STATUTORY RULES OF NORTHERN IRELAND

2016 No. 270

WELFARE REFORM

The Discretionary Support Regulations (Northern Ireland) 2016

Made - - - - 6th July 2016

Coming into operation in accordance with regulation 1

The Department for Communities [F1] in exercise of the powers conferred by Articles 135 & 136(5) of the Welfare Reform (Northern Ireland) Order 2015 [F2]makes the following Regulations.

In accordance with Article 135(5) of that Order, a draft of these Regulations was laid before, and approved by a resolution of, the Assembly.

F1 See section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.)) and S.R. 2016 No. 76
F2 S.I. 2015 No. 2006 (N.I. 1)

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Discretionary Support Regulations (Northern Ireland) 2016 and shall come into operation on the commencement of Article 76 of the Welfare Reform (Northern Ireland) Order 2015.

Discretionary Support Awards

2. Discretionary support may be awarded in accordance with the provisions of these Regulations.

Interpretation

3. In these Regulations–

"annual income threshold" means the amount calculated in accordance with regulation 15(2);

"appropriate office" means an office of the Department or any other place designated by the Department in relation to any case or class of cases as a place to, or which, any claim, notice, document, evidence or other information may be sent, delivered or received for the purposes of these Regulations and includes a postal address specified by the Department for that purpose;

"child" means a person under the age of 16;

"claim" means a claim for a discretionary support award;

"claimant" means a person and any member of a couple who makes a claim, or on behalf of whom a claim is made, for a discretionary support award;

"close relative" means a member of a couple, parent, step-parent, grandparent, parent-in-law, son, step-son, son-in-law, daughter, step-daughter, daughter-in-law, brother, sister, or if any of the preceding persons is one member of a couple, the other member of that couple;

"couple" means—

(a) subject to paragraph (e) **[**F3, two people who are married to, or civil partners of,**]** each other and are members of the same household;

(b) **[**F4two people who are not married to, or civil partners of, each other but are living together as if spouses of each other;**]**

(c) F5...

(d) F5...or

(e) in a case where a person is a member of a polygamous marriage, that person and the member of the polygamous marriage to whom that person was first married,

F6...

"disaster" means a sudden and calamitous event causing loss of possessions or property;

"discretionary support award" means either an award of a grant or a loan;

"discretionary support inspector" means a person appointed by the Department in accordance with Article 136 of the Welfare Reform (Northern Ireland) Order 2015;

"discretionary support officer" means an officer of the Department, acting under its authority and executing functions of the Department in relation to the provisions of discretionary support;

"discretionary trust" means a Trust where the Trust assets or the income from them, are allocated entirely at the Trustees' discretion to any one or more of several beneficiaries or class of beneficiaries. The primary intended beneficiary must have no absolute right to either the capital or the income;

"grant" means a non-repayable discretionary support payment;

"income" includes the income of the other member of a couple and means the remuneration or profits derived from—

(a) employment under a contract of service or in an office, including elective office;

(b) a trade, profession or vocation;

(c) any other paid work; or

(d) any payments made in accordance with benefit legislation;

"immediate family" means members of a household for whom the claimant has financial responsibility;

"loan" means an interest free repayable discretionary support payment;

"parent" includes a guardian, any person acting in the place of a parent, any other person having parental responsibility for a child and any person having care of a child;

"the Order" means the Welfare Reform (Northern Ireland) Order 2015;

"young person" means a person over the age of 16, but under the age of 18, except where the young person is over the age of 18 and their parents are in receipt of child benefit.

F3 Words in reg. 3 substituted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **117(a)** (with regs. 6-9)

F4 Words in reg. 3 substituted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **117(b)** (with regs. 6-9)

F5 Words in reg. 3 omitted (13.1.2020) by virtue of The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **117(c)** (with regs. 6-9)

F6 Words in reg. 3 omitted (13.1.2020) by virtue of The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **117(d)** (with regs. 6-9)

PART 2

Claims

Making a claim for a discretionary support award

4.—(1) Claims for a discretionary support award may be made in such manner as the Department may accept as sufficient in any particular case.

(2) Claims may be made in writing on the prescribed form and shall be completed in accordance with the instructions on the form.

(3) Every claim shall be communicated, delivered or sent to an appropriate office.

(4) The Department may require a person who wishes to make a claim for discretionary support to attend for interview at an office of the Department and to make the claim to a discretionary support officer.

(5) The Department shall give the claimant reasonable notice of the date, time and place at which such an interview is to take place.

