
DRAFT STATUTORY INSTRUMENTS

2015 No.

The Welfare Reform (Northern Ireland) Order 2015

PART 3

Working-age benefits

CHAPTER 2

Employment and support allowance

Conditions of entitlement

Dual entitlement

56. In section 1 of the Welfare Reform Act (Northern Ireland) 2007 (employment and support allowance), after subsection (6) insert—

“(6A) In subsection (3)(f), in relation to a contributory allowance, the reference to a couple entitled to a joint-claim jobseeker’s allowance does not include a couple so entitled by virtue of regulations under paragraph 8A of Schedule 1 to the Jobseekers Order.”

Period of entitlement to contributory allowance

57.—(1) After section 1 of the Welfare Reform Act (Northern Ireland) 2007 insert—

“Duration of contributory allowance

1A.—(1) The period for which a person is entitled to a contributory allowance by virtue of the first and second conditions set out in Part 1 of Schedule 1 shall not exceed, in the aggregate, the relevant maximum number of days in any period for which his entitlement is established by reference (under the second condition set out in Part 1 of Schedule 1) to the same two tax years.

(2) In subsection (1) the “relevant maximum number of days” is—

(a) 365 days; or

(b) if the Department by order specifies a greater number of days, that number of days.

(3) The fact that a person’s entitlement to a contributory allowance has ceased as a result of subsection (1) does not prevent his being entitled to a further such allowance if—

(a) he satisfies the first and second conditions set out in Part 1 of Schedule 1, and

(b) the two tax years by reference to which he satisfies the second condition include at least one year which is later than the second of the two years by reference to which (under the second condition) his previous entitlement was established.

(4) The period for which a person is entitled to a contributory allowance by virtue of the third condition set out in Part 1 of Schedule 1 (youth) shall not exceed—

(a) 365 days; or

(b) if the Department by order specifies a greater number of days, that number of days.

(5) In calculating for the purposes of subsection (1) or (4) the length of the period for which a person is entitled to a contributory allowance, the following are not to be counted—

- (a) days in which the person is a member of the support group,
- (b) days not falling within paragraph (a) in respect of which the person is entitled to the support component referred to in section 2(1)(b), and
- (c) days in the assessment phase, where the days immediately following that phase fall within paragraph (a) or (b).

(6) In calculating for the purposes of subsection (1) or (4) the length of the period for which a person is entitled to a contributory allowance, days occurring before the coming into operation of this section are to be counted (as well as those occurring afterwards).”

(2) In section 25 of that Act (regulations)—

- (a) in the heading, after “regulations” insert “and orders”;
- (b) in subsections (1) and (2) after “regulations” insert “or an order”.

(3) In section 26 of that Act (Assembly control) in subsection (1) after “this Part” insert “or any order made under section 1A”.

(4) In Schedule 4 to that Act (transition relating to Part 1), in paragraph 7(2), at the end insert—

- “(f) make provision modifying the application of section 1A in relation to awards of an employment and support allowance to persons previously entitled to existing awards.”

Further entitlement after time-limiting

58.—(1) After section 1A of the Welfare Reform Act (Northern Ireland) 2007 (as inserted by Article 57) insert—

“Further entitlement after time-limiting

1B.—(1) Where a person’s entitlement to a contributory allowance has ceased as a result of section 1A(1) or (4) but—

- (a) the person has not at any subsequent time ceased to have (or to be treated as having) limited capability for work,
- (b) the person satisfies the basic conditions, and
- (c) the person has (or is treated as having) limited capability for work-related activity,

the claimant is entitled to an employment and support allowance by virtue of this section.

(2) An employment and support allowance entitlement which is based on this section is to be regarded as a contributory allowance for the purposes of this Part.”

(2) In section 1 of that Act (employment and support allowance), in the definition of “contributory allowance” in subsection (7), after “subsection (2)(a)” insert “(and see section 1B(2))”.

Condition relating to youth

59. In section 1 of the Welfare Reform Act (Northern Ireland) 2007 (employment and support allowance), after subsection (3) insert—

- “(3A) After the coming into operation of this subsection no claim may be made for an employment and support allowance by virtue of the third condition set out in Part 1 of Schedule 1 (youth).”

