

EXPLANATORY MEMORANDUM TO
The Jobseeker's Allowance (Extended Period of Sickness) (Amendment)
Regulations (Northern Ireland) 2015

S.R. 2015 No. 138

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under powers conferred by the Social Security Contributions and Benefits (Northern Ireland) Act 1992, the Jobseekers (Northern Ireland) Order 1995, the Social Security (Northern Ireland) Order 1998 and the Welfare Reform Act (Northern Ireland) 2007, and is subject to the confirmatory resolution procedure.
- 1.3 The rule is due to come into operation on 30th March 2015.

2. Purpose

- 2.1 The purpose of the regulations is to make amendments to the Jobseeker's Allowance Regulations (Northern Ireland) 1996 (the JSA Regulations) to allow an extended period of sickness to enable claimants to remain on Jobseeker's Allowance (JSA) when they have a short spell of sickness that is expected to last more than 2 weeks but less than 13 weeks, or they have exhausted the number of occasions on which they may be treated as capable of work. It also makes provision to enable the Employment and Support Allowance (ESA) assessment phase to be reduced by the time a claimant spends on an extended period of sickness. Claimants will need to provide medical evidence to qualify for the new period of sickness.

3. Background

- 3.1 JSA is a benefit for claimants who are available for and actively seeking work and who do not have limited capability for work. Existing sickness provisions under regulation 55 of the JSA Regulations allow a claimant who is suffering from a specific disease or disablement to be treated as capable of work for 2 periods of 2 weeks of sickness (illness or disablement) in any 1 jobseeking period, or if the jobseeking period lasts longer than 12 months, 2 periods of 2 weeks in each successive 12 month period.
- 3.2 In practice, if a claimant provides evidence of sickness which is expected to last for more than 2 weeks they would be directed to claim ESA. In addition, if a claimant has a third period of sickness (however short) during that 12 month period, their JSA award is terminated and they must

claim ESA, if they have no other source of income. ESA is a benefit for claimants who have limited capability for work.

- 3.3 Being required to claim ESA for short periods could have a number of disadvantages. Firstly claimants on ESA before the medical assessment (Work Capability Assessment) do not currently have any conditionality requirements and do not generally benefit from the support of Jobs and Benefit/Social Security Offices as they look for work. Secondly being required to switch benefits for a short period is unnecessarily disruptive to the payment of benefit and can impact the payment of passported benefits.

What is being done and why?

- 3.4 This rule will allow for a new extended period of sickness (EPS) for up to a total period of 13 weeks in one spell in the 12 months calculated from the start of the health condition. Claimants can use the current provisions for the first two weeks of sickness to maintain entitlement to JSA. But if their sickness lasts continuously for longer than 2 weeks but no more than 13 weeks in total, they could under the new provisions maintain entitlement to JSA thereby keeping them in touch with the labour market. Medical evidence must be provided if their sickness extends beyond two weeks. This would also have the effect of reducing the administrative burden resulting from requiring claimants to switch to another benefit (from JSA to ESA) for a short time.
- 3.5 The changes to the JSA Regulations will also allow claimants who fall within the provisions to be treated as available for work. Those claimants will also be treated as actively seeking employment if there are no steps in that week that it would be reasonable to expect them to take to seek work.
- 3.6 These amendments will give Jobs and Benefits/Social Security Office advisers the discretion to apply jobseeking conditions (other than availability) depending on the nature of the health condition and what the adviser considers reasonable for the claimant. Advisers will review and revise the Jobseeker's Agreement at the start of the period of sickness to take account the easements on conditionality that will apply to the claimants during the extended period of sickness.
- 3.7 This rule also amends the 2008 ESA Regulations. ESA claimants found to have limited capability for work or work-related activity following a medical assessment called the work capability assessment (WCA) are paid an additional ESA main phase component after a 13 week 'assessment phase'. The changes ensure that those claimants who stay on JSA during an EPS but who subsequently move to ESA because their health condition did not improve sufficiently for them to meet the full conditionality requirements for JSA before their JSA claim ends, do not have to wait a further 13 weeks for the payment of the additional main phase ESA components should they be found to have limited capability for work or work-related capability following the WCA.

- 3.8 This rule will also amend the legislation governing revisions and supersessions of ESA decisions (the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999). Firstly, so that claimants moving from an EPS on JSA immediately on to ESA are not financially disadvantaged, provision is made to enable the decision to award the additional ESA component from week 14 of the ESA award to be revised at any time so that the payment of that component can be made from day 1 of the ESA award. Secondly, to enable the supersession decision relating to the award of the additional component to take effect from an earlier date where the assessment phase is less than 13 weeks.
- 3.9 This positive measure presents an opportunity for a more proactive and flexible JSA regime. It will give people the opportunity to manage health conditions which affect their work capability, whilst allowing them the choice of remaining on JSA.

4. Consultation

- 4.1 The Department for Work and Pensions (DWP) discussed the proposed changes at a meeting with representatives of disabled claimants from SCOPE, MIND, RNIB, Disability Rights UK and Leonard Cheshire Disability on 7 October 2014. The groups were broadly supportive of the change but also had reservations about the potential financial impact for those remaining on JSA, instead of claiming ESA. These amending provisions now include the amendments to the ESA and Decision and Appeals Regulations which remove this risk.
- 4.2 The Social Security Advisory Committee (SSAC) discussed the corresponding Great Britain Regulations at their meeting on 5th November 2014 and also raised concerns about the potential financial disadvantage for claimants moving to ESA. As a result of this recommendation DWP re-submitted the revised proposed changes to SSAC and on 3rd February 2015 SSAC advised that they did not require these regulations to be formally referred.

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 these legislative proposals and has concluded that the proposals do not have any significant implications for equality of opportunity. In light of this, the Department considers that an equality impact assessment is not necessary.
- 5.2 Every social security policy by its very nature has a differential impact in that the policy is designed to meet a specific need, in this case to allow JSA claimants with medical evidence who have a short period of sickness expected to last more than 2 weeks but less than 13 weeks, the option of remaining on JSA without having to meet the full range of conditionality requirements and will apply to all JSA claimants regardless of religious belief, political opinion, race, sexual orientation, gender or disability.

There will be no compulsion to remain on JSA and those affected may instead decide to claim ESA (where appropriate) should they wish. If they decide to stay on JSA this will reduce disruption to their benefit claim and any passported benefits because they will no longer be required to make a new claim to ESA, unless they choose to do so.

6. Regulatory Impact

- 6.1 These Regulations do not require a Regulatory Impact Assessment as they do not impose any additional costs or savings on business, charities or voluntary bodies.

7. Financial Implications

- 7.1 No financial implications

8. Section 24 of the Northern Ireland Act 1998

- 8.1 The Department has also considered its obligations under section 24 of the Northern Ireland Act 1998. It is the Department's judgement that the Jobseeker's Allowance (Extended Periods of Sickness) (Amendment) Regulations (Northern Ireland) 2015 are not incompatible with the Convention rights, are not incompatible with Community law, do not discriminate against any person or class of person on the ground of religious belief or political opinion and do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. E.U. Implications

- 9.1 Not applicable.

10. Parity or Replicatory Measure

- 10.1 The Regulations mirror the Great Britain Regulations which are to come into force on 30th March 2015.

11. Additional Information

- 11.1 Not applicable