Basic eligibility conditions

10.—(1) A discretionary support award may be made where—

(a) an extreme, exceptional or crisis situation presents a significant risk to the health, safety or well-being of the claimant or a member of the claimant's immediate family;

(b) the need for discretionary support occurs in Northern Ireland;

(c) the claimant's income does not exceed the annual income threshold;

(d) the claimant is–

(i) at least 18 years old, except where child benefit is payable in respect of the claimant; or

(ii) a minimum of 16 years old in the case of a young person who is without parental support; and

(e) the need must be satisfied in Northern Ireland.

(2) For the purposes of this regulation a person is not entitled to a discretionary support award unless the person—

(a) is ordinarily resident in Northern Ireland; and

(b) is present in Northern Ireland.

(3) Except in the case of a disaster, discretionary support shall not be awarded in respect of —

(a) living expenses for which a discretionary support award has already been made;

(b) a claim for the same or other items made within any rolling 12 month period from the date an award is made by the same claimant; or

(c) any loan in relation to regulation 11(1)(c) or (d) which exceeds the 3 loan maximum as set out in sub-paragraph (d).

(d) Subject to regulation 12 a claimant is not eligible to be awarded more than three loans or one grant in a rolling 12 month period.

(4) In this regulation young person is without parental support means, where that person is not being looked after by an authority and—

(a) has no parents;

(b) has parents, but cannot live with those parents because–

(i) the person is estranged from them; or

(ii) there is a serious risk to the person's physical or mental health, or that person would suffer significant harm if the person lived with them; or

(c) is living away from those parents, and neither parent is able to support the person financially because that parent–

(i) has a physical or mental impairment; or

(ii) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court.

Loan eligibility

11.—(1) Discretionary support may be awarded in the form of a loan as follows—

(a) by the provision of immediate assistance with short term living expenses;

(b) by the provision of household items, or assistance with the repair or replacement of household items that have been stolen, broken or destroyed;

(c) by the provision of travelling expenses, to the claimant or one or more members of their immediate family, or an escort, including any reasonable charges for overnight accommodation in order to–

(i) visit a close relative who is ill;

(ii) attend a close relative's funeral;

(iii) ease a domestic crisis;

(iv) visit a child who is with the other parent pending a family court decision;

(v) move to suitable accommodation; or

(d) by providing rent in advance to a landlord other than the Northern Ireland Housing Executive.

(2) A loan shall not be awarded for any of the items and services specified in Schedule 1.

(3) Where paragraph (1)(a) applies short term living expenses shall be limited to those expenses deemed, by a discretionary support officer, as necessary to support a basic standard of living.

(4) Any award to which paragraphs (1)(c), (3), or (5) applies shall not in any case exceed the difference between any sum already repayable by the claimant and the claimant's partner and an assessment of their ability to repay and a level of debt for the time being acceptable to the Department.

(5) Where paragraph (1)(d) applies the amount of rent to be provided shall not exceed a sum calculated in accordance with paragraph (4)(1) of Schedule 2 of the Housing Benefit Regulations (Northern Ireland) 2006(**a**).

(6) In this regulation "escort" means a person, who is not an immediate family member, who is permitted to accompany an individual.

Grant eligibility

12.—(1) Discretionary support may be awarded in the form of a grant where the conditions in paragraph (2) are satisfied.

(2) A grant will only be awarded where—

(a) the grant is to provide assistance for a claimant or their immediate family to remain or begin living independently in the community; or

(b) the claimant or their immediate family are prevented from remaining in their home; or

(c) the grant is to provide assistance in the form of living expenses where the claimant is over the acceptable debt threshold; or

(d) where the claimant is eligible for a loan for living expenses and cannot afford to make repayment.

(**a**) S.R. 2006 No. 405

(3) For the purposes of paragraph 2, sub-paragraphs (a) and (b) only one grant may be awarded to a claimant in any rolling 12 month period from the date an award is made except in the event of a disaster.

(4) For the purposes of paragraph 2, sub-paragraphs (c) and (d) only one living expenses grant may be awarded to a claimant in any rolling 12 month period from the date an award is made.

