EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (INCOME AND CAPITAL) (MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2020

SR 2020 No. 108

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Communities (DfC) on behalf of the Department for Work and Pensions, and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Social Security (Income and Capital) (Miscellaneous Amendments) Regulations (Northern Ireland) 2020:

amends a number of social security related Statutory Rules to ensure the following are disregarded from means-tested benefits:

- payments made to people affected by the fire at Grenfell Tower from the Grenfell Tower Residents' Discretionary Fund, the Royal Borough or Kensington and Chelsea and registered charities;
- payments made by the National Emergencies Trust;
- payments received from the Child Migrants Trust; and
- New Style Employment and Support Allowance special payments.

2.2 This instrument also amends social security regulations to insert the definition of "postgraduate loan" to ensure when new loans are introduced for students on designated postgraduate courses in England and Wales they can be treated correctly for benefit purposes for those claimants who then transfer from one designated postgraduate course to another designated postgraduate course in Northern Ireland to study.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T or the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Northern Ireland.

4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Section 87 of the Northern Ireland Act 1998 ("the 1998 Act") places a statutory duty on the Minister for Communities and Secretary of State for Work and Pensions to consult with one another with a view to securing a single social security system for the United Kingdom. Section 88 of the 1998 Act makes provision for financial adjustments to support the maintenance of these parity arrangements.

6.2 Underpinning the parity principle is the argument that, as people in Northern Ireland pay the same rates of income tax and National Insurance contributions as people in Great Britain, they are entitled to the same rights and benefits paid at the same time.

6.3 The Welfare Reform Act 2012[1] provided for the introduction of a new working age income-related social security benefit, UC, and the abolition of income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Housing Benefit, Working Tax Credit and Child Tax Credit.

6.4 On 17 November 2015 "A Fresh Start: The Stormont Agreement and Implementation Plan" was agreed by the main political parties in Northern Ireland. Included in this agreement was the approach agreed by the Executive and HM Government to implementing welfare reform in Northern Ireland. The Northern Ireland (Welfare Reform) Act 2015 provided a time-limited power for Her Majesty to legislate on social security, child support and certain matters related to employment and training in Northern Ireland by Order in Council. Any such Order in Council could then confer power on the Secretary of State or a Northern Ireland department to make further provision regarding these matters by regulations or order. The Welfare Reform (Northern Ireland) Order 2015 was made on 9 December 2015 making provision corresponding to the 2012 Act. The Welfare Reform and Work (Northern Ireland) Order 2016 was made on 12 October 2016 making provision corresponding to the social security provisions of the Welfare Reform and Work Act 2016.

6.5 In line with the consent given by the Northern Ireland Assembly in relation to the 2015 Act, the Department for Work and Pensions will be laying this instrument on behalf of Northern Ireland in order to deliver the change equally across both Great Britain and Northern Ireland.

6.6 This instrument makes amendments to the Income Support (General) Regulations (Northern Ireland) 1987[2], the Jobseeker's Allowance Regulations (Northern Ireland) 1996[3], the State Pension Credit Regulations (Northern Ireland) 2003[4], the Housing Benefit Regulations (Northern Ireland) 2006[5], the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006[6], the Employment and Support Allowance Regulations (Northern Ireland) 2008[7],

[1] http://www.legislation.gov.uk/ukpga/2012/5/contents
[2] S.R. 1987 No. 459
[3] S.R. 1996 No. 198
[4] S.R. 2003 No. 28
[5] S.R. 2006 No. 405
[6] S.R. 2006 No. 406
[7] S.R. 2008 No. 280

the Universal Credit Regulations (Northern Ireland) 2016[8] and the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016[9] to enable certain payments made to benefit recipients to be disregarded when calculating the amount of that person's benefit award. Latest version of above Statutory Rules are available via the internet at: https://www.communities-ni.gov.uk/services/law-relating-social-security.

6.7 Amendments are also made to ensure when postgraduate loans are introduced for students on designated postgraduate courses in England and Wales they can be treated correctly for benefit purposes. In particular, for those claimants who transfer from one designated postgraduate course in England or Wales to another designated postgraduate course in Northern Ireland to study.

7. Policy background

What is being done and why?

Grenfell Tower Payments

7.1 Following the fire at Grenfell Tower on 14 June 2017, payments were made to people from the Grenfell Tower Residents' Discretionary Fund (GTRDF), the Royal Borough of Kensington and Chelsea and registered charities.

7.2 The amendments in these Regulations, therefore provide income and capital disregards of payments to people affected by the fire from the sources mentioned above.

