

EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT AND SUPPORT ALLOWANCE (EXEMPT WORK AND HARDSHIP AMOUNTS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2017

2017 No. 50

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 This instrument makes amendments to the [Employment and Support Allowance Regulations \(Northern Ireland\) 2008](#) (S.R. 2008 No. 280) and related regulations, removing the current 52 week restriction on undertaking permitted work for Employment and Support Allowance (ESA) claimants in the work related activity group and the assessment phase of the benefit, who are currently limited to no more than 52 weeks of permitted work. The term “permitted work” is used to describe various forms of “exempt work” which claimants are allowed to undertake and still keep their benefit.
- 2.2 This instrument also makes amendments to the hardship provisions inserted by the [Employment and Support Allowance \(Sanctions\) \(Amendment\) Regulations \(Northern Ireland\) 2016](#) (S.R. 2016 No. 240) (which will come into force in Northern Ireland immediately upon the introduction of Universal Credit) and increases the hardship payment to ESA claimants who have been sanctioned because of failure to comply with labour market requirements to 80 percent of the basic ESA rate. This applies to claimants in the work-related activity group, but not in receipt of the work-related activity component where they or a member of their family are pregnant or seriously ill.

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](#) (“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 The [Welfare Reform Act 2012](#) (“the 2012 Act”) introduced a number of reforms which included the introduction of Universal Credit, Personal Independence Payment and a cap on the amount of benefits working age people can receive. This was to restrict the total amount of money a non-working household can receive to broadly the level of the average earned income of working households after tax and national insurance contributions are deducted.
- 4.4 The [Welfare Reform and Work Act 2016](#) (“the 2016 Act”) provided for the introduction of further reforms in Great Britain, including tiered reductions to the level of the benefit cap depending on where in Great Britain claimants lived, changes to the child element of Universal Credit and Child Tax Credits and the removal of the work-related activity group component in Employment and Support Allowance and the Limited Capability for Work element in Universal Credit.
- 4.5 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](#) provided a time-limited 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 until 31 December 2016. Any such Order in Council could 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 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 2016 Act, and regulations stemming from the 2016 Order are now being brought forward.
- 4.6 The main legislation governing entitlement to ESA in Northern Ireland is contained in the [Welfare Reform Act \(Northern Ireland\) 2007](#), the [Employment and Support Allowance Regulations \(Northern Ireland\) 2008](#) (S. R. 2008 No. 280) and the [Employment and Support Allowance Regulations \(Northern Ireland\) 2016](#) (S.R 2016 No. 219).

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 by virtue of the [Employment and Support Allowance \(Exempt Work & Hardship Amounts\) \(Amendment\) Regulations 2017](#) (S.I. 2017/205).

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 These Regulations amend the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995 ([Social Security \(Incapacity for Work\) \(General\) Regulations \(Northern Ireland\) 1995](#) (S.R. 1995 No. 41), [the Employment and Support Allowance Regulations \(Northern Ireland\) 2008](#) (S.R. 2008 No. 280), and the [Employment and Support Allowance Regulations \(Northern Ireland\) 2016](#) (S.R. 2016/219).
- 7.2 These Regulations make amendments in connection with the [Welfare Reform and Work \(Northern Ireland\) Order 2016](#) (S.I. 2016/999 (N.I. 1)) (“the 2016 Order”) which removes the Work Related Activity Component from Employment and Support Allowance. These amendments remove the 52-week permitted work limit, and introduce a new hardship regime for claimants in view of the removal of the Work Related Activity Component.
- 7.3 The Government is committed to ensuring that disabled people are able to participate fully in society, and has set out its ambition to halve the disability employment gap. Evidence shows that most people with disabilities and health conditions want to work, including the majority of Employment and Support Allowance claimants. 56 per cent of Employment and Support Allowance claimants state that they want to work, rising to 61 per cent of claimants in the Work Related Activity Group.
- 7.4 The Work Related Activity Component was originally intended to act as an incentive to encourage those claimants in receipt of the component to participate in work related activity in order to assist them in returning to work. However, as evidence shows that the majority of claimants in the Work Related Activity Group remain on Employment and Support Allowance, it is clear the policy is not working as intended.
- 7.5 The Government, during the passage of the ([Welfare Reform and Work Act 2016](#) (2016 c.7), responded to concerns that the permitted work rules also provided a disincentive for claimants to take up work, and announced that the 52-week permitted work limited would be removed. This will apply to claimants who have already started the 52-week period of work, as well as for new claimants, from 3 April 2017.
- 7.6 The existing sanctions regime reduces the amount of an award of Employment and Support Allowance by applying a reduction in the Work Related Activity Component.
- 7.7 The new sanctions regime is provided for in the [Employment and Support Allowance \(Sanctions\) \(Amendment\) Regulations \(Northern Ireland\) 2016](#) (S.R. 2016 No. 240), which come into operation immediately after the enactment of the Universal Credit Regulations (Northern Ireland) 2016. Claimants who make a claim for Employment and Support Allowance after 3 April 2017 will not be entitled to the work-related activity component, and cannot be sanctioned until the revised sanctions scheme becomes operational on the introduction of Universal Credit.

- 7.8 These regulations provide a change to the level of hardship payment once the changes to the sanction regime come into force. As claimants will no longer be entitled to the work-related activity component, the hardship rate is being increased from 60 per cent to 80 per cent for those claimants who do not receive the work-related activity component as part of their award where either they or a member of their household is pregnant or has a serious illness.

Consolidation

- 7.9 Informal consolidated text of instruments is available to the public free of charge via ‘the National Archive’ website legislation.gov.uk.

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 The appropriate guidance will be amended for staff and Decision Makers in advance of this instrument becoming operational.

10. Impact

- 10.1 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.
- 10.2 An [Impact Assessment](#) was published alongside [the 2016 Order](#) in relation to the removal of the Work Related Activity Component. This highlights that 5,530 individuals will not receive a Work Related Activity Component, although as this only applies to new claimants, nobody will face a cash reduction. There is no disproportionate impact by gender or age, with half of the claimants over 45. The majority of those affected are in families where someone describes themselves as disabled, (under the Equalities Act 2010 definition). This is because those who report themselves as having a disability are more likely to qualify for those benefits which are affected by the policy change.

- 10.3 The impact of changes to hardship is across the working age benefits, around half of whom are between 25-45 and a third over 50. The proposals apply equally to all claimants, both in terms of whether a sanction applies and also the possibility of mitigating the effects of sanctions. 85% of those who receive working age benefits are not disabled, although the proportions of claimants who receive Employment Support Allowance and Incapacity Benefit who are disabled is much greater given the nature of the benefit support.
- 10.4 Analysis can only be provided for some of the equality groups. We do not, as a matter of course monitor religious belief, political opinion, racial background or sexual orientation for the purpose of administering the social security system in Northern Ireland. However, we would not expect claimants to be adversely affected on these grounds.

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.
- 12.3 The Department for Communities will monitor any emerging trends or issues arising from any studies or surveys undertaken by the Department for Work and Pensions

13. Contact

- 13.1 Anne McCleary at the Department for Communities Telephone: 028 9081 9984 or email: anne.mccleary@communities-ni.gov.uk can answer any queries regarding the instrument.