

EXPLANATORY MEMORANDUM TO
THE JOBSEEKER'S ALLOWANCE (SANCTIONS) (AMENDMENT)
REGULATIONS (NORTHERN IRELAND) 2016

2016 No. 241

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Communities (Northern Ireland) (“The Department”) 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 This instrument makes provision for the introduction of a new three tier sanctions regime for Jobseeker’s Allowance (JSA) claimants in Northern Ireland, bringing this regime in line with the regime for Universal Credit, and to replicate provisions made in Great Britain to restore parity. Sanctions will be applied as a consequence of failing to meet responsibilities agreed in the claimant commitment. This instrument will help to ensure the sanction regime is applied consistently across all benefits, and for those who repeatedly fail to meet their responsibilities there will be progression to tougher sanctions.

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 Northern Ireland Minister with responsibility for social security 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.
- 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. [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](#) (the “2015 Order”) 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.

- 4.5 Article 52 (Sanctions) of the 2015 Order provides for the reform of the Jobseeker’s Allowance sanctions regime by replacing Article 21 of the of the Jobseekers (Northern Ireland) Order 1995 with new Articles 21, 21A and 219B to encourage claimants to meet their responsibilities. Claimants are required to look for or prepare for work as a condition of receiving benefit, and those that fail to meet their responsibilities should face a financial sanction. This instrument sets out the detail of the revised sanctions regime for jobseekers.

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 These regulations replicate for Northern Ireland the legislation that applies to Great Britain by [The Jobseeker’s Allowance \(Sanctions\) \(Amendment\) Regulations 2012](#) (SI 2012/2568) and further amended by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2012](#) (S.I. 2012/2575) and [The Social Security \(Miscellaneous Amendments\) Regulations 2013](#) (S.I. 2013/443).

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 revise the JSA sanctions regime in Northern Ireland and are part of a wider package of measures which seek to broadly align the JSA and Employment and Support Allowance (ESA) sanctions regimes with the model to be introduced in Northern Ireland under Universal Credit (UC). Northern Ireland are bringing their policy and legislation concerning JSA sanctions into line with that in Great Britain for both income and contributory-based JSA. As in GB, the new system will be clearer and more robust, particularly for claimants who repeatedly fail to meet their most important responsibilities. There is one difference between Northern Ireland policy and policy in Great Britain and that is in relation to the duration of the higher level sanction which is 3 years in Great Britain and 18 months in Northern Ireland. This difference formed part of the Fresh Start Stormont agreement. The changes to the ESA sanctions regime are being made through a separate instrument.

- 7.2 Sanctions play an important role in encouraging claimants to comply with requirements to help them move into or prepare for work. DWP research suggests that:
- 40% of claimants say they are more likely to look for work due to a threat of a sanction
 - Of those who are sanctioned the vast majority receive just one sanction during their claim and most say they would not repeat the behaviour which led them to being sanctioned¹.
- 7.3 However, under the existing regime some sanctions are not proportionate to the failure and the consequences of failing to comply with requirements are not always clear, for example if a claimant refuses a job offer he/she may be sanctioned between 1- 26 weeks, as it is not a fixed period claimants will not know in advance what the sanction will be. DWP research² into the impact of sanctions on the behaviour of lone parents found that many sanctioned claimants had little knowledge of the duration or amount of their sanction and some were adamant that they had not been sanctioned contrary to Jobcentre Plus records. This kind of confusion is not limited to lone parents³; there is therefore a need to revise the sanctions model to provide greater clarity about the consequences of non compliance.
- 7.4 The revised regime is intended to make the consequences of non compliance clearer and impose more proportionate sanctions for claimants who repeatedly fail to meet their responsibilities. No changes will be made to the requirements imposed on jobseekers and they will continue to have access to flexibilities which allow requirements to be tailored to suit their circumstances, for example, to allow for caring responsibilities.

Three categories of sanctionable failure

- 7.5 The revised sanctions regime will feature three categories of sanction to be applied in different situations. The first situation is when claimants fail to comply with the most important jobseeking requirements, these are:
- through misconduct loses employment as an employed earner;
 - without good reason - voluntarily leaving employment; refuses or fails to apply for, or accept if offered, a situation in any employment which an employment officer has informed him is about to become vacant or neglects to avail himself of a reasonable opportunity of employment.
- These sanctions will apply to the types of failure that currently receive a variable length sanction of between 1- 26 weeks. As the revised sanction will be for fixed periods it will provide greater clarity for claimants on the consequences of not meeting requirements.
- 7.6 For these failures the sanction periods will usually be the following fixed periods set out below:
- 13 weeks for a first failure;
 - 26 weeks for a second failure committed within 52 weeks of the previous failure;
 - and

¹ [Peters and Joyce \(2006\) A review of the JSA sanctions regime: summary findings, DWP Research Report 313](#)