Claimant responsibilities for interim period

Claimant commitment for employment and support allowance

- 60.**—(1) The Welfare Reform Act (Northern Ireland) 2007 is amended as follows.
- (2) In section 1(3) (employment and support allowance) after paragraph (a) insert—
- “(aa) has accepted a claimant commitment.”
- (3) After section 1B (as inserted by Article 58) insert—

“Claimant commitment

1C.—(1) For the purposes of this Part a “claimant commitment” is a record of the claimant’s responsibilities in relation to an award of an employment and support allowance.

(2) A claimant commitment is to be prepared by the Department or the Department for Employment and Learning and may be reviewed and updated as that department thinks fit.

(3) A claimant commitment is to be in such form as the Department thinks fit.

(4) A claimant commitment is to include—

- (a) any prescribed information, and
- (b) any other information the Department or the Department for Employment and Learning considers it appropriate to include.

(5) For the purposes of this Part a claimant accepts a claimant commitment if, and only if, the claimant accepts the most up-to-date version of it in such manner as may be prescribed.

(6) Regulations may provide that, in prescribed circumstances, a claimant is to be treated as having satisfied the condition mentioned in section 1(3)(aa).”

(4) In section 15(2)(b) (directions about work-related activity) for the words from “by” to “14” substitute “in such manner as the Department or the Department for Employment and Learning thinks fit”.

(5) In section 16(1) (contracting out) before paragraph (a) insert—

“(za) any function under section 1C in relation to a claimant commitment;”.

(6) In Schedule 2 (supplementary provisions) after paragraph 4 insert—

“Exemption

4A. Regulations may prescribe circumstances in which a person may be entitled to employment and support allowance without having accepted a claimant commitment.”

(7) In section 25(2) of the Welfare Reform Act (Northern Ireland) 2010 (action plans: well-being of children), in subsection (5) inserted into section 14 of the Welfare Reform Act (Northern Ireland) 2007—

- (a) after “preparing any” insert “claimant commitment or”;
- (b) after “action plan,” insert “the Department or”.

Work experience etc.

61. In section 13 of the Welfare Reform Act (Northern Ireland) 2007 (work-related activity), after subsection (7) insert—

“(8) The reference to activity in subsection (7) includes work experience or a work placement.”

Hardship payments

62. After section 16 of the Welfare Reform Act (Northern Ireland) 2007 insert—

“Hardship payments

16A.—(1) Regulations may make provision for the making of payments (“hardship payments”) by way of an employment and support allowance to a person where—

- (a) the amount otherwise payable to the person in respect of an employment and support allowance is reduced by virtue of regulations under section 11(3), 12(3) or 13(3), and
 - (b) the person is or will be in hardship.
- (2) Regulations under this section may in particular make provision as to—
- (a) circumstances in which a person is to be treated as being or not being in hardship;
 - (b) matters to be taken into account in determining whether a person is or will be in hardship;
 - (c) requirements or conditions to be met by a person in order to receive hardship payments;
 - (d) the amount or rate of hardship payments;
 - (e) the period for which hardship payments may be made.”

Claimant responsibilities after introduction of universal credit

Claimant responsibilities for employment and support allowance

- 63.—(1) The Welfare Reform Act (Northern Ireland) 2007 is amended as follows.
- (2) For sections 11 to 16 (and the italic heading preceding section 11) substitute—

“Work-related requirements

Work-related requirements

11.—(1) The following provisions of this Part provide for the Department to impose work-related requirements with which persons entitled to an employment and support allowance must comply for the purposes of this Part.

- (2) In this Part “work-related requirement” means—
- (a) a work-focused interview requirement (see section 11B);
 - (b) a work preparation requirement (see section 11C).
- (3) The work-related requirements which may be imposed on a person depend on which of the following groups the person falls into—
- (a) persons subject to no work-related requirements (see section 11D);
 - (b) persons subject to work-focused interview requirement only (see section 11E);
 - (c) persons subject to work-focused interview and work preparation requirements (see section 11F).