(5) A grant shall not be awarded for any of the items and services specified in Schedule 2.

(6) In this regulation "acceptable debt threshold" means the level of debt determined as acceptable to the Department.

Persons excluded from discretionary support

13. Discretionary support may not be awarded in respect of a person who is—

(a) a prisoner or a person who is lawfully detained or is on temporary release under rule 27 of the Prisons and Young Offenders Centres Rules (Northern Ireland) 1995(**a**);

(b) a resident in a residential care home, a nursing home or a hospital in-patient, unless it is expected that the person will be discharged within the following 2 weeks;

(c) a member of a religious order who is fully maintained by that order;

(d) listed in regulation 14 (a) to (c) unless regulation 14 applies.

Persons not eligible for discretionary support unless arising as a consequence of a disaster

14. Discretionary support may not be awarded except when arising as a consequence of a disaster to—

(a) a person who is (or treated as) in full time third level education;

(b) a person subject to a trade dispute; or

(c) a person under a sanction as applied by the Department,

where that person would otherwise be ineligible for discretionary support.

PART 4

Income and earnings

Calculation of income

15.—(1) For the purposes of these Regulations an annual income threshold will apply, above which a claimant may not normally be eligible for discretionary support, unless Schedule 3 applies.

(2) For the purposes of this Part the "Annual income threshold" will be based on a working week of 40 hours over 52 weeks paid at the hourly rate set by the National Minimum Wage Regulations 2015(**b**) for a person over the age of 25, in force on the date of a claim.

(3) For the purposes of this Part the income of a claimant which does not consist of earnings to be taken into account shall, subject to paragraph (2), be the claimant's gross income and any capital treated as income under regulation 16.

(4) There shall be disregarded from the calculation of a claimant's gross income under paragraph (1), any sum, where applicable, specified in Schedule 3.

(5) The income of a child or young person who is a member of the claimant's immediate family shall not be treated as income of the claimant for the purposes of this regulation.

(**a**) S.R. 1995 No. 8
(**b**) S.R. 2015 No. 621 as amended by S.I. 2016/68.

Capital treated as income

16.—(1) Any capital payable by instalments which are outstanding on the first day in respect of which discretionary support is payable or the date of determination of a claim, whichever is earlier, shall be treated as income.

(2) Any payment paid under an annuity shall be treated as income.

Notional income

17.—(1) A claimant shall be treated as possessing income of which they have deprived themselves for the purpose of securing entitlement to discretionary support or increasing the amount of that support.

(2) Except in the case of—

(a) a discretionary trust;

(b) a trust derived from a payment made in consequence of a personal injury; or

(c) any benefit related to employment which may be payable to the claimant who is not required to be available for employment,

income which would become available to the claimant upon a claim being made, but which has not been acquired by them, shall be treated as possessed by them but only from the date on which it would be so acquired.

(3) Except in the case of a discretionary trust, or a trust derived from a payment made in consequence of a personal injury, any income which is due to be paid to a claimant but has not been paid to them shall be treated as possessed by the claimant.

(4) Where a claimant's earnings are not ascertainable at the time of the determination of the claim, or of any subsequent review, a discretionary support officer shall treat the claimant as possessing such earnings as is reasonable in the circumstances of the case having regard to the number of hours worked and the earnings paid for comparable employment in the area.

(5) Where—

(a) a claimant performs a service for another person; and

(b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area,

a discretionary support officer shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies the discretionary support officer that the means of the person are insufficient for them to pay more for the service; but this paragraph shall not apply to a claimant who is engaged by a charitable or voluntary body or is a volunteer if the discretionary support officer is satisfied that it is reasonable for them to provide the services free of charge.

PART 5

Capital

Calculation of capital

18.—(1) For the purposes of these Regulations the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of the claimant's capital calculated in accordance with this Part.

(2) The capital of a claimant includes the capital of the other member of the couple, and any reference to the "claimant" shall, except where the context otherwise requires, be construed, for the purposes of this Part, as if it were a reference to the claimant's partner.