² [DWP Research Report 2008, "More support, higher expectations; the role of conditionality in improving employment outcomes"](#)

³ [Peters and Joyce \(2006\) A review of the JSA sanctions regime: summary findings, DWP Research Report 313](#)

- 78 weeks (18 months) for a third or subsequent failure committed within 52 weeks of a previous failure that resulted in a 26 week sanction. 18 month sanctions will apply only in the most extreme cases where claimants have serially and deliberately breached their most important requirements, and they have not changed behaviour after receiving previous sanctions.
- 7.7 There will be exceptions to the fixed periods where a failure occurs before a claimant applies for JSA and relates to losing employment due to misconduct, leaving employment voluntarily or neglecting to avail themselves of a reasonable opportunity of employment. In these cases the sanction period will reflect the length the employment was expected to last if this is shorter than the standard 13, 26 or 78 weeks length. The sanction imposed will be reduced by the period between the failure and the date of claim. In addition if a claimant commits multiple failures within the same two weekly signing period then the sanction will not escalate to the next level, this applies to all 3 sanction situations. This rule will help to ensure claimants do not accumulate lengthy sanctions over a short period.
- 7.8 The next situation is when a claimant becomes re-entitled to JSA following disentitlement for not being available or actively seeking work. Currently claimants who are disentitled for these reasons can reclaim JSA straightaway and if they meet entitlement conditions then benefit resumes after a small number of waiting days as appropriate. Under the revised regime claimants who re-apply for benefit following disentitlement for not being available for or actively seeking work will be subject to a loss of benefit period of 4 weeks for a first failure and 13 weeks where there has been a further disentitlement within 12 months. The sanction is intended to more effectively deter claimants from failing to comply with requirements to be available for and actively seek work.
- 7.9 The loss of benefit period will deduct any period for which the claimant was not paid benefit or during which he was not claiming benefit. To provide an example, Claimant A is disentitled on the same day as his Fortnightly Jobsearch Review and does not receive the previous 2 weeks benefit he was due. He reapplies for JSA after 1 week. His sanction on reclaim would be 1 week, taking into account the 2 weeks benefit he was not paid at the point of disentitlement and 1 week spent away from benefit (to take him to the 4 week sanction period).
- 7.10 There are certain circumstances where claimants are disentitled but it would be inappropriate to apply a sanction if they make a new claim and in these situations the claimant will be exempted from the sanction. The exceptions will include situations where a claimant is disentitled because they exhausted the allowed periods where they can be treated as available for or actively seeking work but they are not ready to return to jobseeking activity, for example, where a claimant is treated as available and actively seeking work during a period of domestic emergency, the allowed period expires but the claimant requires more time to attend to the matter and is disentitled.
- 7.11 The final situation applies when a claimant fails to comply with a requirement under Article 21A of the Jobseekers (Northern Ireland) Order 1995 that was designed to improve their chances of finding work or preparing for work, this will include the following failures:
- Failing to attend an adviser interview at the Social Security Office/Jobs and Benefits Office (SSO/JBO);

- Failing to participate in schemes to assist claimants in obtaining employment under section 19A of the Jobseekers (Northern Ireland) Order 1995, including Steps 2 Success;
- Refusing or failing to comply with a reasonable opportunity to take part in a training scheme or employment programme;
- Refusing or failing to apply for or accept a place on a scheme or programme; or
- Giving up a place, failing to attend a training scheme or employment programme or losing a place through misconduct.

7.12 Currently there is a range of sanctions for these types of failure, including 1 or 2 week sanctions for failing to attend an interview at a SSO/JBO, 2 and 4 week sanctions for some claimants in the Steps 2 Success programme which can end sooner if claimants engage with requirements. The sanction for these failures will be set at a period of 4 weeks for a first failure, and 13 weeks for a second or subsequent failure within 52 weeks of the previous failure.

Effective date of a sanction

- 7.13 We propose to change the effective date of a sanction, that is, the date from which a sanction is applied to a claimant's benefit. The aim is to make the link between claimants' failure to comply and the subsequent sanction clearer and swifter. Currently there can be a delay of up to two weeks between non compliance and the subsequent sanction which can confuse claimants. We are changing the approach to ensure that a sanction will be applied to the next payment due.
- 7.14 Under the revised approach a sanction will be applied from the first day of the benefit week in which the failure occurred, unless payment has already been made for that period at the time the decision to sanction is made, in which case the sanction is to be applied from the first day of the benefit week after the one for which the claimant was last paid JSA.
- 7.15 Whilst we are bringing forward the effective date of the sanction we are maintaining the safeguards of ensuring that claimants receive notification of the decision to sanction before it is applied and have the opportunity to show good reason for non compliance (in which case no sanction will be applied) and a right of appeal against the decision.

