EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY BENEFITS (CLAIMS AND PAYMENTS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2021

S.R. 2021 No. 267

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 under the negative resolution procedure.

1.2. These Regulations are made under sections 5(1)(j) and 165(1), (5) and (6) of the Social Security Administration (Northern Ireland) Act 1992.

2. Purpose

2.1. These Regulations will allow the Department for Communities (DfC), with the claimant's consent, to pay a large amount of benefit arrears due to vulnerable claimants, in instalments rather than one lump sum.

2.2. DfC can already make staggered payments for Employment Support Allowance (ESA) and Universal Credit (UC) these changes only extend this beneficial option to all other benefits. This is proposed as a positive change to increase the flexibility for claimants as to how they can receive the benefit they are owed by the department.

3. Background

3.1. On occasion DfC has identified an underpayment of benefit, resulting in some claimants being due a large payment of benefit arrears. There are a number of possible reasons for these payments, for example, a delay in processing a claim; successful appeals; and departmental error. At times DfC has had to retrospectively review entitlement to benefit, particularly if a long time has passed since the original claim and entitlement decision were first made, administrative review. (LEAP Exercises - Legal Entitlements and Administrative Practice (LEAP)).

3.2. DfC is currently limited in the options available to it for paying benefit arrears through either making the payment in a lump sum to the claimant or, with the claimant's consent, paying the whole amount to a third party.

3.3. For New Style Benefits, UC and ESA, provisions already exist that allow DfC to pay arrears of those benefits in instalments, where it may be beneficial for the claimant and with their consent. (Regulation 42(3), for UC, and regulation 46(3), for ESA, of The Universal Credit, Personal Independence Payment and Employment and Support Allowance Regulations (Northern Ireland) 2016)

3.4. The changes proposed in these Regulations extend this option to all other benefits.

3.5. For the vast majority of claimants, receiving a large arrears of benefit payment is not an issue and are generally able, either themselves or with some third party support if necessary, to effectively manage the payment to their advantage. For these claimants no issues arise. However in order to better support vulnerable claimants, who are deemed as requiring 'Advanced Customer Support', DfC is putting arrangements in place, including paying benefit arrears in instalments, to provide support, if required and only after agreement with the claimant.

3.6. Recently, Legal Entitlements and Administrative Practice (LEAP) exercises have led to significant increases in the number of 'large payment' cases and affected those claimants in receipt of Employment and Support Allowance (ESA) or Personal Independence Payment, many of whom are extremely vulnerable, or potentially vulnerable, as a result of health conditions.

3.7. In NI, LEAP Exercises for PIP have identified approximately 900 claimants due an average payment of benefit arrears equalling £3,814. In addition, due to the length of time taken by The Appeals Service to determine appeals, a high volume of allowed appeals would also result in arrears being due, many well in excess of £5K.

3.8. There are a very small minority of claimants for whom the payment of a large amount of arrears of benefit may pose a potential risk, in extremis a risk to their lives, for example, those with serious addiction issues, where having large sums of money at any one time might lead to tragic consequences.

3.9. In July 2019 the findings of a Coroner's case in GB related to a claimant with a history of drug addiction issues, highlighted an issue that large sums of money being received may put some vulnerable claimants, specifically those with drug and alcohol concerns, at greater risk through unrestrained access to illicit substances. While no firm conclusions were drawn, it was believed that the large amount of money received had indirectly led to the death of a claimant. Concerns were raised amongst the claimant's treatment team that receipt of such a large sum of money (£18,000 in PIP arrears) would place the claimant at risk given the potential for unrestrained access to illicit drugs. Unfortunately, following receipt of this money, the claimant disengaged from his addiction treatment and was found deceased in his own residence in January 2019.

3.10. The Coroner issued a Prevention of Future Death report under the Coroners (Investigations) Regulations 2013 and challenged the Department for Work and Pensions (DWP) to act to ensure that all relevant safeguards to protect vulnerable claimants are in place. While no similar cases have been reported in NI, DfC are in agreement that the option to pay large amounts of benefit arrears in instalments would still be a beneficial safeguard that should be introduced.

3.11. In a further case, upon which DWP have based the decision to regulate, DWP were asked by the claimant's social worker not to pay a large sum, c£5000, because there were fears over the misuse of drugs and domestic violence. In this case DWP were able, with the claimant's consent, to pay the money to the claimant's appointed third party directly. However, this scenario requires there to be a (trusted) third party willing to receive

payment. Again no similar cases were identified in NI however, the option to pay large amounts of benefit in instalments would still be a beneficial safeguard that should be introduced.

3.12. In the absence of this third party there is no alternative but to make the payment in full to the claimant and the claimant could have insisted that he receive the money as a lump sum. In law DfC would have to accede to that request, despite any explicit warning received.

3.13. These Regulations do not interfere with the claimant's right to the benefit arrears due, they are designed to provide an additional support to those claimants who wish to receive their payments in smaller amounts that may be more manageable for them and reduces risk.

4. Legislative Context

4.1. This Statutory Rule makes amendments to the following regulations:

- The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987; and,
- The Universal Credit, Personal Independence Payment, Job Seekers Allowance and Employment Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016.

4.2. In essence, for both the legacy and new style benefits, the amendments being proposed are the same. For the legacy benefits, the amendments are being made to the 1987 regulations through the introduction of a new, catch-all provision. Amending all the legacy benefits individually seemed unnecessary, particularly when it is highly likely that the provision will be called into use for the majority of them.

4.3. For the new style benefits (UC, PIP, JSA(C) and ESA(C)) the Amendments to the 2016 Regulations are being done on an individual benefit basis. A different approach has been taken with the new style benefits because we are dealing with just the four benefits.

5. Consultation

5.1. The Department has not consulted on these changes. As explained above, for ESA and UC we can already make staggered payments, so these changes do no more than extend this option to all other benefits. This is proposed as a positive change to increase the flexibility for claimants as to how they can receive the money they are owed by the department.

6. Equality Impact

6.1. 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.

7. Regulatory Impact

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

8. Financial Implications

8.1. None.

9. Section 24 of the Northern Ireland Act 1998

9.1. The Department is content that the statutory rule complies with section 24 of the Northern Ireland Act 1998 (Convention rights, etc.).

10. EU Implications

10.1. Not applicable.

11. Parity or Replicatory Measure

11.1. The corresponding Great Britain Regulations are the Social Security Benefits (Amendment) Regulations 2021 (S.I. 2021/XXX).

12. Additional Information

12.1. Not applicable.