

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT AND SUPPORT ALLOWANCE (DURATION OF
CONTRIBUTORY ALLOWANCE) (CONSEQUENTIAL AMENDMENTS)
REGULATIONS (NORTHERN IRELAND) 2016

2016 No. 175

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Social Development (Northern Ireland) 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 purpose of these Regulations is to modify the time-limiting provision for claimants in the work-related activity group who become entitled to contributory Employment Support Allowance (ESA) through the Incapacity Benefit reassessment exercise. This protects claimants who would otherwise be disadvantaged by the introduction of time-limited ESA. The regulations also make amendments to various other social security regulations to protect the position of those who would otherwise be unintentionally disadvantaged by the change. They also abolish the 104 week linking rule to coincide with the introduction of the time limiting of contributory ESA, so as to enable claimants to re-qualify if they pay sufficient National Insurance.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 [Section 87 of the Northern Ireland Act 1998](#) places a statutory duty on the Minister for Social Development and the 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.
- 4.2 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 rates.
- 4.3 The [Welfare Reform Act 2012](#) introduced a number of reforms including Universal Credit, Personal Independence Payment, the Jobseeker's Allowance Claimant Commitment and a cap on the amount of benefits working age people can receive. It

also reassessed incapacity benefits claimants for Employment and Support Allowance, improved the Work Capability Assessment and made sure housing support is fair.

- 4.4 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 provides a power for welfare reform to be legislated for by Order in Council and confers a power on the Secretary of State or a Northern Ireland department to make further provision by regulations or order. The Welfare Reform (Northern Ireland) Order 2015 was made on 9 December 2015 and regulations stemming from the Order to implement the various changes are now being brought forward.
- 4.5 These regulations will make amendments to:
- the Social Security (Credits) Regulations (Northern Ireland) [1975](#);
 - the Income Support (General) Regulations (Northern Ireland) [1987](#);
 - the Jobseeker’s Allowance Regulations (Northern Ireland) [1996](#);
 - the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) [1999](#);
 - the State Pension Credit Regulations (Northern Ireland) [2003](#);
 - the Housing Benefit Regulations (Northern Ireland) [2006](#);
 - the Employment and Support Allowance Regulations (Northern Ireland) [2008](#); and
 - the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) [2010](#);
- 4.6 Whilst there is a difference in timing for the implementation of these changes for Northern Ireland, the proposals for the Regulations mirror those made in Great Britain and are in keeping with the principal of parity between Northern Ireland and Great Britain in social security matters.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is solely to Northern Ireland.
- 5.2 The territorial application of this instrument is Northern Ireland.
- 5.3 The corresponding Great Britain Regulations are the Employment and Support Allowance (Duration of Contributory Allowance) (Consequential Amendments) Regulations 2012 ([S.I. 2012/913](#)) and came into force on 1st May 2012 to coincide with the introduction of time limiting contributory Employment and Support Allowance in Great Britain.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 These Regulations amend various provisions of social security legislation by virtue of, or in consequence of, sections 1A (duration of contributory allowance) and 1B (further entitlement after time limiting) of the Welfare Reform Act (Northern Ireland) [2007](#). Those sections introduce a time limit on entitlement to contributory Employment and Support Allowance for claimants who are not in the Support Group, and provides that further entitlement may nevertheless arise on the basis of fresh National Insurance contributions. Section 1B provides that further entitlement may also arise in the event that the claimant's health deteriorates such that they now have (or are treated as having) limited capability for work-related activity.
- 7.2 The regulations make amendments to various other social security regulations where other allowances and entitlements rely on entitlement to contributory Employment and Support Allowance, such as housing benefit, to protect the position of those who would otherwise be unintentionally disadvantaged by the change, for example where, exceptionally, at the point of undergoing the reassessment exercise the claimant is concurrently entitled to both Incapacity Benefit/Severe Disablement Allowance or Income Support on grounds of incapacity, and Employment and Support Allowance (dual entitlement), and qualifies for conversion into an award, the reassessment process is modified: by virtue of their pre-existing award of Employment and Support Allowance, the claimant is exempted from the requirement to undergo a further work capability assessment in connection with the reassessment, and, effectively, their awards are simply merged into a single award of Employment and Support Allowance from the effective date of the conversion decision.
- 7.3 Where a claimant's entitlement to Employment and Support Allowance has terminated on account of the time limit, further entitlement may arise because the claimant's health has subsequently deteriorated. As a result, it may be such that they would now be placed in the support group. An amendment is therefore required to provide that the claimant should not have to serve either the "assessment phase" (being the first 13 weeks of an Employment and Support Allowance award which is normally paid at a lower rate) or any "waiting days" (being the first three days of an Employment and Support Allowance award in respect of which no entitlement normally arises).

National Insurance credits – new condition of entitlement

- 7.4 Where a claimant has limited capability for work but does not qualify for an award of Employment and Support Allowance as such, they can nevertheless qualify for a National Insurance credit. This amendment allows entitlement to a credit to arise for a claimant who would still be entitled to Employment and Support Allowance had it not been for the operation of the time limit.

Decisions and appeals – new ground for revision

- 7.5 The regulations provide a new power in Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) [1999](#) to allow for the revision of a decision to terminate an award of Employment and Support Allowance because of the time limit. For example, in circumstances where, following a subsequent

determination, the claimant is placed in the support group for some or all of the period for which the terminated award was paid.

Addition to references to “converted employment and support allowance”

- 7.6 For the purposes of Housing Benefit, a “converted employment and support allowance” is an award of Employment and Support Allowance by virtue of the reassessment exercise. Additions are made to the existing references to include cases where a person would have remained entitled to a converted award if it had not been for the operation of the new time limit.

Consolidation

- 7.7 This instrument will be informally consolidated in the NI equivalent of the GB Law Relating to Social Security (or “Blue Volumes”), as the legislation applies only to Northern Ireland. It will be available to the public at no cost via the internet at: <https://www.dsdni.gov.uk/services/law-relating-social-security>

8. Consultation outcome

- 8.1 As this is a consequence of wider welfare reform the Department for Social Development has not consulted on it specifically. As part of its obligations, the Department consulted extensively about the implications of those wider reforms as part of the draft [Welfare Reform Bill consultation process](#).

9. Guidance

- 9.1 Guidance is being developed for staff and Decision Makers and the relevant guidance will be available before this rule comes into force.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector will be reflected in the operational costs of enacting this change and any fiscal savings from increased movement into work. This measure is part of the welfare reform package that will restore parity with the rest of the UK and contribute toward sustainable finances for the executive.
- 10.3 An Impact Assessment, prepared by the Department for Work and Pensions, is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website. Fewer than 5% of the overall ESA caseload receives contributory ESA WRAG alone. This is currently around 5,500 individuals. Those who have not moved into work after one year can be assessed for income related benefits. Where the household income or capital is greater than the maximum eligible for those benefits a reduction in benefit income will result.

11. Regulating small business

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

12. Monitoring & review

- 12.1 The operation of the Regulations will continue to be reviewed through the normal avenues of guidance, enquiries received from the Department’s offices and correspondence from members of the public.

13. Contact

- 13.1 Anne McCleary at the Department for Social Development Telephone: 02890 819984 or email: anne.mccleary@dsdni.gsi.gov.uk can answer any queries regarding the instrument.