

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT AND SUPPORT ALLOWANCE (MISCELLANEOUS
AMENDMENTS AND TRANSITIONAL AND SAVINGS PROVISIONS)
REGULATIONS (NORTHERN IRELAND) 2017

2017 No. 148

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Communities (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 instrument makes minor amendments to the following amendments made by the Employment and Support Allowance (Consequential Amendments and Transitional and Savings Provisions) Regulations (Northern Ireland) 2017:
- 2.2 The Employment and Support Allowance Regulations (Northern Ireland) 2008¹;
- 2.3 The Employment and Support Allowance Regulations (Northern Ireland) 2016²;
- 2.4 The Social Fund (Cold Weather Payments) (General) Regulations (Northern Ireland) 1988³;
- 2.5 The Jobseeker's Allowance Regulations (Northern Ireland) 1996⁴;
- 2.6 The Housing Benefit Regulations (Northern Ireland) 2006⁵;
- 2.7 The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006⁶;
- 2.8 The Employment and Support Allowance (Consequential Amendments and Transitional and Savings Provisions) Regulations (Northern Ireland) 2017⁷,
- 2.9 These amendments ensure that the policy intent across these Regulations is clearly expressed following amendments made by the Employment and Support Allowance (Consequential Amendments and Transitional and Savings Provisions) Regulations (Northern Ireland) 2017.

3. Matters of special interest to Parliament

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

¹ <http://www.legislation.gov.uk/nisr/2008/280/contents/made>

² <http://www.legislation.gov.uk/nisr/2016/219/contents/made>

³ <http://www.legislation.gov.uk/nisr/1988/368/contents/made>

⁴ <http://www.legislation.gov.uk/nisr/1996/198/contents/made>

⁵ <http://www.legislation.gov.uk/nisr/2006/405/contents/made>

⁶ <http://www.legislation.gov.uk/nisr/2006/406/contents/made>

⁷ <http://www.legislation.gov.uk/nisr/2017/51/contents/made>

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative resolution procedure, 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](#) (“the 1998 Act”) places a statutory duty on the Minister for Communities 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 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](#) (“the 2015 Order”) was made on 9 December 2015 making provision corresponding to the Welfare Reform Act 2012 (“the 2012 Act”). [The Welfare Reform and Work \(Northern Ireland\) Order 2016](#) (“the 2016 Order”) was made on 12th October 2016 making provision corresponding to the social security provisions of the Welfare Reform and Work Act 2016 (“the 2016 Act”), and regulations stemming from the 2016 Order are now being brought forward.

4.4 The Employment and Support Allowance (ESA) work-related activity component is no longer included in awards of these benefits from 3 April 2017. This instrument makes amendments across a number of social security related Regulations to remove any ambiguity about the amount of benefit that ESA claimants, including those that also claim Housing Benefit, under the age of 25 are entitled to, once they have undergone a work capability assessment and entered main phase ESA, that may have arisen from removing references to the work-related activity component.

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.