Claimant commitment

11A.—(1) A claimant commitment is a record of the responsibilities of a person entitled to an employment and support allowance in relation to the award of the allowance.

(2) A claimant commitment is to be prepared by the Department and may be reviewed and updated as the Department thinks fit.

(3) A claimant commitment is to be in such form as the Department thinks fit.

(4) A claimant commitment is to include—

- (a) a record of the requirements that the person must comply with under this Part (or such of them as the Department considers it appropriate to include),
- (b) any prescribed information, and
- (c) any other information the Department considers it appropriate to include.

(5) For the purposes of this Part a person accepts a claimant commitment if, and only if, the claimant accepts the most up-to-date version of it in such manner as may be prescribed.

Work-focused interview requirement

11B.—(1) In this Part a “work-focused interview requirement” is a requirement that a person participate in one or more work-focused interviews as specified by the Department.

(2) A work-focused interview is an interview for prescribed purposes relating to work or work preparation.

(3) The purposes which may be prescribed under subsection (2) include in particular that of making it more likely in the opinion of the Department that the person will obtain paid work (or more paid work or better-paid work).

(4) The Department may specify how, when and where a work-focused interview is to take place.

Work preparation requirement

11C.—(1) In this Part a “work preparation requirement” is a requirement that a person take particular action specified by the Department for the purpose of making it more likely in the opinion of the Department that the person will obtain paid work (or more paid work or better-paid work).

(2) The Department may under subsection (1) specify the time to be devoted to any particular action.

(3) Action which may be specified under subsection (1) includes in particular—

- (a) attending a skills assessment;
- (b) improving personal presentation;
- (c) participating in training;
- (d) participating in an employment programme;
- (e) undertaking work experience or a work placement;
- (f) developing a business plan;
- (g) any action prescribed for the purpose in subsection (1).

(4) The action which may be specified under subsection (1) includes taking part in a work-focused health-related assessment.

(5) In subsection (4) “work-focused health-related assessment” means an assessment by a health care professional approved by the Department which is carried out for the purpose of assessing—

- (a) the extent to which the person’s capability for work may be improved by taking steps in relation to the person’s physical or mental condition, and
- (b) such other matters relating to the person’s physical or mental condition and the likelihood of the person obtaining or remaining in work or being able to do so as may be prescribed.

(6) In subsection (5) “health care professional” means—

- (a) a registered medical practitioner,
- (b) a registered nurse,
- (c) an occupational therapist or physiotherapist registered with a regulatory body established by an Order in Council under section 60 of the Health Act 1999, or
- (d) a member of such other profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 as may be prescribed.

Persons subject to no work-related requirements

11D.—(1) The Department may not impose any work-related requirement on a person falling within this section.

(2) A person falls within this section if—

- (a) the person has limited capability for work and work-related activity,
- (b) the person has regular and substantial caring responsibilities for a severely disabled person,
- (c) the person is a single person responsible for a child under the age of one,
- (d) the person is of a prescribed description.

(3) Where a person falls within this section, any work-related requirement previously applying to the person ceases to have effect.

(4) In this section—

- “regular and substantial caring responsibilities” has such meaning as may be prescribed;
- “severely disabled” has such meaning as may be prescribed.

Persons subject to work-focused interview requirement only

11E.—(1) A person falls within this section if—

- (a) the person is a single person responsible for a child who is aged at least one and is under a prescribed age (which may not be less than 3), or
- (b) the person is of a prescribed description.

(2) The Department may, subject to this Part, impose a work-focused interview requirement on a person entitled to an employment and support allowance who falls within this section.

(3) The Department may not impose a work preparation requirement on a person falling within this section (and, where a person falls within this section, a work preparation requirement previously applying to the person ceases to have effect).

Persons subject to work preparation and work-focused interview requirement

11F.—(1) A person who does not fall within section 11D or 11E falls within this section.

(2) The Department may, subject to this Part, impose a work preparation requirement or work-focused interview requirement on a person entitled to an employment and support allowance who falls within this section.

Connected requirements

11G.—(1) The Department may require a person entitled to an employment and support allowance to participate in an interview for any purpose relating to—

- (a) the imposition of a work-related requirement on the person;
- (b) verifying the person's compliance with a work-related requirement;
- (c) assisting the person to comply with a work-related requirement.

