Draft Regulations laid before the Assembly under Article 137(5) of the Welfare Reform (Northern Ireland) Order 2015 for approval

DRAFT STATUTORY RULES OF NORTHERN IRELAND

2016 No. 0000

WELFARE

The Welfare Supplementary Payments Regulations (Northern Ireland) 2016

Made - - - -	**** 2016*
Coming into operation -	**** 2016*

The Department for Social Development makes the following Regulations in exercise of the powers conferred on it by Article 137 of the Welfare Reform (Northern Ireland) Order 2015(**a**).

In accordance with Article 137(5) of that Order, a draft of these Regulations was laid before, and approved by a resolution of, the Assembly.

PART 1

INTRODUCTION

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Welfare Supplementary Payments Regulations (Northern Ireland) 2016 and come into operation on 31st May 2016.

(2) In these Regulations—

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

"welfare supplementary payment" means a payment under these Regulations.

Welfare supplementary payments

2. Welfare supplementary payments are payable in accordance with the provisions of these Regulations.

(**a**) S.I. 2015/2006 (N.I. 1)

PART 2

BENEFIT CAP

Interpretation of Part 2

3.—(1) In this Part—

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

"couple" means—

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

(b) a man and 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 were 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;

"housing association" has the same meaning as in Article 3 of the Housing (Northern Ireland) Order 1992(**a**);

"housing benefit" means housing benefit under section 122 of the Contributions and Benefits Act(**b**);

"Housing Benefit Regulations" means the Housing Benefit Regulations (Northern Ireland) 2006(**c**);

"landlord" has the same meaning as in regulation 92 of the Housing Benefit Regulations(**d**);

"welfare benefit" has the same meaning as in regulation 73G of the Housing Benefit Regulations(**e**);

"young person" has the same meaning as in regulation 17(1) of the Housing Benefit Regulations.

(2) For the purposes of regulation 4(3)(b), the circumstances in which a person is treated as responsible for a child or young person are the same as those set out in regulation 18 of the Housing Benefit Regulations.

Benefit cap

4.—(1) This paragraph applies where a person's daily total entitlement to welfare benefits, or where the person is a member of a couple, the couple's daily total entitlement to welfare benefits, exceeds £71.42 on 31st May 2016.

(2) This paragraph applies where a person—

(a) was entitled to a welfare benefit in respect of each day during the relevant period; and

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(**a**) S.I. 1992/1725 (N.I. 15)
(**b**) 1992 c. 7; section 122 was amended by section 60 and Schedule 6 to the Tax Credits Act 2002 (c. 21)
(**c**) S.R. 2006 No. 405
(**d**) Regulation 92 has been amended but the amendments are not relevant to these regulations
(**e**) Regulation 73G was inserted by regulation 3(5) of S.R. 2016 No. 55

(b) is entitled to housing benefit the amount of which is reduced in accordance with regulation 73D of the Housing Benefit Regulations(**a**).

(3) Where paragraph (1) or (2) applies and subject to paragraph (6), a person is entitled to a welfare supplementary payment under this regulation for any period in respect of which—

(a) the amount of housing benefit to which the person is entitled is reduced in accordance with regulation 73D of the Housing Benefit Regulations; and

(b) the person resides with a child or young person for whom the person, or as the case may be, the person's partner is responsible.

(4) Subject to paragraph (5), the amount of a welfare supplementary payment to which a person is entitled under this regulation is the amount by which the person's award of housing benefit is reduced in accordance with regulation 73D of the Housing Benefit Regulations on the first occasion on which it is so reduced.

(5) If as a result of a change of circumstances, a person's award of housing benefit is reduced in accordance with regulation 73D of the Housing Benefit Regulations by less than the amount by which it was reduced on the first occasion on which it was reduced, the amount of a welfare supplementary payment to which a person is entitled under this regulation is that lesser amount.

(6) The period in respect of which welfare supplementary payments are payable under this regulation commences on the first occasion on which the amount of housing benefit to which the person is entitled is reduced in accordance with regulation 73D of the Housing Benefit Regulations and ends on 31st March 2020.

(7) A welfare supplementary payment to which a person is entitled under this regulation must be paid every four weeks, or as soon as is reasonably practicable thereafter, in arrears.

(8) Subject to paragraph (9), a welfare supplementary payment to which a person is entitled under this regulation must be paid to that person except where housing benefit to which that person is entitled is paid to that person's landlord in which case the welfare supplementary payment must be paid to the person's landlord.

(9) A welfare supplementary payment must not be paid to the person's landlord unless the landlord is—

(a) registered under regulation 3 of the Landlord Registration Scheme Regulations (Northern Ireland) 2014(**b**);

(b) the Northern Ireland Housing Executive; or

(c) a housing association.