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 work related activity component was introduced in Employment and Support Allowance (ESA), as part of the reform of the Incapacity Benefit (IB) regime in 2008 and was originally intended to act as an incentive to encourage people to participate in work-related activity and therefore return to work more quickly. This policy was not working, as few ESA claimants in the work related activity group leave ESA each month. The longer an individual remains out of work, the more likely ‘out of work’ behaviours are to become ingrained, unconscious ‘habits’ and become a factor hindering an individual’s return to the labour market. The Government therefore removed these disincentives while at the same time providing additional practical support to such claimants to help them move closer to employment. The Welfare Reform and Work (Northern Ireland) Order 2016 ([S.I. 2016/999 \(N.I. 1\)](#)) (“the 2016 Order”) provided the necessary power to remove references to the work-related activity component from ESA.
- 7.2 The Government, in the [Summer Budget 2015](#), announced reforms to ESA to provide greater incentives to help claimants return to work and support the Government’s commitment to halve the disability employment gap.
- 7.3 This measure is intended to provide the right incentives and support to enable those who have limited capability, but some potential for work, to move closer to the labour market and when they are ready, back into work. Aligning the rate of benefit paid to new claims for ESA with the standard rate paid to claimants who are capable of work from 3 April 2017 will remove the financial incentives that could otherwise discourage claimants from taking steps back to work.
- 7.4 The Employment and Support Allowance (Consequential Amendments and Transitional and Savings Provisions) Regulations (Northern Ireland) 2017⁸ made a number of consequential amendments to secondary legislation as a result of the removal of the ESA work-related activity component.
- 7.5 This instrument makes minor amendments to the statutory instruments listed in paragraphs 2.2 – 2.8 to ensure that ESA claimants under the age of 25 receive the higher over-25 rate of benefit as intended, once they have undergone a work capability assessment and entered main phase ESA.
- 7.6 The definitions of “member of the work-related activity group” is amended across the Social Fund (Cold Weather Payments) (General) Regulations (Northern Ireland) 1988, The Housing Benefit Regulations (Northern Ireland) 2006 and The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006, as well as clarifying the definition of “main phase employment and support allowance” in Housing Benefit legislation and in the Employment and Support Allowance Regulations (Northern Ireland) 2008.
- 7.7 The amendments clarify for the purposes of Schedule 2 of the Jobseekers Allowance Regulations (Northern Ireland) 1996⁹ that someone in receipt of ESA and a member of the work-related activity group can be a disabled person.

⁸ <http://www.legislation.gov.uk/nisr/2017/51/contents/made>

⁹ <http://www.legislation.gov.uk/nisr/1996/198/contents/made>

- 7.8 These Regulations amend the Employment and Support Allowance (Consequential Amendments and Transitional and Savings Provisions) Regulations (Northern Ireland) 2017 (S.R. 2017 No. 51)¹⁰ to make it clear which claimants are protected by the transitional protection.
- 7.9 This Statutory Rule has been printed to address defects in S.R. 2017 No. 51 and is being issued free of charge to all known recipients of that Statutory Instrument.

Consolidation

- 7.10 This instrument will be informally consolidated in the Law Relating to Social Security Northern Ireland (or “Blue Volumes”). It will be available to the public at no cost via the internet at: <https://www.communities-ni.gov.uk/services/law-relating-social-security> .

8. Consultation outcome

- 8.1 As this is a consequence of wider welfare reforms the Department for Communities has not consulted on it specifically. The Department consulted extensively about the implications of those wider reforms as part of the [Welfare Reform Bill](#).

9. Guidance

- 9.1 Guidance was developed for the Employment and Support Allowance (Consequential Amendments and Transitional and Savings Provisions) Regulations (Northern Ireland) 2017¹¹ to support advisors and decision makers. The Advice for Decision Making and the Decision Makers Guide are published on the Department for Communities website and have been updated. No further guidance changes are required for the amendments¹².

10. Impact

- 10.1 An [Impact Assessment](#) on the removal of the work-related activity component was published alongside [the 2016 Order](#). However, an Impact Assessment has not been prepared for this instrument.
- 10.2 There is no impact on business, charities or voluntary bodies.
- 10.3 The impact on the public sector is negligible.

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.
- 12.2 Northern Ireland social security legislation normally retains parity with changes made by the Department for Work and Pensions.

¹⁰ <http://www.legislation.gov.uk/nisr/2017/51/contents/made>

¹¹ <http://www.legislation.gov.uk/nisr/2017/51/contents/made>

¹² <https://www.communities-ni.gov.uk/sites/default/files/publications/communities/dmg-memo-vol8-84.DOCX>

13. Contact

- 13.1 Anne McCleary at the Department for Communities Telephone: 028 9082 3332 or email: anne.mccleary@communities-ni.gov.uk can answer any queries regarding the instrument.