

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT AND SUPPORT ALLOWANCE (AMENDMENT OF
LINKING RULES) REGULATIONS (NORTHERN IRELAND) 2016

2016 No. 176

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 These Regulations will abolish the provisions within the Employment and Support Allowance Regulations (Northern Ireland) [2008](#) which allow a period of limited capability for work in a claim for Employment and Support Allowance to link an earlier period of limited capability for work where the two periods are separated by no more than 104 weeks. As part of the welfare reforms, the 104-week linking rule is being abolished to complement another change which introduces a time limit of 365 days on entitlement to contributory Employment and Support Allowance for claimants who are not in the support group.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instrument.

- 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 Her Majesty to legislate on social security, child support and certain matters related to employment and training in Northern Ireland for welfare reform to be legislated for by Order in Council. Any such Order in Council may then confers a power on the Secretary of State or a Northern Ireland department to make further provision regarding these matters 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 welfare reforms set out in the Welfare Reform Act 2012 in Northern Ireland changes are now being brought forward.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is 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 (Amendment of Linking Rules) Regulations 2012 (S.I.2012/919) 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

Background

- 7.1 The regulations in this instrument amend the Employment and Support Allowance Regulations, removing a rule that has proved difficult to understand and apply, thus introducing a procedural simplification. As part of the welfare reforms, the 104-week linking rule is being abolished to complement another change which introduces a time limit of 365 days on entitlement to contributory Employment and Support Allowance for claimants who are not in the support group. The operation of time-limiting would, however, be frustrated by the existence of the 104-week linking rule as this would treat the gap between two periods of limited capability for work as being one continuous period, which would in turn reduce (in some cases to zero) the number of days’ entitlement to contributory Employment and Support Allowance to which the claimant might become entitled following a reclaim within the linking period. The 104-week rule is being abolished to complement Article 57 (period of entitlement to contributory allowance) of the Welfare Reform (Northern Ireland) Order [2015](#). It should be noted that the 12 week linking rule will remain.
- 7.2 These regulations will make amendments as a consequence of that abolition to:

- the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) [1999](#);
- 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](#).

Abolition of the 104-week linking rule

- 7.3 Currently, if a new claim is made within 104 weeks, the National Insurance contribution record that applied when the first claim was made can be re-used for the new claim. This allows people to re-qualify for benefit when they otherwise might not. In addition, any component in place in the previous award is payable from the outset of the new award, subject to the outcome of a new medical assessment.
- 7.4 With the introduction of a time limit to awards of contributory Employment and Support Allowance means that the 104-week linking rule, that was meant to be beneficial to claimants, may now work to their disadvantage. If the 104-week linking rule was retained, it would mean that some claimants would not be able to start a new 365 day period of entitlement even though they have recently worked and paid National Insurance contributions. They would only be entitled to the balance, if any, of the 365 day period from their earlier award.
- 7.5 The removal of the 104-week linking rule means claimants will start a new 365 day period of entitlement based on a more recent contribution record and will not be inadvertently tied to an earlier period. They will, however, no longer be able to rely on the contributions on which their previous award was based, and they will need to serve a new 13-week assessment phase period before becoming potentially entitled to a component.

Consolidation

- 7.6 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, DSD 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 is negligible. 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 through reduced welfare spend.

10.3 An Impact Assessment has not been prepared for this instrument.

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@dndni.gsi.gov.uk can answer any queries regarding the instrument.