(10) In this regulation "relevant period" in respect of a person means the period beginning on 30th May 2016 and ending on the date of the first occasion on which the amount of housing benefit to which that person is entitled is reduced in accordance with regulation 73D of the Housing Benefit Regulations.

Amendment of the Discretionary Financial Assistance Regulations

5. In regulation 3 of the Discretionary Financial Assistance Regulations (Northern Ireland) 2001(**c**) after paragraph (j) add the following paragraph—

"(k) a reduction under regulation 73D of the Housing Benefit Regulations of the amount of housing benefit to which a person is entitled if that reduction—

(i) relates to the housing benefit of a person who is entitled to a welfare supplementary payment under Part 2 of the Welfare Supplementary Payments Regulations (Northern Ireland) 2016; and

(ii) is no more than the amount specified in regulation 4(4) of those Regulations.".

(**a**) Regulation 73D was inserted by regulation 3(5) of S.R. 2016 No. 55

(**b**) S.R. 2014 No. 9

(**c**) S.R. 2001 No. 216; relevant amending regulations are S.R. 2002 No. 80, SR. 2008 No.111, S.R. 2011 No. 291, S.R. 2012 No. 44 and S.R. 2014 No. 150

PART 3

CONTRIBUTORY EMPLOYMENT AND SUPPORT ALLOWANCE

Interpretation of Part 3

6.—(1) In this Part—

"Claims and Payments Regulations" means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**a**);

"contributory employment and support allowance" means an employment and support allowance entitlement to which is based on section 1(2)(a) of the WRA 2007;

"ESA Regulations" means the Employment and Support Allowance Regulations (Northern Ireland) 2008(**b**);

"income-related employment and support allowance" means an employment and support allowance entitlement to which is based on section 1(2)(b) of the WRA 2007;

"new award of income-related employment and support allowance" means—

(a) in cases in which a person makes a claim for an income-related employment and support allowance within the period mentioned in regulation 7(2)(b), the award made pursuant to the original decision in respect of that claim;

(b) in all other cases, the award in existence immediately after the cessation of an award of contributory employment and support allowance as a consequence of section 1A of the WRA 2007(**c**);

"previous award of contributory employment and support allowance" means the award in existence immediately prior to its cessation as a consequence of section 1A of the WRA 2007;

"previous award of employment and support allowance" means the award in existence immediately prior to the cessation of a contributory employment and support allowance as a consequence of section 1A of the WRA 2007;

"relevant date" in respect of a person means the date on which chapters 1 and 2 of Part 2 of the Order are commenced in respect of a group of people of which that person forms part;

"WRA 2007" means the Welfare Reform Act (Northern Ireland) 2007(**d**).

Entitlement to a welfare supplementary payment under this Part

7.—(1) If—

(a) a person is either—

(i) in receipt of a contributory employment and support allowance on the date of commencement of section 1A of the WRA 2007; or

(ii) in receipt of a contributory employment and support allowance after that date but, by virtue of regulation 145(1) of the ESA Regulations, the period of limited capability for work to which the award of that allowance relates is treated as a continuation of a period of limited capability for work which occurred before that date;

(b) the person's entitlement to a contributory employment and support allowance ceases as a consequence of that section before the relevant date; and

(c) the person suffers a financial disadvantage,

the person is entitled to a welfare supplementary payment under this Part for any period in respect of which the person has limited capability for work.

(**a**) S.R. 1987 No. 465
(**b**) S.R. 2008 No.280
(**c**) Section 1A was inserted by Article 57 of S.I. 2015/2006 (N.I. 1)
(**d**) 2007 (c. 2 (N.I.))

(2) A person suffers a financial disadvantage for the purposes of paragraph (1) if—

(a) the person's previous award of employment and support allowance was treated as mentioned in section 6(4) of the WRA 2007 and the amount of their new award of income-related employment and support allowance is less than the amount of their previous award of contributory employment and support allowance;

(b) the person did not, at any time during the period of 56 days ending on the date of cessation of the person's contributory employment and support allowance as a consequence of section 1A of the WRA 2007, make a claim for an income-related employment and support allowance under Part II of the Claims and Payments Regulations;

(c) the person made such a claim and the amount of their new award of income-related employment and support allowance is less than the amount of their previous award of contributory employment and support allowance; or

(d) the person made such a claim and the decision under Article 9 of the Social Security (Northern Ireland) Order 1998(**a**) was a decision not to award income-related employment and support allowance.

(3) A person has limited capability for work for the purposes of this regulation if the person—

(a) is entitled to a limited capability for work credit; or

(b) is entitled to an employment and support allowance.