Date of claim

5. In the case of a claim—

(a) made by telephone, the date of the claim is the date of the telephone call to the Department;

(b) made in writing, the date of the claim is the date the claim is received in an appropriate office;

(c) made in person, the date of the claim is the date of the meeting with the discretionary support officer.

Evidence and information in connection with a claim

6. The Department shall require the claimant to supply such further information or evidence in connection with the claim, or any questions arising out of it, as it considers appropriate.

Person unable to act

7. If a claim for discretionary support is made by or on behalf of a person ("P"), who is unable for the time being to act, the claim shall be made by—

(a) a person who has been appointed to act on P's behalf by the Department under regulation 33(1) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 [F7]; or

(b) a person who has been appointed, with a general power or a power to claim or receive benefit, by P under the Powers of Attorney Act (Northern Ireland) 1971 [F8], the Enduring Powers of Attorney (Northern Ireland) Order 1987 [F9] or otherwise.

F7 S.R. 1987 No. 465
F8 1971 c. 33 (NI)
F9 S.I. 1987/1627 (N.I.16)

Decision to award a loan or a grant

8.—(1) Where a claimant applies for a discretionary support award under regulation 4 a discretionary support officer may determine the claim as a claim for a loan or a grant.

(2) In making a decision in relation to a discretionary support award a discretionary support officer shall take into account any guidance issued by the Department.

Withdrawal of a claim

9. A person who has made a claim may withdraw it at any time before a determination has been made on it, in such manner as the Department may accept as sufficient in any particular case, and any such notice of withdrawal shall have effect when it is received.

PART 3

Eligibility

Basic eligibility conditions

10.—(1) A discretionary support award may be made where—

(a) an extreme, exceptional or crisis situation presents a significant risk to the health, safety or well-being of the claimant or a member of the claimant's immediate family;

(b) the need for discretionary support occurs in Northern Ireland;

(c) the claimant's income does not exceed the annual income threshold;

(d) the claimant is–

(i) at least 18 years old, except where child benefit is payable in respect of the claimant; or

(ii) a minimum of 16 years old in the case of a young person who is without parental support; and

(e) the need must be satisfied in Northern Ireland.

(2) For the purposes of this regulation a person is not entitled to a discretionary support award unless the person—

(a) is ordinarily resident in Northern Ireland; and

(b) is present in Northern Ireland.

(3) Except in the case of a disaster, discretionary support shall not be awarded in respect of —

(a) living expenses for which a discretionary support award has already been made;

(b) a claim for the same or other items made within any rolling 12 month period from the date an award is made by the same claimant; or

(c) any loan in relation to regulation 11(1)(c) or (d) which exceeds the 3 loan maximum as set out in sub-paragraph (d).

(d) Subject to regulation 12 a claimant is not eligible to be awarded more than three loans or one grant in a rolling 12 month period.

(4) In this regulation "a young person is without parental support" means, where that person is not being looked after by an authority and—

(a) has no parents;

(b) has parents, but cannot live with those parents because–

(i) the person is estranged from them; or

(ii) there is a serious risk to the person's physical or mental health, or that person would suffer significant harm if the person lived with them; or

(c) is living away from those parents, and neither parent is able to support the person financially because that parent–

(i) has a physical or mental impairment; or

(ii) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court.

Loan eligibility

11.—(1) Discretionary support may be awarded in the form of a loan as follows—

(a) by the provision of immediate assistance with short term living expenses;

(b) by the provision of household items, or assistance with the repair or replacement of household items that have been stolen, broken or destroyed;

(c) by the provision of travelling expenses, to the claimant or one or more members of their immediate family, or an escort, including any reasonable charges for overnight accommodation in order to–

(i) visit a close relative who is ill;

(ii) attend a close relative's funeral;

(iii) ease a domestic crisis;

(iv) visit a child who is with the other parent pending a family court decision;

(v) move to suitable accommodation; or

(d) by providing rent in advance to a landlord other than the Northern Ireland Housing Executive.

(2) A loan shall not be awarded for any of the items and services specified in Schedule 1.

(3) Where paragraph (1)(a) applies short term living expenses shall be limited to those expenses deemed, by a discretionary support officer, as necessary to support a basic standard of living.

(4) Any award to which paragraphs (1)(c), (3), or (5) applies shall not in any case exceed the difference between any sum already repayable by the claimant and the claimant's partner and an assessment of their ability to repay and a level of debt for the time being acceptable to the Department.