

1. Title of measure

Social Security Legislation (Benefits) (Application) (No. 3) Order 2016

2. Changes in policy

There is no significant change in policy.

3. Effects of the measure

3.1 This Order applies 2 statutory instruments of the UK Parliament to the Island, *viz* :

- The Statutory Paternity Pay, Statutory Adoption Pay and Statutory Shared Parental Pay (Amendment) Regulations 2015; and
- The Social Security (Disability Living Allowance and Personal Independence Payment) (Amendment) Regulations 2016.

3.2 The Statutory Paternity Pay, Statutory Adoption Pay and Statutory Shared Parental Pay (Amendment) Regulations 2015

3.2.1 These regulations modify the 26-week continuous employment test for paternity allowance for persons who start work in first of those 26 weeks.

3.2.2 To qualify for paternity allowance a person must, among other things, have been in employed earner's employment for a continuous period of at least 26 weeks ending with the week before –

- in the case of paternity allowance (birth), the 14th week before the child is expected to be born, or
- in the case of paternity allowance (adoption), the week the person/family are told they have been matched with a child they are going to adopt.

Here "week" means a period of 7 days beginning with a Sunday, unless Regulations prescribe another period in relation to any case or class of cases.

3.2.3 Currently, if a person starts working for their employer part-way through the first of those 26 weeks (i.e., after the Sunday), that week would not count for paternity allowance purposes.

3.2.3 However, these regulations now provide that where a person starts work for their employer part-way through the first of those 26 weeks, that week will nevertheless count as a week for the purpose of the 26-week continuous employment test.

3.3 The Social Security (Disability Living Allowance and Personal Independence Payment) (Amendment) Regulations 2016

- 3.3.1 These regulations dis-apply provisions whereby payment of Disability Living Allowance (DLA) is withdrawn after a certain period as an NHS in-patient, but only in respect of persons who are under age 18 at the date of their admission to hospital.
- 3.3.2 Currently DLA (both care and mobility components) is not payable in respect of a child (i.e., a person under the age of 16) after they have been in hospital for 84 days. The changes made by these regulations mean that a person who is under the age of 18 when they are admitted to hospital will continue to be paid their DLA throughout the period they remain in hospital. This will apply whether they are getting DLA when they go into hospital or if they first become entitled to DLA while in hospital.
- 3.3.3 Persons aged 18 or over at the date of admission to hospital can only be paid DLA for the first 28 days in hospital, as now. Payment of their DLA would resume when they are discharged from hospital.

4. Reasons for the measures

- 4.1 The first statutory instrument applied to the Island by this Order will allow a very small number of employees who start work part-way through the first week of the relevant 26-week period to qualify for paternity allowance, when they would otherwise not do so.
- 4.2 The second statutory instrument applied by this Order was made following a Supreme Court judgment in the case of *Cameron Mathieson v Secretary of State for Work and Pensions*. That judgement acknowledged the ongoing costs of parents of children in hospital for longer periods (e.g, costs of transport to/from hospital, reduced earnings etc.) and determined that for these reasons it was inappropriate to withdraw payment of DLA whilst the child remains in hospital.

5. Legal Powers or Legal Advice obtained

This Order is made by the Treasury in exercising its legal powers under section 1 of the Social Security Act 2000. Legal advice from the Attorney General's Chambers was sought in drafting the Order.

6. Resource Implications

Only a very small number of persons will be affected by the changes made by this Order. Any (nominal) increase in expenditure will be absorbed within existing budgets. No additional personnel resources will be required.

7. Tynwald Procedure

This Order requires the approval of Tynwald (see section 2(1) of the Social Security Act 2000).