**EXPLANATORY MEMORANDUM TO**

**The Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2026**

**S.R. 2026 No. 177**

## 1. Introduction

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

1.2. The Statutory Rule (the Rule) is made under sections 122(1)(d), 129A(2), 132(3) and (4), 132A(3) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, sections 69(8), 69ZC(1) and 165(1), (4) and (6) of the Social Security Administration (Northern Ireland) Act 1992, paragraph 8 of Schedule 1 to the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997, sections 1(5)(b), 15(3) and (6)(b), 17(2)(a) and 19(1) and (3) of the State Pension Credit Act (Northern Ireland) 2002, sections 4(2), 17(1) and (3) and 25(2) of the Welfare Reform Act (Northern Ireland) 2007, Articles 48(1) and (2), 85(1) and (3), 98 and 99(1) of, and paragraph 4(1) and (3)(a) of Schedule 1, paragraphs 1(1) and 4(1)(b) and (2)(d) of Schedule 6, and paragraph 1(1) of Schedule 10 to the Welfare Reform (Northern Ireland) Order 2015.

1.3. The Rule is subject to the negative resolution procedure.

## 2. Purpose

2.1. This Statutory Rule makes amendments to various social security regulations relating to Pension Credit (PC), Housing Benefit (HB), income-related Employment and Support Allowance (ESA), Universal Credit (UC), Personal Independence Payment (PIP) and the recovery of benefits. The amendments include:

- changes to clarify that a claimant's employed earnings for UC purposes are not reduced by reference to Mileage Allowance Relief available through the tax system;
- changes to the UC transitional protection provisions so that, where a carer element and an LCW or LCWRA element replace one another, the transitional element erodes only by the net increase, if any, between the two elements and to correct a drafting defect relating to the definition of the LCW element;
- changes to PC, UC, HB and income-related ESA to disregard payments under the Republic of Ireland Mother and Baby Institutions Payment Scheme;
- changes to exempt those payments from the social security compensation recovery arrangements;

- changes to the PC temporary absence provisions to correct a minor drafting omission;
- changes to correct an inconsistency in the maximum rate of deductions from PC for the recovery of specified fraud-related overpayments; and
- changes to the PIP transitional provisions to clarify the position where it is subsequently accepted that a Disability Living Allowance to PIP transfer claimant had good reason for a failure to comply with a requirement connected with their PIP claim.

## 3. Background

3.1. This Statutory Rule makes a series of miscellaneous amendments to social security legislation. The amendments are intended to maintain parity with corresponding changes being made in Great Britain, clarify the intended operation of existing provisions, address technical drafting issues and respond to relevant Upper Tribunal decisions. The Rule makes provision across a number of benefits and schemes, including UC, PC, HB, ESA, PIP and the recovery of benefit overpayments.

3.2. A number of the amendments concern payments made under the Mother and Baby Institutions Payment Scheme established by the Irish Government under the Mother and Baby Institutions Payment Scheme Act 2023. That Scheme provides financial redress in acknowledgement of the circumstances experienced by people who spent time in certain Mother and Baby and County Home Institutions in Ireland between 1922 and 1998. The Scheme opened for applications on 20 March 2024 and is expected to remain open until March 2029. Of the approximately 34,000 people estimated to be eligible for the Scheme, around 40% are thought to live outside the Republic of Ireland, with a significant proportion residing in the United Kingdom.

3.3. Income-related benefits are subject to income and capital rules. Without specific provision, a payment under the Mother and Baby Institutions Payment Scheme could reduce or extinguish entitlement to UC, PC, HB or income-related ESA. The amendments therefore provide for payments under the Scheme to be disregarded indefinitely as income and capital for those benefits. The disregard applies to payments whenever made, including payments made before the Rule comes into operation. This reflects the approach taken for a number of other compensation and redress schemes and is intended to ensure that eligible survivors can receive the redress payment due to them without their benefit entitlement being adversely affected. Payments under the Scheme are also disregarded for the purposes of the Republic of Ireland's social welfare system. The amendments therefore ensure that recipients in Northern Ireland are similarly protected from adverse effects on entitlement to income-related benefits.