(3) There shall be disregarded from the calculation of a claimant's capital under paragraph (1) any capital, where applicable, specified in Schedule 4.

Notional capital

19.—(1) A claimant shall be treated as possessing capital of which they have deprived themselves for the purpose of securing entitlement to discretionary support.

(2) Except in the case of—

(a) a discretionary trust; or

(b) a trust derived from a payment made in consequence of a personal injury,

any capital which would become available to the claimant upon claim being made but which has not been acquired by them shall be treated as possessed by them but only from the date on which it would be so acquired.

(3) Where a claimant is treated as possessing capital under paragraphs (1) and (2), the foregoing provisions of this Part shall apply for the purposes of calculating its amount as if it was actual capital which they do possess.

Capital jointly held

20. Where the claimant and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share.

PART 6

Awards and Payments

Principles of determination of an award

21.—(1) An award of discretionary support may take the form of either a loan or a grant.

(2) A discretionary support officer may decide whether or not to make a discretionary support award in a particular case, or the amount or value to be awarded, and shall have regard to all the circumstances of the case and in particular—

(a) the nature, extent and urgency of the need;

(b) the existence of resources including income and capital from which the need may be met either in whole or in part;

(c) the possibility that some other person or body may wholly or partly meet the need;

(d) where the amount is repayable, the conditions attached to that repayment, the means and ability to repay and the time within which repayment is likely;

(e) be satisfied that the award does not exceed the budget allocation;

(f) take account of any general guidance issued by the Department.

(3) An award of a loan shall include a determination that it is recoverable.

(4) The amount or value of a loan to be awarded should normally be the lowest reasonable cost to meet the claimant's need but the amount shall not in any case exceed the difference between any sum already repayable by the claimant to the Department in respect of discretionary support, social fund, payments on account of benefit, budgeting loan, budgeting advances and the level of debt for the time being acceptable to the Department.

(5) No loan may be awarded in excess of the amount which a discretionary support officer has determined the claimant is likely to be able to repay.

(6) The maximum period permitted for the repayment of a loan will be 52 weeks. Except where it appears to a discretionary support officer that due to exceptional circumstances, the 52 week period will not be met, the loan repayment period may be extended at the point of decision making to a maximum of 78 weeks.

(7) The Department shall inform the claimant, or the person appointed to act on the claimant's behalf, in writing of its decision on a claim as soon as reasonably practicable and that written notification shall also advise of the right to apply for a review.

Conditions to be satisfied before payment of an award

22.—(1) An award of a loan shall be recoverable under such terms and conditions, as the Department notifies to the claimant or person appointed to act on the claimant's behalf before payment is made.

(2) An award of a grant shall be made under such terms and conditions, as the Department notifies to the claimant or person appointed to act on the claimant's behalf before payment is made.

(3) The claimant may be required to inform the Department in writing whether they agree to the terms and conditions contained in the notification issued under paragraph (1) within a period defined by the Department and failure to meet this condition will result in an offer being withdrawn.

(4) Before payment the Department shall be satisfied as to the identity of the claimant.

(5) An award will be withdrawn where the claimant fails to satisfy the conditions in paragraphs (1), (2) & (3)

Payment of an award

23.—(1) Discretionary support is to be paid in accordance with an award as soon as is reasonably practicable after an award has been made and the claimant has agreed to the terms and conditions.

(2) Subject to the claimant satisfying the conditions in regulations 21 and 22 the Department may arrange for an award of discretionary support to be paid—

(a) directly to the claimant by way of a transfer into an account held in the name of the claimant, or an account held jointly as a member of a couple;

(b) to an account of a person appointed to act on behalf of the claimant; or

(c) through the supply of goods or services directly to the claimant to the value of the award.

(3) Payment of an award shall be made to the claimant or person appointed to act on behalf of the claimant unless a discretionary support officer determines otherwise.

PART 7

Recovery

Recovery of an award

24.—(1) A discretionary support award that is repayable shall be recoverable by the Department.

(2) A discretionary support award that is not repayable may be recoverable by the Department.

