

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CONTRIBUTION CONDITIONS FOR JOBSEEKER'S ALLOWANCE AND EMPLOYMENT AND SUPPORT ALLOWANCE) REGULATIONS 2010

2010 No. 2446

1. This Explanatory Memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 From 1 November 2010, all new customers claiming contributory Employment and Support Allowance (ESA) or contribution-based Jobseeker's Allowance (JSA) will need to have paid National Insurance contributions on relevant earnings at the lower earnings limit for at least 26 weeks to qualify for benefit. As a result, people will need to have worked for at least 26 weeks in one of the last two complete tax years to claim either benefit. This differs from current rules where people can qualify for either ESA or JSA having paid contributions on earnings for around 12 weeks' work at the National Minimum Wage, or less than four weeks work at higher-rate tax levels.
- 2.2 These Regulations make provision for determining a claimant's 'relevant earnings' for the purposes of the first contribution condition for ESA and JSA. They provide that, for the purpose of this condition, a claimant's 'relevant earnings' will be the total amount of their earnings at the lower earnings limit in one of the last two complete tax years before the benefit year in which the claim is made.
- 2.3 These Regulations also amend the existing relaxation provision under which certain groups of ESA customers – such as carers – can be treated as satisfying the first contribution condition. From 1 November 2010, the relaxation provisions will allow these specific customers to qualify for ESA using the amended first contribution condition on the basis of National Insurance contributions paid in any single tax year.
- 2.4 The amendments apply to new customers only - i.e. those customers applying on or after 1 November 2010.

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

3.1 None.

4. Legislative Context

- 4.1 Sections 12 and 13 of the Welfare Reform Act 2009 (the Act) provide the main legislative authority for the changes to the first contribution condition. The Act broadly aligns the contribution conditions for both ESA and JSA whilst strengthening the link between claiming contributory benefits and periods of recent employment.
- 4.2 Under the existing arrangements people can qualify for a lifetime's contributory ESA, or 6 months of contribution-based JSA, with as little as 12 weeks' work at the National Minimum Wage or less than 4 weeks' work for higher-rate taxpayers. In addition, ESA claimants can meet the first contribution on the basis of National Insurance paid within three relevant tax years whereas JSA claimants have only two years.
- 4.3 The Government has decided that claimants need to work for a reasonable amount time before claiming ESA or JSA and that entitlement to benefit should be linked to a period of

recent work. To meet these objectives the Act changes the first contribution conditions. From 1 November, people will need to have worked, and paid contributions at the lower earnings limit, for at least 26 weeks before claiming ESA or JSA. To strengthen the link between recent employment and benefits the National Insurance contributions must have been paid in one of the last two complete tax years.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

What is being done and why

- 7.1 The 2008 Welfare Reform White Paper¹ *‘Raising expectations and increasing support: reforming welfare for the future’* outlined changes to the National Insurance contributions conditions for both ESA and JSA. It proposed that people would have to work for a reasonable amount of time before claiming contributory benefit by ensuring claimants must have worked at least 26 separate weeks in one of the two relevant income tax years before qualifying for contributory ESA or contribution-based JSA. However, claimants will not have to work 26 consecutive weeks to qualify for benefit.
- 7.2 Sections 12 and 13 of the 2009 Act, as supplemented by these Regulations, give effect to these changes. More specifically, this instrument supports the Government’s policy - that people must work at least 26 weeks before claiming contributory benefit - by ensuring that only the weekly amount of National Insurance paid at the lower earnings limit is counted towards meeting the first contribution condition. It does this by disregarding any National Insurance paid on earnings above the lower earnings limit, which in turn, allows the Department to determine both ‘relevant earnings’ and the amount of weeks worked by the claimant.
- 7.3 The Act and these Regulations also give effect to the Government’s aim to simplify the benefit system and strengthen the link between claiming contributory benefits and periods of recent employment. It does this by reducing the number of tax years in which a person could pay National Insurance contributions and qualify for ESA from three years to two, which aligns the periods for both ESA and JSA.
- 7.4 These alignment measures are intended in particular to strengthen the link to recent employment and simplify the benefit system across ESA and JSA. The changes apply to new claimants only. For ESA this means:
- reducing the number of qualifying tax years² from one of the last 3 years, to one of the last 2 years;
 - retaining the exemptions and protections for additional groups such as carers and previous ESA claimants; and
 - retaining eligibility for self-employed people who pay Class 2 contributions.

¹ ‘Raising expectations and increasing support’ (Cm 7506) - <http://www.officialdocuments.gov.uk/document/cm75/7506/7506.pdf>

² Actually relevant income tax years (6 April to 5 April)

- 7.5 People who do not qualify for contribution based ESA or JSA after these measures come into force, and have a low income, may be eligible for income-related ESA or income-based JSA.

Consolidation

- 7.6 Informal consolidation will be included in the Department's 'the Law Relating to Social Security' (the Blue Volumes)³.

8. Consultation Outcome

- 8.1 On 21 July 2008, the Green Paper⁴ '*No-one written off: reforming welfare to reward responsibility*' was published and opened for a full public consultation until 22 October 2008.
- 8.2 The Government elicited feedback from a wide range of stakeholders. Several events were held between officials and organisations representing key stakeholders. This also included a discussion forum with representatives of learning disability / learning difficulty organisations. Officials from the Department also met with representatives from the entertainers' union Equity to discuss their concerns with the changes.
- 8.3 The Government's response to the consultation was published in the 2008 Welfare Reform White Paper⁵ '*Raising expectations and increasing support: reforming welfare for the future*'. It was noted that whilst many of those who responded to the consultation were in favour of benefit simplification, some were concerned about the impact of change, or recommended flexibility within a simpler system.

9. Guidance

- 9.1 The Government's objectives for communications include:
- for customers and stakeholders – to ensure that they understand the ethos of ESA and JSA; what it means for them, what is going to change and when and how they will be affected. This will involve updating external products such as the Disability Alliance handbook, as part of the Department's normal publication quality assurance process; and
 - for staff – to ensure that all Department for Work and Pensions, Jobcentre Plus and Her Majesty's Revenue and Customs staff understand the policy and the amended first contribution condition and are able to explain them clearly to customers. To this end, a Launch Bulletin alongside staff guidance will be available via the intranet explaining the changes.

10. Impact

- 10.1 The legislation does not impact on business, charities or voluntary bodies
- 10.2 The legislation does not impact on the public sector as the changes are being delivered using existing Jobcentre Plus and Her Majesty's Revenue and Customs computer systems. As result, there will be no additional burdens on public services.
- 10.3 A full impact assessment is attached to this memorandum at **Annex A**.

³ Available on the internet at: http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/pdf/c_0031.pdf at no cost to the public.

⁴ 'No one written off: reforming welfare to reward responsibility' (Cm 7363) <http://www.officialdocuments.gov.uk/document/cm73/7363/7363.pdf>

⁵ 'Raising expectations and increasing support' (Cm 7506) - <http://www.officialdocuments.gov.uk/document/cm75/7506/7506.pdf>

11. Regulating Small Business

11.1 The legislation does not impact on small business.

12. Monitoring and Review

12.1 This policy will be subject to ongoing review. The introduction of Employment and Support Allowance will be fully evaluated by 2014. The changes to the First Contribution condition for Employment and Support Allowance will be fully reviewed as part of that process.

13. Contact

13.1 Trevor Pendergast at the Department for Work and Pensions (Tel: 020 7449 5639 email: trevor.pendergast@dpw.gsi.gov.uk) can answer any queries regarding this instrument.