

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

2017 No. 51

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 amends 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](#)) to remove references to the work-related activity component from Employment and Support Allowance.

2.2 This instrument also makes consequential amendments to:

2.3 The Income Support (General) Regulations (Northern Ireland) 1987 ([S.R. 1987 No. 459](#)).

2.4 The Social Fund (Cold Weather Payments) (General) Regulations (Northern Ireland) 1988 ([S.R. 1988 No. 368](#)).

2.5 The Jobseeker's Allowance Regulations (Northern Ireland) 1996 ([S.R. 1996 No. 198](#)).

2.6 The Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001 ([S.R. 2001 No. 213](#)).

2.7 The State Pension Credit Regulations (Northern Ireland) 2003 ([S.R. 2003 No. 28](#)).

2.8 The Housing Benefit Regulations (Northern Ireland) 2006 ([S.R. 2006 No. 405](#)).

2.9 The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 ([S.R. 2006 No. 406](#)).

2.10 Additionally it also sets out certain circumstances in which claimants will retain the work-related activity component.

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 An Early Day Motion ([2016-17/992](#)) was tabled by Jeremy Corbyn MP on the 28 February, seeking to annul the equivalent Great Britain Regulations, the Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional and Savings Provisions) Regulations ([S.I. 2017/ 204](#)).

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 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 claims for Employment and Support Allowance (ESA), 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](#) (“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.

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 These Regulations amend 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](#)).

- 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”) and remove references to the work-related activity component from Employment and Support Allowance (ESA). The work-related activity component was introduced in 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 quicker.
- 7.3 The Government, in the [Summer Budget 2015](#), announced reforms to Employment and Support Allowance to provide greater incentives to help claimants return to work and support the Government’s commitment to halve the disability employment gap.
- 7.4 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 Employment and Support Allowance 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.
- 7.5 The regulations contained in this instrument make consequential amendments to legislation across a range of benefits to remove or amend reference to the Work-Related Activity Group component.
- 7.6 This instrument also sets out the circumstances in which ESA claimants will be protected. This includes claimants:
- already receiving the work-related activity component;
 - who have made or are treated as having made a claim for ESA before 3 April 2017 but are awaiting an assessment on their capability for work;
 - who have made their claim before 3 April 2017 and requested a mandatory review or appealed against a decision that they are fit for work and as a result found to have limited capability for work.

Consolidation

- 7.7 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 The impact on the public sector is outlined in the Impact Assessment. 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](#).
- 10.3 No current claimants will be affected by these changes. Instead those who may be affected will be those claiming ESA from 3 April 2017 who are found to have limited capability for work following a work capability assessment. The numbers affected are expected to build up to around 5,530 individuals by March 2021. The notional loss to each family is expected to be £29.05 a week of the ESA work-related activity group premium, presented in 2016/17 prices.
- 10.4 These notional losses represent a maximum cost to individuals and assume no behaviour change. The impact would be mitigated through behaviour change – for example, someone moving into work could, by working around 4-5 hours a week at National Living Wage, recoup the notional loss of the work-related activity component.
- 10.5 Whilst there may be an estimated 5,530 notional losers in Northern Ireland following this change, it is the Government's view that work and having working parents is beneficial to families and children and that this change will in fact amount in the long term to a positive impact on families and children. Helping these claimants back into work will help increase family income and improve life chances for any children.

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.

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.