(3) Where it is determined that, whether fraudulently, or otherwise, any person has misrepresented, or failed to disclose, any material fact and in consequence of the misrepresentation or failure, an award of discretionary support has been made, the Department shall be entitled to recover the amount of any payment which the Department would not have made or any sum which the Department would have received but for the misrepresentation or failure to disclose.

(4) Without prejudice to any other method of recovery, the Department may recover an award under paragraph (1), (2) or (3) from benefits.

(5) The Department may recover an award from the person to or for the benefit of whom it was made.

(6) Sections 69ZC to 69ZE of the Social Security Administration (Northern Ireland) Act 1992(**a**) apply to amounts recoverable under this regulation as they apply to amounts recoverable under section 69ZB of that Act.

PART 8

Reviews

Reviews and further reviews

25.—(1) The Department may establish procedures for reviewing a person's entitlement to a discretionary support award under these Regulations.

(2) The procedures established under paragraph (1) must—

(a) provide for a review to be carried out on the application of any claimant; and

(b) provide for the manner of making such an application.

(3) Such procedures may, in particular, provide for—

(a) the need to take account of any general guidance issued by the Department;

(b) the consideration of the claimant's entitlement to a discretionary support award by a discretionary support officer;

(c) the further consideration of the claimant's entitlement to a discretionary support award by a discretionary support inspector, following consideration by a discretionary support officer;

(d) the time limits to be applied to an application for a review of a determination;

(e) the information a discretionary support officer or a discretionary support inspector can take into account in considering the application;

(f) the preparation of a report for a claimant setting out the discretionary support officer's or the discretionary support inspector's reasons for their determination and their recommendation as to the manner in which the matter should be finally determined.

(**a**) 1992 c. 8

Sealed with the official seal of the Department for Communities



Name
A Senior Officer of the
Department for Communities

SCHEDULE 1

Regulation 11(2)

Discretionary support loans – excluded items and services

1. Any need which occurs outside Northern Ireland.

2. An educational or training need including clothing, tools, school uniforms or sports clothes, equipment for use at school, school meals and travel to and from school.

3. Work related expenses.

4. Expenses in connection with court or legal proceedings (including community service orders) such as legal fees, court fees, fines, costs, damages, subsistence or travelling expenses.

5. Domestic assistance and respite care.

6. Medical items or services including surgical, optical, aural and dental.

7. Mobility needs.

8. Funeral and maternity expenses.

9. Any expenses which the Trusts or Local Councils have a statutory duty to meet.

10. Housing costs, including repairs modifications and improvements to the dwelling occupied as the main home, including any garage, garden and outbuildings, and including deposits to secure accommodation, mortgage payments, rates, water rates, sewerage rates, service charges, rent and all other charges for accommodation except rent payable under regulation 11(1)(d).

11. Removal or storage charges where a claimant is re-housed following the imposition of a compulsory purchase order, or a redevelopment or closing order, or a compulsory exchange of tenancies, or pursuant to the Northern Ireland Housing Executive's statutory duty to the homeless under the Housing (Northern Ireland) Order 1988(**a**).

12. Costs associated with home or personal security measures including locks, bolts for outside doors or windows, door chains, door viewers, installation of closed-circuit television, burglar alarms or security lighting.

13. A television or radio and licence, aerial, cable, satellite or rental charges for a television or radio.

14. Costs of purchasing, renting, installing or maintaining a computer, telephone, mobile phone or internet including software, call or usage charges.

15. Garaging, parking, taxi use, purchase and running costs of any motor vehicle except travelling expenses payable to assist with an urgent crisis or emergency under regulation 11(1)(c).

16. Holidays.

17. Debts to government departments.

18. Investments.

(**a**) S.I. 1988 No. 1990 (N.I. 23)

SCHEDULE 2

Regulation 12(5)

Discretionary support grants – excluded items and services

1. Any need which occurs outside Northern Ireland.

2. An educational or training need including clothing, tools, school uniforms or sports clothes, equipment for use at school, school meals and travel to and from school.

3. Work related expenses.

4. Expenses in connection with court or legal proceedings (including community service orders) such as legal fees, court fees, fines, costs, damages, subsistence or travelling expenses.