Sanction amount

- 7.16 The amount of the sanction for all three types of sanction will not change under the revised regime, the reductions will be as follows:
- Single claimants and joint claimants where both partners are non compliant - 100% of JSA, that is, all of their applicable amount;
 - Joint claim cases where only one claimant is non compliant - if the compliant partner is eligible for contributory JSA they will receive the personal rate allowance for JSA (C) – currently this is up to £73.10. If the compliant member is not eligible for JSA (C) he will be paid the single person rate of income-based JSA taking into account any income or capital, currently this is up to £73.10. If the couple are determined to be in hardship then they will receive the relevant hardship payment.

Existing features

7.17 Alongside the introduction of a revised sanctions structure important elements of the existing sanctions regime will be carried forward, these include:

- Safeguards such as providing claimants with an opportunity to explain why they have not complied. If they provide a good reason then a sanction will not be imposed. Within the existing system this is currently called providing ‘good cause’ or ‘just cause’ whereas in the revised regime it will be referred to as ‘good reason’ but it will apply in the same way. However, in the revised regime regulations will not set out particular circumstances or situations for the Decision Maker leaving him to take into account all reasons considered relevant when determining good reason;
- Enabling claimants to be able to request further information about the decision to sanction, request a reconsideration and appeal the decision ;
- Carrying forward exceptions where sanctions are not applied, for example a sanction is not applied if a claimant leaves work during a trial period;
- Sanctions will continue to run concurrently;
- The provision whereby once a sanction has begun it continues unbroken until the period comes to an end. This means that if, for example, a claimant finds a job and leaves JSA during the period of a sanction if they reclaim benefit during that period they must serve any balance remaining on the sanction. The exception to this rule will be where a claimant becomes re-entitled to benefit after working for six months or more, in this situation the balance of the sanction would be lifted. This approach is intended to encourage claimants to move into and remain in employment; and
- Where claimants fail to attend an appointment at the Social Security Office/Jobs and Benefits Office (SSO/JBO) and do not make contact within 5 days then they will continue to be disqualified. Where they make contact within 5 days and do not show good reason then a sanction of 4 weeks or 13 weeks (for second or subsequent failures) will be applied.

Consequential and related changes

7.18 Consequential amendments will need to be made to a number of provisions, this includes:

- Amending the hardship provisions in the Jobseeker’s Allowance Regulations (Northern Ireland) 1996 to reflect the revised sanctions structure;
- Amending the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 to enable a right of appeal against a sanction applied to a new award following a disqualification;
- Amending the Social Security (Credits) Regulations (Northern Ireland) 1975, the Discretionary Financial Assistance Regulations (Northern Ireland) 2001 and the Jobseeker’s Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations (Northern Ireland) 2014 to reflect and update references to the sanctions regime.

7.19 The Jobseeker’s Allowance Regulations (Northern Ireland) 1996 are also being amended to omit regulation 74A. Regulation 74A had the effect that where a claimant subject to a sanction went onto full time training, they did not feel the effect of the

sanction as they were paid their full JSA allowance by way of a training allowance. However, as it is desired that such claimants remain subject to a sanction for the duration of the sanction whilst they are participating in full time training. Claimants will not lose entitlement to JSA as a result of being a full time student however as they will be paid a nominal amount of training allowance. This will bring regulation 168 into play whereby they are then exempt from meeting the jobseeking conditions. They will also continue to be able to access housing benefit and council tax benefit as they retain entitlement to JSA.

Consolidation

- 7.20 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 As this is a consequence of wider welfare reforms the Department has not consulted on it specifically. The Department 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. As a result of this process, and the failed passage of the Welfare Reform Bill through the Assembly, the length of higher level sanctions are 18 months in Northern Ireland as opposed to 3 years in Great Britain.

9. Guidance

- 9.1 A comprehensive suite of products is being developed for operational staff which includes guidance, awareness and learning and development products to support both staff and claimants in understanding the revised regime. The type of training that staff will receive will vary across the business. All staff will receive general awareness training on the changes. Staff dealing more directly with sanctions aspects of the benefit will receive specific training. Guidance will be updated and made available for all staff in advance of the provisions coming into operation, and a bespoke operational guidance product is being developed for decision-making staff.
- 9.2 Existing information leaflets will be updated to explain the revised sanctions system along with a factsheet giving fuller information as required, these will be issued to new claimants when they first make a claim to JSA and to existing claimants at the fortnightly jobsearch review. Claimants will be able to access information via a helpline which will be made available for a limited period following go-live to explain the new sanction regime to claimants. The information will be available in advance of the provisions coming into operation.
- 9.3 Prior to the implementation of these regulations, changes will also be to the Decision Makers Guide (DMG) which is also available free on the internet at: <https://www.dsdni.gov.uk/articles/decision-makers-guide>

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.
- 10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website. The changes may apply to those who claim JSA, but 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 new sanctions regime will be monitored and evaluated through analysis of internal management information. Information on the operation of sanctions will be published in a report prepared by the Department.
- 12.2 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.gov.uk can answer any queries regarding the instrument.