EXPLANATORY MEMORANDUM TO

THE SOCIAL FUND MATERNITY AND FUNERAL EXPENSES (GENERAL) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2023

S.R. 2023 No. 190

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is to be laid before the Northern Ireland Assembly.

1.2. These Regulations are made under sections 134(1)(a) and 171(1) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

2. Purpose

2.1. These Regulations are amending a reference in the Social Fund Maternity and Funeral Expenses (General) Regulations (Northern Ireland) 2005 as regards to parental orders under the Human Fertilisation and Embryology Act 2008.

3. Background

Legislative Context

3.1. In the Social Fund Maternity and Funeral Expenses (General) Regulations (Northern Ireland) 2005 ("the 2005 Regulations"), the definition of "parental order" is being amended to include a reference to section 54A of the Human Fertilisation and Embryology Act 2008 ("the 2008 Act"), which was updated in 2018.

3.2. Regulation 2 of these Regulations amends regulation 2(1) of the 2005 Regulations to insert the updated reference to section 54A of the 2008 Act.

Policy Background

3.3. The 2008 Act was amended in 2018 following a declaration by the High Court that section 54 of the 2008 Act was incompatible with Article 14 of the European Convention for Human Rights. The Court stated that section 54 of the 2008 Act was incompatible in that it only allowed couples to apply for a parental order, which transfers legal parenthood after a surrogacy arrangement. The 2008 Act was then amended to allow for a sole applicant for a parental order. Subsequently, the reference to section 54 of the 2008 Act in the 2005 Regulations needs to be amended to reflect the inclusion of the updated section 54A.

4. Consultation

4.1. These Regulations are specific to Northern Ireland. An equivalent GB amendment was made as part of GB's Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 (S.I. 2018 No. 1413). The Regulations were referred to the Social Security Advisory Committee (SSAC) for scrutiny at their meeting on 11th October 2023. The committee did not take the Regulations on formal reference.

5. Equality Impact

5.1. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on proposals for these Regulations and concluded that they do not have significant implications for equality of opportunity. In light of this, the Department considered that an equality impact assessment is not necessary.

6. Regulatory Impact

6.1. There is no, or no significant, impact on business, charities or voluntary bodies or on the public sector.

7. Financial Implications

7.1. Not applicable.

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 these Regulations:

a) are not incompatible with any of the Convention rights;

b) are not incompatible with Article 2(1) of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement (rights of individuals);

c) do not discriminate against a person or class of person on the ground of religious belief or political opinion; and

d) do 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. Not applicable.

11. Additional Information

11.1. Not applicable.