5. Domestic assistance and respite care.

6. Medical items or services including surgical, optical, aural and dental.

7. Mobility needs.

8. Funeral and maternity expenses.

9. Any expenses which the Trusts or Local Government have a statutory duty to meet.

10. Housing costs, including repairs modifications and improvements to the dwelling occupied as the main home, including any garage, garden, outbuildings, and including deposits to secure accommodation, mortgage payments, rates, water rates, sewerage rates, service charges, rent and all other charges for accommodation, whether or not such charges include payment for meals or services except daily living expenses such as food and groceries where such expenses are incurred in caring for a prisoner or young offender on temporary release under Rule 27 of the Prison and Young Offenders Centres Rules (Northern Ireland) 1995(**a**).

11. Removal or storage charges where a claimant is re-housed following the imposition of a compulsory purchase order, or a redevelopment or closing order, or a compulsory exchange of tenancies, or, pursuant to the Northern Ireland Housing Executive's statutory duty to the homeless under the Housing (Northern Ireland) Order 1988(**b**).

12. Costs associated with home or personal security measures including locks, bolts for outside doors or windows, door chains, door viewers, installation of closed-circuit television, burglar alarms or security lighting.

13. A television or radio and licence, aerial, cable, satellite or rental charges for a television or radio.

14. Costs of purchasing, renting, installing or maintaining a computer telephone, mobile phone or internet including software, call or usage charges.

15. Garaging, parking, taxi use, purchase and running costs of any motor vehicle.

16. Holidays.

17. Debts to government departments.

18. Investments.

19. Costs of fuel consumption and any associated standing charges.

20. Travel and any associated accommodation expenses required to visit a close relative who is ill, attend a close relative's funeral, ease a domestic crisis, and visit a child who is with the other parent pending a family court decision or to move to other accommodation.

(**a**) S.R. 1995 No.8
(**b**) S.I. 1988 No. 1990 (N.I. 23)

SCHEDULE 3

Regulation 15(4)

Sums to be disregarded in the calculation of an annual income threshold

1. Any earnings of a child or young person.

2. Any amount paid by way of tax, national insurance or pension contributions where—

(a) any relievable pension contributions have been made by the person in that period;

(b) any amounts paid by the person in that period in respect of the employment by way of income tax or primary Class 1 contributions under section 6(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**a**);

(c) Class 2 contributions payable under section 11(1) or (3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 or any Class 4 contributions payable under section 15 of that Act; or

(d) income tax; and any relievable pension contributions made by the person in the assessment period (unless a deduction has been made in respect of those contributions in calculating a person's employed earnings).

3. Any payment in respect of any expenses incurred by the claimant who is—

(a) engaged by a charitable or voluntary body; or

(b) a volunteer,

if the claimant otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under regulation 17(5).

4. Any payments under article 15(1)(c) or article 29(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(**b**).

5. Access to Work payments.

6. Any reimbursements for hospital travel or prescription charges under the Travelling Expenses and Remission of Charges Regulations (Northern Ireland) 2004(**c**).

7. Northern Ireland Single Assessment Tool (NISAT).

8. Any payments made in respect of Fostering Allowance and other Social Services payments.

9. Expenses paid to jurors or witnesses in court cases (excluding income replacement).

10. In the case of employment as an employed earner, any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment.

11. In the case of a payment of statutory sick pay under Part XI of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 or statutory maternity pay under Part XII, or statutory paternity pay under Part XIIZA, or statutory adoption pay under Part XIIZB, or any remuneration paid by, or on behalf of, an employer to the claimant who for the time being is unable to work due to illness or maternity under Part XIIA——

(a) any amount deducted by way of primary Class 1 contributions;

(b) any sum paid by the claimant by way of a contribution toward an occupational or personal pension scheme.

(**a**) 1992 c. 7
(**b**) S.R. 2011 No. 517
(**c**) S.R. 2004 No. 91

12. Any payment to the claimant as a holder of the Victoria Cross or George Cross or any analogous payment.

13. Any payment to the claimant of a War Disablement Pension if the injury or illness happened or developed on or before 5 April 2005 and it is linked to Service in the Armed Forces.