(2) The Department may specify how, when and where such an interview is to take place.

(3) The Department may, for the purpose of verifying a person's compliance with a work-related requirement, require the person to—

- (a) provide to the Department information and evidence specified by the Department in a manner so specified;
- (b) confirm compliance in a manner so specified.

(4) The Department may require a person to report to the Department any specified changes in that person's circumstances which are relevant to—

- (a) the imposition of work-related requirements on the person;
- (b) the person's compliance with a work-related requirement.

Imposition of requirements

11H.—(1) Regulations may make provision—

- (a) where the Department may impose a requirement under this Part, as to when the requirement must or must not be imposed;
- (b) where the Department may specify any action to be taken in relation to a requirement under this Part, as to what action must or must not be specified;
- (c) where the Department may specify any other matter in relation to a requirement under this Part, as to what must or must not be specified in respect of that matter.

(2) Where the Department may impose a work-focused interview requirement, the Department must have regard to such matters as may be prescribed.

(3) Where the Department may specify a particular action under section 11C(1), the Department must have regard to such matters as may be prescribed.

(4) Where the Department may impose a requirement under this Part, the Department may revoke or change what has been imposed or specified.

(5) Where the Department may specify any action to be taken in relation to a requirement imposed under this Part, the Department may revoke or change what has been specified.

(6) Notification of a requirement imposed under this Part (or any change to or revocation of such a requirement) is, if not included in the claimant commitment, to be in such manner as the Department may determine.

(7) Regulations must make provision to secure that, in prescribed circumstances, where a person has recently been a victim of domestic violence—

- (a) a requirement imposed on that person under this Part ceases to have effect for a period of 13 weeks, and
 - (b) the Department may not impose any other requirement on that person during that period.
- (8) For the purposes of subsection (7)—
- (a) “domestic violence” has such meaning as may be prescribed;
 - (b) “victim of domestic violence” means a person on or against whom domestic violence is inflicted or threatened (and regulations under subsection (7) may prescribe circumstances in which a person is to be treated as being or not being a victim of domestic violence);
 - (c) a person has recently been a victim of domestic violence if a prescribed period has not expired since the violence was inflicted or threatened.

Compliance with requirements

11I. Regulations may make provision as to circumstances in which a person is to be treated as having—

- (a) complied with or not complied with any requirement imposed under this Part or any aspect of such a requirement, or
- (b) taken or not taken any particular action specified by the Department in relation to such a requirement.

Sanctions

11J.—(1) The amount of an award of an employment and support allowance is to be reduced in accordance with this section in the event of a failure by a person which is sanctionable under this section.

(2) It is a failure sanctionable under this section if a person—

- (a) fails for no good reason to comply with a work-related requirement;
- (b) fails for no good reason to comply with a requirement under section 11G.

(3) Regulations are to specify—

- (a) the amount of a reduction under this section, and
- (b) the period for which such a reduction has effect.

(4) Regulations under subsection (3)(b) may provide that a reduction under this section in relation to any failure is to have effect for—

- (a) a period continuing until the person meets a compliance condition specified by the Department,
- (b) a fixed period not exceeding 26 weeks which is—
 - (i) specified in the regulations, or
 - (ii) determined in any case by the Department, or
- (c) a combination of both.

(5) In subsection (4)(a) “compliance condition” means—

- (a) a condition that the failure ceases, or
- (b) a condition relating to future compliance with a work-related requirement or a requirement under section 11G.

- (6) A compliance condition specified under subsection (4)(a) may be—
 - (a) revoked or varied by the Department;
 - (b) notified to the person in such manner as the Department may determine.
- (7) A period fixed under subsection (4)(b) may in particular depend on either or both the following—
 - (a) the number of failures by the person sanctionable under this section;
 - (b) the period between such failures.
- (8) Regulations may provide—
 - (a) for cases in which no reduction is to be made under this section;
 - (b) for a reduction under this section made in relation to an award that is terminated to be applied to any new award made within a prescribed period of the termination;
 - (c) for the termination or suspension of a reduction under this section.

