EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (INCOME AND CAPITAL DISREGARDS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2025

S.R. 2025 No. 24

1. Introduction

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

1.2 The Statutory Rule is made under the Social Security Contributions and Benefits (Northern Ireland) Act 1992, the Social Security Administration (Northern Ireland) Act 1992, the Jobseekers (Northern Ireland) Order 1995, the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997, the State Pension Credit Act (Northern Ireland) 2002, the Welfare Reform Act (Northern Ireland) 2007 and the Welfare Reform (Northern Ireland) Order 2015, and is subject to the negative resolution procedure.

2. Purpose

2.1 The purpose of this Rule is to amend various social security Regulations to ensure that payments made via the Ministry of Defence's Lesbian, Gay, Bi-sexual and Transgender Financial Recognition Scheme are disregarded indefinitely as capital or income when calculating entitlement to certain means-tested benefits[1]. If these payments were not disregarded claimants who receive payments from the Ministry of Defence's scheme could see their benefit entitlement reduced or ceased.

2.2 The Rule also amends recovery of benefits Regulations so payments made from the scheme will be exempt from the Department's compensation recovery scheme. This means that redress payments will not be reduced.

3. Background

What is being done and why?

3.1 Prior to 2000 those serving in the Armed Forces who were Lesbian, Gay, Bi-sexual and Transgender (LGBT) (or perceived to be) could be dismissed or otherwise forced to leave the Armed Forces. Following a successful challenge in the European Court of Human Rights[2], in January 2000 UK Government policy was amended enabling personnel to serve in the Armed Forces regardless of their sexuality.

3.2 As a result, the Ministry of Defence and the Office for Veterans' Affairs co-commissioned an independent report to better understand the impacts and implications of the pre 2000 ban on LGBT personnel.

[1] Income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit, Pension Credit and Universal Credit.
[2] http://hudoc.echr.coe.int/eng?i=001-58408 and http://hudoc.echr.coe.int/eng?i=001-58407

3.3 In May 2023 Lord Etherton produced the LGBT Veterans Final Review[3]. Among its recommendations, it advocated that a Recognition scheme for people who were dismissed or felt compelled to resign because of an official policy current in the Armed Forces pre 2000 be introduced.

3.4 The Ministry of Defence have now implemented this recommendation and have introduced the LGBT Financial Recognition Scheme that will provide payments to affected Armed Forces personnel from March 2025.

3.5 There are two types of recognition payments within the LGBT Financial Recognition Scheme. The LGBT Dismissed or Discharge Payment is for applicants who were dismissed or discharged from service because of the Ban. Where successful these applicants can receive a flat rate payment of £50,000. The other recognition payment type is the LGBT Impact Payment, which can also apply to successful applicants of the LGBT Dismissed or Discharged Payment and is for applicants who suffered harm and/or suffering during their service because of the Ban. Applications for the LGBT Impact Payment, with successful applicants receiving payments ranging from £1,000 to £20,000.

3.6 In terms of next of kin, the Scheme Rules for the LGBT Financial Recognition Scheme, state that the Scheme will make eligible application payments to the recipient(s) of the deceased's estate if the applicant has sadly died during the application process.

3.7 As part of their implementation the Ministry of Defence requested that payments made via the LGBT Financial Recognition Scheme be disregarded from the Departments means-tested benefits.

3.8 Although Departmental legislation does include disregards in relation to, for example, personal injury or specified compensations schemes, it is not sufficient to cover the payments being made via the Ministry of Defence's Lesbian, Gay, Bisexual and Transgender (LGBT) Financial Recognition Scheme. This means without amendment, payments made by this scheme would either reduce or remove some recipients' entitlement to means-tested benefits.

3.9 As the Ministry of Defence scheme is analogous with previous schemes that have been legislated for before, the Department is making amendments to ensure that any payments made by the LGBT scheme are disregarded indefinitely when calculating entitlement to certain means-tested benefits.

