

EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT AND SUPPORT ALLOWANCE (SANCTIONS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2016

2016 No. 240

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 amend [the Employment and Support Allowance Regulations \(Northern Ireland\) 2008](#) (SR 2008 No. 280). The purpose of these regulations is to introduce new sanctions for claimants in receipt of Employment and Support Allowance (ESA) that would apply as a consequence of their failure to take part in work-focused interviews or undertake work-related activities.
- 2.2 These regulations also make provision for the payment of hardship payments for claimants in receipt of ESA that may be at risk of not being able to meet certain basic needs.
- 2.3 The changes are being made to align the sanctions regime for ESA claimants with the regime that will apply in Universal Credit as it is rolled out Northern Ireland. These changes restore parity between social security systems in Northern Ireland and Great Britain as the instrument makes the equivalent changes for Northern Ireland that were made in Great Britain.

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 Her Majesty to legislate on social security, child support and certain matters related to employment and training in Northern Ireland by Order in Council. Any such Order in Council may then confer 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 are now being brought forward.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Northern Ireland only.
- 5.2 The territorial application of this instrument is Northern Ireland.
- 5.3 These regulations replicate for Northern Ireland the legislation that applies to Great Britain, [the Employment and Support Allowance \(Sanctions\) \(Amendments\) Regulations 2012 S.I. 2012/2756](#).

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 The Employment and Support Allowance (ESA) sanctions regime in Great Britain (GB) was revised ahead of the introduction of Universal Credit (UC) from April 2013 in GB only. These regulations will revise the ESA regime in Northern Ireland to replicate the system which is in place in GB prior to UC being introduced in Northern Ireland.
- 7.2 As in GB, the ESA regime in Northern Ireland, will broadly align with the sanctions model for the equivalent category of claimant under UC and therefore help pave the way for UC. Requirements (and therefore sanctions) for those receiving ESA will only apply to those who are capable of work-related activity and have been placed in the ESA Work- Related Activity Group (WRAG). All requirements will take account the claimant's health and cannot include requirements to apply for a job, undertake work or undergo medical treatment.

Currently claimants who fail to attend a work-focused interview (WFI) or to undertake work-related activity (WRA) without good cause receive an open ended

sanction which is lifted when they re-engage. The revised sanctions will have two parts - an open ended period and a fixed period.

- the open-ended part of the sanction is one week for every 7 day period during which the claimant fails to meet a compliance condition and the open-ended part will be lifted when the claimant meets a compliance condition or agrees to do so on a scheduled date.
- The fixed period part of the sanction will be :
 - a fixed period of 1 week for a first failure,
 - 2 weeks for a second failure within 52 weeks of the first and
 - 4 weeks when it is a third or subsequent failure which is within 52 weeks of the last previous failure (except when the subsequent failure occurs within 2 weeks of the previous failure).

When claimants re-engage within one week of the failure or before a decision to sanction has been made only the fixed period will apply. In the case of multiple sanctions, they will run concurrently. If, after a sanction begins, the claimant is moved out of the WRAG and therefore no longer subject to the requirements of WFIs and WRA, the sanction will end at that point.

- 7.3 The effective date of a sanction will also change, so that it takes effect from the first day of the benefit week after the one for which the claimant was last paid ESA. The aim is to make the link between claimants' failures to comply and the sanction clearer and swifter. The right of appeal against the decision also continues to be available.
- 7.4 The sanctionable amount is being increased to align with the equivalent sanction for claimants in UC. Under the revised regime ESA claimants will be sanctioned 100% of the prescribed ESA amount for a single person (currently £73.10). They will though retain the WRAC, any premiums and any additional amounts such as mortgage costs. Those claiming for a partner will receive the couple rate less the prescribed amount for a single claimant.
- 7.5 The new regime will include access to hardship payments for those who have a sanction imposed on their ESA award. Hardship payments will be available from the beginning of a sanction period providing the claimant meets the conditions for entitlement to income-related ESA.

Consolidation

- 7.6 This instrument will be informally consolidated in the NI equivalent of the GB Law Relating to Social Security (or "Blue Volumes"). 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 The Department for Social Development consulted extensively about the implications of the wider reforms in the [Welfare Reform Bill](#) consultation process, and has also discussed informally with stakeholders to ensure that the operational implications are fully understood and that processes are in place to ensure that the change is implemented correctly in Northern Ireland.

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 with the impact dependant on the response to this change by claimants. 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.
- 10.2 The Northern Ireland Executive published Impact Assessments alongside the Northern Ireland Assembly Bill which included the impact on the public sector, the impact assessment found that no specific mitigation is required as there should be no adverse differential impact as a result of changes to the sanction regime. Sanctions are only imposed when a claimant fails to comply with requirements placed upon them and can be avoided or minimised by changes in a claimant's behaviour..
- 10.3 An Impact Assessment is submitted with this memorandum, which indicates no adverse impacts, and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website. The changes may apply to those who claim JSA, they will only have an impact where claimants do not comply with the conditions that they have agreed to as part of the claimant commitment. Statistics on the breakdown of the characteristics of claimants can be found here: <https://www.communities-ni.gov.uk/topics/benefits-and-pensions-dsd-statistics-and-research/benefits-statistics>

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 Communities Telephone: 02890 819984 or email: anne.mccleary@communities-ni.gsi.gov.uk can answer any queries regarding the instrument.