EXPLANATORY MEMORANDUM TO

THE SOCIAL FUND WINTER FUEL PAYMENT REGULATIONS (NORTHERN IRELAND) 2024

S.R. 2024 No. 160

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.

These Regulations are made under sections 134(2) and 171(1), and (3) to (5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, sections 5(1)(a) and (i) and 165(1), and (4) to (6) of the Social Security Administration (Northern Ireland) Act 1992, and Articles 16(1) and 74(1) of, and paragraph 3 of Schedule 4 to, the Social Security (Northern Ireland) Order 1998.

2. Purpose

2.1. These Regulations redefine the eligibility for pensioners who can receive a Winter Fuel Payment. From Winter 2024/25, they will no longer be paid on a universal basis, instead they will be targeted at those pensioners receiving an income-related benefit, such as Pension Credit.

3. Background

Legislative Context

3.1. The Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000 are revoked by these Regulations, which make provision for payment of a Winter Fuel Payment in prescribed circumstances. The legislation implements the policy decision to change the entitlement conditions for payment of a Winter Fuel Payment.

3.2. It was decided, in line with England and Wales, to re-make the regulations rather than amend them as that is the clearest way to make the necessary changes to the legislation.

Policy Background

3.3. The previous policy, the Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000, provided for a universal payment to all pensioners who were of State Pension Age ("SPa") (aside from the specific exemptions as detailed below). This was originally introduced in 1997/98 (the Social Fund Winter Fuel Payment Regulations (Northern Ireland) 1998) to help pensioners with the cost of heating and give them reassurance through the winter (with the Regulations laid in 2000 superseding the 1998 Regulations). This legislation changes who is eligible for a Winter Fuel Payment, to only those who are on certain income-related benefits. That is, on an income-related basis.

3.4. This legislation revokes and replaces the previous legislation, the Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000 ("the 2000 Regulations") and makes provision for those who have reached the SPa by the end of the qualifying week (the third week of September, 16-22 September 2024) and who are entitled to Pension Credit ("PC"), Universal Credit ("UC"), Income Support ("IS"), Income-based Jobseeker's Allowance ("JSA IB") and Income-related Employment and Support Allowance ("ESA IR"), as well as those who are entitled to Child Tax Credit ("CTC") or Working Tax Credit ("WTC") of no less than £26 in respect of the tax year 2024/25 will receive a Winter Fuel Payment.

3.5. Regulation 2 provides that the Department must pay a Winter Fuel Payment to anyone who has reached SPa by the end of qualifying week, and is resident in Northern Ireland and in receipt of PC or other qualifying benefit. It also includes those awarded WTC and CTC.

3.6. Provision for pensioners in receipt of WTC or CTC to receive a Winter Fuel Payment for winter 2024/25 has been included in these Regulations. This is because Tax Credits will close from April 2025 and pensioners will need to apply for either UC or PC, if they wish to continue receiving support.

3.7. Regulation 2 also provides that the Department must pay a Winter Fuel Payment to certain people in the European Economic Area (EEA) and Switzerland. That is, anyone who has reached SPa by the end of the qualifying week, and is resident in a country that is both covered by the Withdrawal Agreement or other parallel agreements; and is also listed in Schedule 1 of the regulations. They should be in receipt of a benefit equivalent to PC or another qualifying benefit and be able to show that they have a Genuine and Sufficient Link (GSL) to the UK[1]. Following Kavanagh & Anor versus Secretary of State for Work and Pensions ([2019] EWCA Civ 272[2]), regulation 2 clarifies that a claimant must demonstrate a GSL to the UK, rather than the UK's Social Security System. This provision is for winter 2024-25 only, as detailed in 3.14.

3.8. Regulation 3 details the amount a pensioner can receive. Payment amounts will remain the same as detailed in the previous Regulations: £200 for a household with someone of SPa and under 80, and £300 for a household with someone aged 80 and over.

3.9. Regulation 4 sets out that pensioners will not be eligible for a Winter Fuel Payment if:

i) they are in a couple, or polygamous marriage, and the other member of the couple has received a payment for the household, as the lead claimant.

ii) they are in hospital getting free treatment for the whole of the qualifying week and at least a year immediately before the qualifying week.

iii) they are in prison for the whole of the qualifying week, (third week of September).

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[1] The Genuine and Sufficient Link (GSL) to the United Kingdom (UK) is an exemption in law that can be applied when the UK is competent for the payment of WFP and the claimant is within scope of a relevant European Union (EU) Regulation. The GSL can be applied to claimants for WFP living in the UK or in an EU member state, with decision makers determining whether a claimant has demonstrated relevant proof of their link to the UK. A GSL may include contributions to the domestic social security system, the relationship between the claimant and the United Kingdom, family circumstances and other personal circumstances of the claimant.

[2] https://assets.publishing.service.gov.uk/media/60df3828d3bf7f7c34dff54e/_2019__AACR_21wsa.pdf

iv) they are in residential care (a nursing home) for a period of 13 weeks, including the full week of the qualifying week.

3.10. Regulation 4 also ensures that a pensioner will not receive a duplicate payment if they move from Northern Ireland to England and Wales or Scotland by the last day of qualifying week.

3.11. Regulation 4 also details that a pensioner will not be eligible for a Winter Fuel Payment if they have not made a claim by 31 March 2025. However, there are exceptions to this rule as set out in Regulation 5.

3.12. Regulation 5 allows for automated payment of Winter Fuel Payment based on information held by the Department. This Regulation also allows for Winter Fuel Payment to be paid if a customer becomes entitled to a qualifying benefit or tax credit, in the qualifying week where that entitlement is decided after 31 March 2025, following the appeals process.

3.13. Regulation 6 makes consequential amendments to the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987.

3.14. Regulation 7 revokes previous Winter Fuel Payment Regulations. Regulation 7 also limits the provisions to pay Winter Fuel Payments in the European Economic Area and Switzerland to winter 2024-25 only.

4. Consultation

4.1. As the Regulations make, in relation to Northern Ireland, only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain consultation with the Social Security Advisory Committee is not required.

4.2. No formal consultation has taken place.

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.

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. The financial impact on the public sector is that the overall Exchequer effect (UK wide) of the provision in these regulations will be £1.3 billion in 2024/25 and around £1.5 billion in subsequent years.

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 complies with that provision.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. Replicatory measure can be found in the Great Britain instrument, the Social Fund Winter Fuel Payment Regulations 2024.

10.2. In line with the long-standing policy of parity in social security, the Social Fund Winter Fuel Payment Regulations 2024 will come into operation on 16th September 2024. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.

10.3. Due to time constraints the Department will be unable to honour the 21-day rule under the Negative Resolution procedure in this instance, in order to maintain parity of timing with Great Britain.

11. Additional Information

11.1. Not applicable.