3.4. The Rule also exempts payments made under the Mother and Baby Institutions Payment Scheme from the compensation recovery arrangements under the Social Security (Recovery of Benefits)

Regulations (Northern Ireland) 1997 and the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations (Northern Ireland) 2008. This reflects the nature of the Scheme as a redress scheme established by the Irish Government, rather than a conventional third-party compensation scheme within the compensation recovery framework.

3.5. The practical effect is that payments under the Scheme will not trigger recovery of relevant social security benefits under those arrangements. This ensures that recipients retain the full value of any payment awarded and reflects the policy intention that the financial redress provided under the Scheme should benefit recipients in full.

3.6. The amendment to the Social Security (Overpayments and Recovery) Regulations (Northern Ireland) 2016 concerns deductions from PC for the recovery of certain fraud-related overpayments. The existing provision specifies a maximum deduction rate of 25 per cent for recovery from PC in respect of certain fraud-related overpayments. The amendment increases that rate to 40 per cent where the overpayment resulted from an admission of fraud, a fraud conviction or the acceptance of an administrative penalty as an alternative to prosecution. This corrects an inconsistency arising from a drafting oversight and aligns the provision with the established policy intention for recovery of fraud-related overpayments.

3.7. The amendment to the Universal Credit Regulations (Northern Ireland) 2016 clarifies the treatment of Mileage Allowance Relief for employed claimants. Mileage Allowance Relief is administered by His Majesty's Revenue and Customs through the tax system where an employee is not fully reimbursed by their employer for work-related mileage. UC is assessed by reference to net employed earnings. The amendment makes clear that employed earnings for UC purposes are not to be reduced by reference to Mileage Allowance Relief available through the tax system. This reflects the existing policy intention that any such relief should be dealt with through HMRC rather than by recalculating UC awards.

3.8. The amendment to the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016 concerns the interaction between the carer element, the Limited Capability for Work element ("LCW") and the Limited Capability for Work and Work-Related Activity element ("LCWRA") where a claimant has a transitional element in their UC award. Transitional protection is intended to avoid a cliff-edge reduction in entitlement when claimants move to UC, but it is not intended to be permanent and normally erodes when underlying UC entitlement increases.

3.9. The interaction between the erosion rules and the rule preventing simultaneous payment of the carer element and a health-related element in respect of the same person can produce an unintended outcome where one element replaces another in the same assessment period. In those circumstances, a claimant's transitional element could otherwise be reduced by the full amount of the new element, even though the claimant has also lost payment of the previous element. Following an Upper

Tribunal decision (SSWP v MJ[1] [2025] UKUT 35 (AAC)) which found that the operation of the transitional erosion rules could produce a discriminatory outcome in certain circumstances, the amendment provides that, where the carer element is replaced by a LCW or LCWRA element, or vice versa, the relevant increase is the net increase between the two elements. This ensures that erosion of the transitional element reflects the actual increase in entitlement rather than the full value of the replacement element. The amendment therefore ensures that claimants are not disadvantaged through the transitional element being eroded by more than the actual net increase in their underlying UC entitlement where one qualifying element replaces another in the same assessment period.

3.10. The Rule also corrects a drafting defect in regulation 56 of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016. The existing definition of "LCW element" relies on a cross-reference to a provision of the Universal Credit Regulations (Northern Ireland) 2016 which no longer contains that definition. The amendment inserts a self-contained definition to preserve the intended meaning of the provision and ensure legal certainty.

3.11. The Rule also corrects an omission in the temporary absence abroad provisions in the State Pension Credit Regulations (Northern Ireland) 2003. Regulations made in 2025 extended the normal permitted period of temporary absence abroad to a maximum of 26 weeks in certain crisis situations, namely where His Majesty's Government advises British nationals to leave a country or arranges evacuation from that country. The policy intention was that the extension should apply only where the person was already within a permitted period of absence when the advice was issued or the evacuation was arranged. The amendment ensures that this condition applies consistently to members of a claimant's household as well as to the claimant. Without this amendment, a member of a claimant's household could potentially benefit from the extended absence provisions in circumstances where the equivalent conditions would not have been met by the claimant themselves.