(4) In paragraph (3), "limited capability for work credit" refers to a credit under regulation 8B(1) of the Social Security (Credits) Regulations (Northern Ireland) 1975(**b**) where paragraph (2)(a)(iv) or (2)(a)(v) of that regulation applies and which follows the cessation of the entitlement period of contributory employment and support allowance.

Amount of welfare supplementary payment

8. Subject to regulation 9, the amount of a welfare supplementary payment to which a person is entitled under this Part is—

(a) in the cases mentioned in regulation 7(2)(a) and (c), an amount corresponding to the difference between the amount of the previous award of contributory employment and support allowance and the amount of the new award of income-related employment and support allowance;

(b) in the cases mentioned in regulation 7(2)(b) and (d), an amount corresponding to the amount of the previous award of contributory employment and support allowance.

Change of circumstances

9.—(1) If in a case mentioned in regulation 7(2)(b) a person makes a claim for income-related employment and support allowance at any time during the person's period of entitlement, the amount of a welfare supplementary payment to which the person is entitled under this Part is reduced to the difference between the amount of the person's previous award of contributory employment and support allowance and the amount of any award made pursuant to that claim.

(2) If as a result of a change of circumstances a person's award of income-related employment and support allowance is increased, the amount of a welfare supplementary payment to which the person is entitled under this Part is reduced to the difference between the amount of the person's

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(**a**) S.I. 1998/1506 (N.I. 10); relevant amending provisions are paragraph 16(2) and (3) of Schedule 6 to, and Schedule 9 to, the Social Security (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671), Part VII of Schedule 13 to Welfare Reform and Pensions Act 1999 (c. 30), paragraph 6 of Schedule 1 to the State Pension Credit Act (Northern Ireland) 2002 (c.14 (N.I.)), Schedule 6 to the Tax Credits Act 2002 (c. 21), paragraph 10(3) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.)), Part 1 of Schedule 4 to the Welfare Reform Act (Northern Ireland) 2010 (c. 13 (N.I.)) and paragraph 29 of Schedule 12 to, and paragraph 37 of Schedule 16 to the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.))

(**b**) S.R. 1975 No. 113; regulation 8B was inserted by regulation 2(6) of S.R. 1996 No. 430; relevant amending regulations are S.R. No. 404, S.R. 2003 No. 151, S.R. 2008 No. 286 and S.R. 2010 No. 109

previous award of contributory employment and support allowance and the amount of the increased award.

(3) If a person is awarded contributory employment and support allowance pursuant to section 1B of the WRA 2007(**a**) at any time during the person's period of entitlement, the person's entitlement to a welfare supplementary payment under this Part shall cease.

(4) In this regulation, "period of entitlement" means the period in respect of which welfare supplementary payments are payable under this Part.

Payment of welfare supplementary payment

10.—(1) A welfare supplementary payment under this Part must be paid every four weeks, or as soon as is reasonably practicable thereafter, in arrears.

(2) The period in respect of which welfare supplementary payments are payable to a person under this Part commences—

(a) in a case in which the person makes a claim for income-related employment and support allowance under Part II of the Claims and Payments Regulations during the period referred to in regulation 7(2)(b)—

(i) on the day after the date of the decision in respect of that claim; or

(ii) on the day after the date of the cessation of the person's contributory employment and support allowance as a consequence of section 1A of the WRA 2007,

whichever is the last to occur;

(b) in all other cases on the day after the date of cessation of the person's contributory employment and support allowance as a consequence of section 1A of the WRA 2007.

(3) The period in respect of which welfare supplementary payments are payable to a person under this Part ends—

(a) one year after the date of its commencement under paragraph (2); or

(b) on 31st March 2020,

whichever is the first to occur.

PART 4

MISCELLANEOUS

Review

11.—(1) The Department may establish procedures for reviewing a person's entitlement to a welfare supplementary payment 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 person; and

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

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

(a) the consideration of the applicant's entitlement to a welfare supplementary payment by such persons (not exceeding three) as the Department may nominate for that purpose;

(b) the preparation of a report by the persons so nominated setting out their conclusions in relation to the applicant's entitlement to a welfare supplementary payment and their recommendation as to the manner in which the matter should be finally determined.

(**a**) Section 1B was inserted by Article 58 of S.I. 2015/2006 (N.I. 1)

Disregards

12. No account must be taken of entitlement to a welfare supplementary payment in considering a person's entitlement to a benefit under a statutory provision relating to social security (irrespective of the name or nature of the benefit).