National Emergencies Trust Payments

7.3 The National Emergencies Trust (NET) is a new charity that will launch a public appeal in response to domestic national disasters and emergencies, and will then coordinate the distribution of funds raised to victims and/or their families. It has been set up on the advice of the Charity Commission for England and Wales after lessons learned from the Grenfell Tower fire and the Manchester and London terrorist attacks, which found the need for better co-ordination of fundraising and the overall initial charitable sector response, as well as distribution of funds.

7.4 The amendments in these Regulations, therefore, provide income and capital disregards of payments made by the NET to ensure means tested benefits are not affected.

Former child migrant compensation scheme

7.5 The UK Government has set up a payment scheme for former British child migrants who were separated from their families and sent overseas as part of the UK government's historic participation in child migration programmes. Each former child migrant will receive a one-off payment of £20,000 paid by the Child Migrants Trust, a registered charity.

7.6 Any payment received from the Child Migrants Trust will be a payment of capital and for the purposes of means-tested benefits it will be disregarded indefinitely.

Treatment of student loans for postgraduates

7.7 In 2016 the Department for Education (DfE) introduced a new postgraduate master's degree loan for students normally resident in England. Unlike undergraduate funding, this loan is not divided between general maintenance costs and tuition fees, but is a

[8] S.R. 2016 No. 216
[9] S.R. 2016 No. 226

single sum (initially £10,000 but uprated each year) intended as a contribution towards both. Working with DfE, DWP developed a policy to take 30% of the loan into account for benefit awards (subject to any applicable disregard) and ignore the remaining 70%. This was an estimate of the likely amount that would be spent on maintenance versus tuition. GB social security regulations are being amended to widen the definition of "postgraduate loan" in order to future proof regulations so that when new loans are introduced (they are aware of three new loans that have been introduced across England and Wales), they will be covered by the regulations and only 30% of the loan will be taken into account for the calculation of a benefit award.

7.8 These Regulations make amendments to NI social security regulations to insert the definition of "postgraduate loan" to ensure when new loans are introduced for students on designated postgraduate courses in England and Wales they can be treated correctly for benefit purposes for those claimants who then transfer from one designated postgraduate course in England or Wales to another designated postgraduate course in Northern Ireland to study. The Regulations are amended to reflect the 70/30 split. They future proof regulations so that when new loans are introduced, they will be covered by the regulations and only 30% of the loan will be taken into account for the calculation of a benefit award.

New Style Employment and Support Allowance Special Payments

7.9 In its original form Employment and Support Allowance (ESA) was a single benefit with two separate strands: one based on National Insurance contributions (contributory ESA), the other means-tested (income-related ESA). Universal Credit (UC) is gradually replacing the following benefits: working tax credit, child tax credit, housing benefit, income support, income-based Jobseeker's Allowance (JSA) and income-related ESA.

7.10 UC is not replacing contributory ESA (or contribution-based JSA). Since, however, it is not possible to have entitlement to both UC and the original versions of ESA (or JSA), we necessarily introduced, in 2016, new ESA (and JSA) Regulations[10], to provide a "new style" of the benefit, namely one which is wholly and exclusively based on National Insurance contributions, and thus can be paid alongside UC.

7.11 Arrears of new style ESA or compensation for non-payment of new style ESA will be made to provide redress to people affected by initial errors in the way claims for new style ESA were handled.

7.12 These special payments are intended to put a claimant's award to as near the amount it should have been as possible, if not for the incorrect advice. Where this special payment would affect someone's award of UC or other means-tested benefit, it will be disregarded.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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

[10] https://www.communities-ni.gov.uk/services/law-relating-social-security (JSA -S.R. 2016 No. 219 and ESA – S.R. 2016 No. 218)

9. Consolidation

9.1 This instrument will be informally consolidated in the Law relating to Social Security (Northern Ireland) or ("Blue Volumes"). It will be available to the public at no cost via the internet at: https://www.communities-ni.gov.uk/services/law-relating-social-security.

10. Consultation outcome

10.1 The Department for Work and Pensions presented the GB draft Regulations to the Social Security Advisory Committee (SSAC) on 8 April 2020. The Committee did not take the Regulations on formal reference.

11. Guidance

11.1 Guidance is being updated to support DfC staff and will be published on the Department's website.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is no impact on business.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 There are no plans to formally review the impacts of these amendments.

14.2 The Regulation does not include a statutory review

15. Contact

15.1 Anne McCleary at the Department for Communities. Telephone: 02890 839332 or email: anne.mccleary@communities-ni.gov.uk can answer any queries regarding the instrument.

15.2 Anne McCleary, Director of Social Security Policy, Legislation and Decision Making Services, at the Department for Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Will Quince, Minister for Welfare Delivery at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.