3.12. The amendment to the Personal Independence Payment (Transitional Provisions) Regulations (Northern Ireland) 2016 concerns claimants transferring from Disability Living Allowance to PIP. Where a transfer claimant fails to comply with a requirement connected with their PIP claim, for example by failing to provide information or attend or participate in a consultation, a determination may be made which brings their Disability Living Allowance entitlement to an end. The amendment clarifies what happens where it is later accepted, either by the Department or as part of a revision, appeal or other proceedings, that the claimant had good reason for that failure. In those circumstances, the determination ending Disability Living Allowance is treated as not having been made, and the claimant's Disability Living Allowance entitlement is reinstated as if the determination had never been made. The claimant then remains within the ordinary DLA-to-PIP transfer process. DLA ends in accordance

[1] https://www.gov.uk/administrative-appeals-tribunal-decisions/secretary-of-state-for-work-and-pensions-v-mj-2025-ukut-035-aac

with the ordinary transfer provisions and, where PIP is awarded, PIP entitlement begins from the following day. This produces the same DLA run-on and PIP commencement outcome regardless of how or when PIP entitlement is determined. The amendment also resolves uncertainty arising from differing Upper Tribunal decisions concerning the effect of a later finding that the claimant had good reason for the relevant failure. It ensures that all successful good reason cases are treated consistently under the same legislative framework.

3.13. The overall effect of the Rule is therefore to preserve entitlement to income-related benefits where payments under the Mother and Baby Institutions Payment Scheme are received; ensure that the compensation recovery arrangements do not apply to those payments; clarify that employed earnings for UC purposes are not reduced by reference to Mileage Allowance Relief; ensure that a UC transitional element erodes only by the net increase, if any, where carer and health-related elements replace one another and correct a drafting defect relating to the definition of the LCW element in the transitional provisions; correct a technical omission in the State Pension Credit temporary absence provisions; align the maximum deduction rate for specified fraud-related overpayments with the intended rate; and provide for the reinstatement of Disability Living Allowance, together with consistent run-on and PIP commencement treatment, where good reason for a relevant failure is subsequently accepted.

## 4. Consultation

4.1. The Department has not undertaken a public consultation on this Rule as there is no statutory requirement to do so.

## 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 this Rule and concluded that it does not have significant implications for equality of opportunity or good relations. Accordingly, an equality impact assessment was considered unnecessary.

## 6. Regulatory Impact

6.1. The Rule does not require a Regulatory Impact Assessment as it does not impose any costs on business, charities, social enterprises or voluntary bodies.

## 7. Financial Implications

7.1. The measures contained in the Rule are expected to have a negligible impact on the Department's Annually Managed Expenditure (AME). Northern Ireland costs are currently estimated to be less than £1 million

per annum. The main AME impacts are expected to arise from the disregard of payments made under the Republic of Ireland Mother and Baby Institutions Payment Scheme and from the UC transitional protection amendment. The amendment to the PIP transitional provisions is not expected to result in a material AME impact.

## 8. Section 24 of the Northern Ireland Act 1998

8.1. The Department is satisfied that this Rule complies with section 24 of the Northern Ireland Act 1998 (Convention rights, etc.).

## 9. EU Implications

9.1. Not applicable.

## 10. Parity or Replicatory Measure

10.1. The corresponding Great Britain Instrument is the Social Security (Miscellaneous Amendments) Regulations 2026 which comes into force on 30 October 2026.

10.2. In line with the long-standing policy of parity in social security, the Rule will come into operation on the same date as the corresponding Great Britain Instrument. 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.

## 11. Additional Information

11.1. Guidance will be issued to relevant Department for Communities staff prior to this Statutory Rule becoming operational.