Compensation recovery

3.10 The amendments to the recovery of benefits regulations will ensure that payments made by the LGBT Financial Recognition Scheme are not subject to recovery of benefit procedures. The Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 provides that, if a person makes a payment (whether on his own behalf or not) to another person in consequence of any accident, injury or disease, and specific social security benefits have been paid in respect of the same accident, injury or disease, the person making the payment is liable to repay the Department an amount equivalent to the benefits paid.

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3 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1170688/LGBT_Veterans_Independent_Review.pdf

3.11 Unless the Regulations are amended, compensation recovery could reduce the amount of the recognition payment that can be paid via the LGBT Financial Recognition Scheme to the applicant, which is not considered appropriate in the context of the LGBT Financial Recognition Scheme.

3.12 This Rule makes amendments to the Income Support (General) Regulations (Northern Ireland) 1987, the Jobseeker's Allowance Regulations (Northern Ireland) 1996, the State Pension Credit Regulations (Northern Ireland) 2003, the Housing Benefit Regulations (Northern Ireland) 2006, the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006, the Employment and Support Allowance Regulations (Northern Ireland) 2008 and the Universal Credit Regulations (Northern Ireland) 2016 to allow for payments made via the Ministry of Defences LGBT Financial Recognition Scheme to be indefinitely disregarded as capital and income when calculating entitlement to certain means-tested benefits.

3.13 Amendments are also made to the Social Security (Recovery of Benefits) Regulations (Northern Ireland) 1997 and the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations (Northern Ireland) 2008 to exempt payments made by the LGBT Financial Recognition Scheme from the Department's compensation recovery process.

3.14 Similar amendments were made via the Social Security (Income and Capital Disregards) (Amendment) Regulations (Northern Ireland) 2023 (S.R. 2023 No. 97) so payments made by analogous schemes such as Grenfell Tower compensation, Post Office compensation and under the Vaccine Damage Payments scheme could be disregarded in the same way.

3.15 The Rule will be issued free of charge to all known recipients of the Social Security (Income and Capital Disregards) (Amendment) Regulations (Northern Ireland) 2021 (S.R. 2021 No. 345) and the Social Security (Income and Capital Disregards) (Amendment) Regulations (Northern Ireland) 2023 (S.R. 2023 No. 97). The Rule inserts into regulation 105(10A)(ac) to (ae) of the Jobseeker's Allowance Regulations (Northern Ireland) 1996 and paragraph 40(6) of Schedule 8 and paragraph 27(6) of Schedule 9 to the Employment and Support Allowance Regulations (Northern Ireland) 2008, words that should have been included in S.R. 2021 No. 345 and S.R. 2023 No. 97 but were overlooked.

4. Consultation

4.1 There is no requirement to consult on these Regulations. They 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.

4.2 The Department for Work and Pensions presented their draft Regulations to the Social Security Advisory Committee on 4 December 2024. 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 the legislative proposals for these Regulations. The Department has concluded that they would not have significant

implications for equality of opportunity and considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

6.1 The proposed Rule does not apply to activities that are undertaken by small businesses. A Regulatory Impact Assessment has not been prepared for this Rule as there is no, or no significant, impact on business, charities, voluntary bodies or on the public sector.

7. Financial Implications

7.1 None for the Department.

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 This Rule does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

10. Parity or Replicatory Measure

10.1 The corresponding Great Britain provisions are the Social Security (Income and Capital Disregards) (Amendment) Regulations 2025 (S.I. 2025/44) which were laid on 20 January 2025 and come into force on 28 February 2025. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions in line with section 87 of the Northern Ireland Act 1998.

11. Additional Information

11.1 Internal guidance for staff at the Department for Communities will be updated to take account of these changes.

12. 21 Day Rule

12.1 Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions in line with section 87 of the Northern Ireland Act 1998. Due to the need to align the Statutory Rule with the final Department for Work and Pensions (DWP) instrument, it was not possible to lay it on the same date as DWP. The Department must ensure that the draft Northern Ireland legislation reflects the legislative provision and aligns the operational date with the equivalent legislation made in Great Britain, and it is not always possible for the legislation for Northern Ireland to be made on the same day as Great Britain. This additional level of scrutiny ensures that the single systems of social security, child support and pensions are maintained. The Department regrets that it has been unable to comply with the 21-day rule.