14. Any payment to the claimant under the Civilian War Pension Scheme (The Personal Injuries (Civilians)) Scheme 1983(**a**)

15. Except where regulation 17 applies, income in kind.

16. Attendance Allowance under Section 64 Social Security Contributions and Benefits (NI) Act 1992.

17. Disability Living Allowance under Section 71 Social Security Contributions and Benefits (NI) Act 1992.

18. Guardians Allowance under Section 77 Social Security Contributions and Benefits (NI) Act 1992.

19. Constant Attendance Allowance under Sections 104 and 105 Social Security Contributions and Benefits (NI) Act 1992.

20. Child Benefit under Section 141 Social Security Contributions and Benefits (NI) Act 1992.

21. A Christmas bonus paid in accordance with sections 148 to 150 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

22. Discretionary Housing Payments.

23. Housing Benefit.

24. Independent Living Fund.

25. Payments made under the Skipton Fund, the MacFarlane Trust and the Eileen Trust; and any payments of compensation arising from variant Creutzfeld Jacob disease (CJD).

26. Housing Costs, based on the local housing allowance under the Housing Benefit Regulations (Northern Ireland) 2006(**b**), for those not on Housing Benefit.

27. Charitable or voluntary payments for the claimant or their children.

28. Extra-statutory payments for non-payment of benefit, payments in kind.

29. Discharge grants paid on release from prison.

30. Arrears of residence order payments.

31. Child maintenance

32. Any earnings or income derived from employment, or otherwise, which are payable in a country outside Northern Ireland for such period during which there is a prohibition against a transfer to Northern Ireland of those earnings or income.

33. Where a payment, to which paragraph 32 applies, is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

34. Adoption allowance, paid in respect of maintenance for a child who has been adopted.

35. Any payment arising as a result of the Welfare Supplementary Payments Regulations (Northern Ireland) 2016(**c**).

(**a**) S.R. 1983 No. 686
(**b**) S.R. 2006 No. 405
(**c**) S.R. 2016 No. 56

SCHEDULE 4

Regulation 18(3)

Capital to be disregarded

1. Any sum—

(a) paid to the claimant in consequence of damage to, or loss of the home or any personal possession and intended for its repair or replacement; or

(b) acquired by the claimant (whether as a loan or otherwise) on the express condition that it is to be used for effecting essential repairs or improvements to the home,

which is to be used for the intended purpose, from the date on which it was so paid or acquired or such longer period as is reasonable in the circumstances to effect the repairs, replacement or improvement.

2. Any capital which is by virtue of regulation 16 is to be treated as income.

3. Where funds of a trust are derived from a payment made in consequence of any personal injury to the claimant the value of the trust fund and the value of the right to receive any payment

4. Any payment made by the Victim and Survivors Service.

5. Any payment to the claimant of a War Disablement Pension if the injury or illness happened or developed on or before 5 April 2005 and it is linked to Service in the Armed Forces.

6. Any payment to the claimant under the Civilian War Pension Scheme (The Personal Injuries (Civilians)) Scheme 1983(**a**)

7. Any payments under article 15(1)(c) or article 29(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(**b**).

8. Any social fund payment.

9. Any existing discretionary support payment.

10. The surrender value of any policy of life insurance.

11. The value of the right to receive any income under an annuity and the surrender value (if any) of such an annuity.

12. Any capital of a child or young person who is a member of the claimant's immediate family.

(**a**) S.R. 1983 No. 686
(**b**) S.R. 2011 No. 517

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which are made under articles 135 & 136 (5) of the Welfare Reform (Northern Ireland) Order 2015, provide for the establishment of a discretionary support fund to be administered by the Department, to provide emergency loans and grants to claimants who find themselves in extreme, exceptional or crisis circumstances which present a significant risk to the health, safety or well-being of the claimant or a member of the claimant's family.

Part 1 sets out the commencement, citation and interpretation relevant to the Regulations.