Concurrent exercise of certain functions by Department for Employment and Learning

11K.—(1) The Department for Employment and Learning may exercise, concurrently with the Department, the functions of the Department under the provisions of this Part specified in subsection (2); and references to the Department in those provisions are to be construed accordingly.

- (2) The provisions are—
 - (a) section 11A(2) and (4)(a) and (c);
 - (b) section 11B(1), (3) and (4);
 - (c) section 11C(1) and (2);
 - (d) section 11G(1), (2), (3) and (4);
 - (e) section 11H(1)(b) and (c), (3) and (5);
 - (f) section 11I(b).

Delegation and contracting out

11L.—(1) The functions of the Department under sections 11 to 11I may be exercised by, or by the employees of, such person as the Department may authorise for the purpose (an “authorised person”).

- (2) An authorisation given by virtue of this section may authorise the exercise of a function—
 - (a) wholly or to a limited extent;
 - (b) generally or in particular cases or areas;
 - (c) unconditionally or subject to conditions.
- (3) An authorisation under this section—
 - (a) may specify its duration;
 - (b) may be varied or revoked at any time by the Department;
 - (c) does not prevent the Department or another person from exercising the function to which the authorisation relates.
- (4) Anything done or omitted to be done by or in relation to an authorised person (or an employee of that person) in, or in connection with, the exercise or purported exercise of the

function concerned is to be treated for all purposes as done or omitted to be done by or in relation to the Department or (as the case may be) an officer of the Department.

(5) Subsection (4) does not apply—

- (a) for the purposes of so much of any contract made between the authorised person and the Department as relates to the exercise of the function, or
- (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by the authorised person (or an employee of that person).

(6) Where—

- (a) the authorisation of an authorised person is revoked, and
- (b) at the time of the revocation so much of any contract made between the authorised person and the Department as relates to the exercise of the function is subsisting,

the authorised person is entitled to treat the contract as repudiated by the Department (and not as frustrated by reason of the revocation).

(7) This section applies in relation to the functions exercisable by the Department for Employment and Learning by virtue of section 11K as it applies in relation to the functions of the Department mentioned in subsection (1); and references to the Department in subsections (1) to (6) are to be construed accordingly.”

(3) In section 19 (pilot schemes), in subsection (3), for the words from “ascertaining” to the end substitute—

“testing the extent to which the provision made by the regulations is likely to promote—

- (a) people remaining in work, or
- (b) people obtaining or being able to obtain work (or more work or better-paid work).”

(4) In section 24 (interpretation), in subsection (1)—

(a) at the appropriate places insert—

““child” means a person under the age of 16;”;

““single person” means an individual who is not a member of a couple (within the meaning of Part 2 of the Welfare Reform (Northern Ireland) Order 2015);”;

““work” has such meaning as may be prescribed;”;

““work-focused interview requirement” has the meaning given by section 11B;”;

““work preparation requirement” has the meaning given by section 11C;”;

““work-related requirement” has the meaning given by section 11;”;

(b) for the definition of “work-related activity” substitute—

““work-related activity”, in relation to a person, means activity which makes it more likely that the person will obtain or remain in work or be able to do so;”.

(5) In section 25 (regulations), in subsection (3), for “to 15” substitute “to 11J”.

(6) In Schedule 2 (supplementary)—

- (a) in the heading preceding paragraph 10A, for “cause” substitute “reason”;
- (b) before paragraph 10A insert—

“**10ZA.** Regulations may for any purpose of this Part provide for—

- (a) circumstances in which a person is to be treated as having or not having a good reason for an act or omission;
- (b) matters which are or are not to be taken into account in determining whether a person has a good reason for an act or omission.”;

- (c) in paragraph 10A, in sub-paragraph (1)—
 - (i) for “section 11, 12 or 13” substitute “paragraph 10ZA”;
 - (ii) for “good cause” substitute “a good reason”.
- (7) In that Schedule, after paragraph 10A insert—

“Responsibility for children

10B. Regulations may for any purpose of this Part specify circumstances in which a person is or is not responsible for a child.”

- (8) In that Schedule, in paragraph 13 (information), for “13” substitute “11K”.