

## EXPLANATORY MEMORANDUM

### The Jobseekers Allowance (Extended Period of Sickness) (Amendment) Regulations (Northern Ireland) 2016

S.R. 2016 No. 233

#### 1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Communities 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 Jobseekers (Northern Ireland) Order 1995, and is subject to the negative resolution procedure.
- 1.3 The rule is due to come into operation on 23rd May 2016.

#### 2. Purpose

- 2.1 The purpose of this rule is to clarify existing legislation, and improve the administration and support available to Jobseeker's Allowance (JSA) claimants when they have periods of sickness. The rule:
  - recognises that an extended period of sickness (EPS) lasting up to a maximum of 13 weeks in a 12 month period applies even if their health condition changes during the period;
  - provides for a short period of sickness (SPS) which becomes an EPS when the sickness lasts longer than two weeks to be disregarded from the maximum number of short sickness spells JSA claimants are permitted to have; and
  - requires JSA claimants to provide a fit note when a SPS becomes an EPS.

#### 3. Background

##### *What is being done and why*

- 3.1 JSA claimants have long been able to have two short periods of sickness (SPS) of up to 14 days each in a 12 month period, and remain on JSA. No medical evidence is required and instead claimants self-certify their sickness. In March 2015, extended period of sickness (EPS) was introduced allowing claimants with a specific health condition expected to last for more than two weeks but fewer than 13 weeks to have the option to remain on JSA rather than having to switch to Employment and Support Allowance (ESA). It also applies to claimants who have already used their two spells of SPS, in which case an EPS can be used for a sickness of less than two weeks.

- 3.2 EPS is voluntary and claimants determine whether it is appropriate for their circumstances. Claimants are required to provide evidence to support their period of sickness; the evidence can be in the form of self-certification or the provision of a fit note depending on the length of the sickness. For the duration of the sickness, claimants are treated as available and actively seeking employment and can be required to undertake reasonable steps to find work. Work coaches can tailor the conditionality rules associated with receiving JSA including switching off all requirements.
- 3.3 The policy rationale for EPS is to enable JSA claimants with a temporary health condition the option of remaining on JSA and staying in touch with the personalised support available from their work coach. Switching benefits for a short period can be unnecessarily disruptive to the payment of benefit and can impact the payment of passported benefits<sup>1</sup> such as housing benefit, whilst also increasing the administrative burden of processing a short term change of benefit.
- 3.4 As part of the Department of Work and Pension's review of implementation and whether it met the policy intent, some issues were identified that required the regulations to be more explicit. These are small changes that seek to ensure that the policy intent is applied consistently to all claimants and ensure the process is straightforward to administer.
- 3.6 Firstly, it became apparent that if a claimant's health condition changed during their time on an EPS, the regulations would not necessarily support the claimant to continue on the EPS because the regulations arguably only allow for one specific health condition (disease or disablement) for the entire period of the EPS. It is known that some claimants may for example have multiple, linked or changing health conditions and that the nature of the sickness can alter over the course of the EPS. This rule makes clear that there should not be a restriction to a single health condition, and ensures flexibility for claimants to remain on JSA irrespective of their health condition changing, provided there is no break between the onset of the various conditions within the course of the EPS.
- 3.7 Secondly, it was identified that at present, the provisions potentially produce an inconsistency in the number of sickness spells claimants can have. This inconsistency arises where a claimant initially expects to be sick for up to two weeks and starts on a Short Periods of Sickness (SPS), but then finds that their period of sickness lasts longer than two weeks, in which case, they go onto satisfy the requirements of the Extended Period of Sickness (EPS) provision. As the regulations are currently drafted, this could count as two spells of sickness (i.e. 1 x SPS plus 1 x EPS) whereas, if the claimant had known at the outset that their sickness would exceed two weeks, then they would have started on an EPS at the outset and only one spell of sickness will have been used i.e. the EPS. This rule will amend the regulations to ensure that any SPS that becomes an EPS is disregarded, therefore ensuring that claimants who start on a SPS which becomes an EPS, are treated the same in this respect as claimants who start on an EPS.

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<sup>1</sup> Passport benefits are benefits or schemes which some groups of people are entitled to because of their entitlement to certain benefits or tax credits. Benefits and tax credits which can passport you to other benefits or schemes include: Income Support. Jobseekers Allowance (Income Based).

- 3.8 To mitigate the risk of abuse of the EPS provisions, the regulations require claimants to provide fit notes to be eligible for an EPS. In addition this rule makes changes to the evidence required where a claimant who starts on an EPS as a 3rd sickness spell (because they have exhausted their two SPS periods and expect to be sick for two weeks or less) later finds that their sickness is going to extend beyond two weeks. Currently the regulations do not explicitly require medical evidence to be provided in this situation. In practice advisors will ask claimants to provide fit notes in these circumstances so the change should not place an additional burden on claimants. The amendments made by this rule will put the requirement to provide a fit note for an EPS, which lasts for more than two weeks, beyond doubt.
- 3.9 As a whole the changes set out in this rule are beneficial to claimants **who want to remain on JSA** and access the support that is available to them to help find work. They ensure the regulations are explicitly consistent with the original policy intent and overall aims of keeping claimants close to the labour market and avoiding unnecessary cycling or switching between benefits whilst reducing administrative burden on the Department.

#### 4. Consultation

- 4.1 A formal consultation was not undertaken for these changes as it was not considered necessary because they constitute a small tidying up of existing legislation that is largely beneficial and will introduce more flexibility for jobseekers.
- 4.2. An informal consultation was undertaken on 7 October 2014 by DWP with representatives of disabled claimants from SCOPE, MIND, RNIB, Disability Rights UK and Leonard Cheshire Disability when the original regulations were brought in. DWP's Implementation Project continued to consult operations following the launch of the policy which led to the identification of the issues that these proposed Regulations address. As is usual practice, any issues identified by the Department were passed to DWP for consideration.
- 4.3 DWP presented the proposals to the Social Security Advisory Committee (SSAC) on 9th March 2016. The Member's recognised that the changes were largely beneficial to claimants and welcomed the amendments as a good instance of monitoring the operation of the policy and making adjustments in the light of what emerges. SSAC advised that it did not want to take these regulations on formal reference.

#### 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 the introduction of the EPS provisions in April 2015 and concluded that the changes did not have any significant implications for equality of opportunity. In light of this, the Department considered that an equality impact assessment was not necessary.

5.2 Further screening of this proposed change has not been conducted as there is no change to the original policy which was screened in April 2015, these changes will ensure that the policy intent applies consistently to all claimants and will ensure that the process is more straightforward to administer.

## **6. Regulatory Impact**

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

## **7. Financial Implications**

7.1 There are 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 Period of Sickness) (Amendment) Regulations (Northern Ireland) 2016 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 23rd May 2016.

## **11. Additional Information**

11.1 Not applicable