Part 2 details the manner in which a claim can be made. Claims can be made by telephone or in such other manner as the Department may accept as sufficient to a particular case (regulation 4(1)). Claims can also be made in writing 4(2); claims must be communicated, sent or delivered to an appropriate office 4(3). Regulation 5 specifies the date on which a claim has been received by the Department. Regulation 6 sets out the information types the Department may request a claimant to provide. Regulation 7 sets out the rules that apply when a person is unable to act on their own behalf. Regulation 8 provides the discretionary support officer with a discretionary power to decide whether a claim for discretionary support should proceed as a loan or a grant application. It also makes the discretionary support officer liable to take into account any guidance issued by the Department in relation to any matter concerning discretionary support. Regulation 9 permits the claimant to withdraw a claim.

Part 3 deals with eligibility. Regulation 10 sets out the general eligibility criteria that must be satisfied, including in 10(1)(a) that there should be significant risk to the claimant or the claimant's family. 10(1)(b) specifies the need must arise in Northern Ireland. Regulation 10(1)(c) ensures the claimant's income cannot exceed a set income threshold, 10(1)(d) sets out the age restrictions – over 18, unless their parents are in receipt of child benefit, or a minimum of 16 if the young person has no parental support, and 10(1)(e) that the need must be satisfied in Northern Ireland. Regulation 10(2) sets out that the claimant must be a resident of Northern Ireland and present in Northern Ireland. Regulation 10(3) specifies when a discretionary support officer should not make a determination, and the exceptions to those circumstances. 11 & 12 set out the criteria for eligibility for a loan or a grant, including reference to Schedules 1 and 2 which sets out excluded items. Regulation 13 sets out those persons who are excluded from applying for discretionary support and Regulation 14 sets out those who are ordinarily excluded, but may be eligible to make a claim for discretionary support, but only where that is a loan for living expenses arising as a consequence of a disaster.

Part 4 explains the conditions around income and earnings, regulation 15 sets an annual income threshold with reference to the national living wage paid to those over 25 assuming a working pattern of 40 hours per week 52 weeks per year. Anyone whose earnings exceed this may not be eligible. Income taken into account will be gross income. By regulation 15(4) certain disregards specified in Schedule 3 apply to the calculation of income. The income of a child or young person will not be regarded as income of the claimant, but that of a member of a couple will be treated as income of the claimant. Regulation 16 deals with circumstances where some capital is regarded as income and regulation 17 covers circumstances where it appears the claimant may have intentionally deprived themselves of income to ensure they are eligible. So called notional income will be taken into account as if the claimant was in possession of that income.

Part 5 details the rules around capital held by a claimant and regulation 18 deals with the calculation of capital, and includes provision that any capital held by the claimant or the other member of a couple will be regarded as capital of the claimant. As with income, a number of disregards will apply and these are specified in Schedule 4. Regulation 19 details that any capital deliberately disposed of for the purposes of securing discretionary support will be treated as capital they actually possess. Regulation 20 deals with capital that is jointly held.

Part 6 covers awards and payments. Regulations 21 to 23 set out the principles for determining an award, dependent on existing levels of debt; the conditions a claimant must satisfy before an award can be paid; and how a payment should be made once conditions are satisfied.

Part 7 deals with recovery. All loans will be repayable, and grants may be recoverable. Regulation 24 sets out the ways in, and circumstances under which a loan or overpayment can be recovered.

Part 8 outlines reviews of a determination. Regulation 25 provides the Department with power to establish review procedures and the manner in which they can be conducted.

Schedule 1 sets out items and services that are excluded from the loan process.

Schedule 2 sets out items and services that are excluded from the grant process.

Schedule 3 sets out the disregards in respect of income calculations.

Schedule 4 sets out the disregards in respect of capital calculations.

A Regulatory Impact Screening Assessment and an Equality Impact Screening Assessment in relation to these Regulations has been placed in the Library of the Northern Ireland Assembly. Copies may be obtained from: Central Social Policy Unit, Department for Communities, The Lighthouse Building, Gasworks Business Park, Belfast BT7 2JB.

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