Residence and presence in Northern Ireland

13. A person is not entitled to welfare supplementary payments under these Regulations unless the person—

(a) is ordinarily resident in Northern Ireland; and

(b) is present in Northern Ireland.

Temporary absence from Northern Ireland

14.—(1) Subject to regulation 15, where a person is temporarily absent from Northern Ireland, the person is treated as present in Northern Ireland for the purpose of these Regulations for the first 4 weeks of absence.

(2) A person is temporarily absent from Northern Ireland if, at the beginning of the period of absence, the person's absence is unlikely to exceed 52 weeks.

Temporary absence from Northern Ireland to receive medical treatment

15.—(1) Where a person is temporarily absent from Northern Ireland, the person is treated as present in Northern Ireland for the purposes of these Regulations for the first 13 weeks of that absence, where—

(a) the person's absence is solely in connection with arrangements made for the medical treatment of the person for a disease or bodily or mental disablement which commenced before the person left Northern Ireland; and

(b) the arrangements referred to in sub-paragraph (a) relate to medical treatment—

(i) outside Northern Ireland,

(ii) during the period whilst the person is temporarily absent from Northern Ireland, and

(iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.

(2) In this regulation "temporarily absent" has the same meaning as in regulation 14(2).

Prisoners

16.—(1) No welfare supplementary payment is payable under these Regulations for a period during which a person is undergoing imprisonment or detention in legal custody.

(2) Paragraph (1) does not apply in respect of the first 28 days of any such period.

Sealed with the Official Seal of the Department for Social Development on

(L.S.)

Name
A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations introduce welfare supplementary payments to mitigate impacts from implementation of the Welfare Reform (Northern Ireland) Order 2015 ("the Order") as defined in the document "A Fresh Start the Stormont Agreement and Implementation Plan".

The Regulations provide for mitigations on the introduction of the benefit cap (as provided for in Article 101 of the Order) and time limiting of contribution based employment and support allowance (Article 57 of the Order).

Regulation 2 provides for payments referred to as welfare supplementary payments.

Regulation 3 is an interpretative provision for Part 2 of the Regulations which provides for payments to be made in circumstances where the benefit cap is applicable.

Entitlement conditions to a payment to mitigate the reduction in housing benefit resulting from the benefit cap are described in regulation 4. The regulation makes provision to calculate the benefit cap rate as a daily amount for both couples and single claimants. The regulation allows for welfare supplementary payments to be made where a person's housing benefit is capped after the 31st May 2016 in circumstances where that person has been continuously in receipt of a welfare benefit between that date and the date the benefit cap is applied. It makes further provision to calculate the welfare supplementary payment by reference to the reduction of housing benefit on the first occasion it is reduced. Where there is a change of circumstances leading to re-calculation of housing benefit and the outcome is a reduction of housing benefit which is less than the first reduction the welfare supplementary payment will be equal to that lesser amount. The regulation provides for the maximum duration of payments under the scheme and for payments to be made every four weeks. It maintains for the welfare supplementary payment the current practice in relation to housing benefit that payments may be made to landlords.

Regulation 5 regulates any payments made as Discretionary Housing Payments with those made as welfare supplementary payments.

Regulation 6 contains interpretative provisions in relation to Part 3 (Contributory Employment and Support Allowance).

Regulation 7 prescribes the conditions for entitlement to a welfare supplementary payment on the cessation of a contributory based employment and support allowance. It defines what is meant by financial disadvantage and limited capability for work.

Regulation 8 provides for the amount of welfare supplementary payment under Part 3 of the Regulations to be an amount corresponding to the difference between any new award of income-related employment and support allowance and the contributory award that immediately preceded it or in some cases an amount corresponding to the full amount of contributory employment and support allowance.

Regulation 9 provides for the adjustment or cessation of a welfare supplementary payment in the event of certain changes in circumstances.

Regulation 10 stipulates welfare supplementary payments under Part 3 are to be paid four weeks in arrears and provides for the duration of payments.

Regulation 11 provides for reviewing a person's entitlement to a welfare supplementary payment.

Regulation 12 ensures entitlement to a welfare supplementary payment is to be disregarded in the consideration of entitlement to social security benefits.

Regulation 13 defines entitlement by reference to residence and presence in Northern Ireland.

Regulation 14 allows periods of temporary absence from Northern Ireland to be deemed as presence for 4 weeks provided if at the beginning of the absence period that period was unlikely to exceed 52 weeks.

Regulation 15 allows temporary absence from Northern Ireland to be deemed as presence in Northern Ireland for the first 13 weeks of absence where a person is receiving medical treatment.

Regulation 16 provides that a welfare supplementary payment will not be paid where a person is imprisoned or detained in legal custody for a period is excess of 28 days.

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