

## EXPLANATORY MEMORANDUM TO

### THE JOBSEEKER'S ALLOWANCE AND UNIVERSAL CREDIT (HIGHER-LEVEL SANCTIONS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2019

2019 No. 201

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Communities (DfC) 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 reduces the maximum duration of a higher-level sanction in Universal Credit (UC) and Jobseeker's Allowance (JSA), for claimants aged over 18, for third and subsequent failures to 182 days or 26 weeks.
- 2.2 It also makes transitional provisions in both UC and JSA in relation to people subject to a 546 days or 78 weeks higher-level sanction on the date of change.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None

##### *Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### 4. Extent and Territorial Application

- 4.1 The extent of this instrument is Northern Ireland.
- 4.2 The territorial application of this instrument is Northern Ireland.

#### 5. European Convention on Human Rights

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

#### 6. Legislative Context

- 6.1 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.

- 6.2 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 rate.
- 6.3 The Welfare Reform Act 2012 provides for the introduction of a new working age income-related social security benefit, UC, and the abolition of JSA(IB), ESA(IR), IS, Housing Benefit (HB), Working Tax Credit and Child Tax Credit (CTC).
- 6.4 On 17th 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. 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.
- 6.5 In line with the consent given by the Northern Ireland Assembly in relation to the 2015 Act, in the absence of a Northern Ireland Executive, the Department for Work and Pensions will be laying this instrument on behalf of Northern Ireland in order to deliver the change equally across both Great Britain and Northern Ireland.
- 6.6 Social security legislation enables the Department to require claimants receiving JSA or UC to comply with work-related activity. Work-related activity means activity which makes it more likely that a person will obtain, or remain in work or do more or better paid work.
- 6.7 Sanctions, or reductions in the amount of benefit paid to a claimant, are imposed if a claimant fails to comply with work-related activity without good reason. The length of a sanction is provided in regulations and increases depending on the number of previous occasions that a claimant has failed to comply with work-related activity and the period between such failures.
- 6.8 Higher-level sanctions are imposed for the most serious failures such as not taking up an offer of paid work, or losing or ceasing paid work voluntarily and for no good reason, or through misconduct.
- 6.9 The duration of higher-level sanctions in the Universal Credit Regulations (Northern Ireland) 2016 and the Jobseeker’s Allowance Regulations (Northern Ireland) 2016 is currently 91 days for a first failure, 182 days for a second failure (within 365 days but not 14 days of a previous failure) and 546 days for third and subsequent failures (within 365 days but not 14 days of a previous failure).
- 6.10 The duration of higher-level sanctions in the Jobseeker’s Allowance Regulations (Northern Ireland) 1996 is currently 13 weeks for a first failure, 26 weeks for a second failure (within 365 days but not 14 days of a previous failure) and 78 weeks for third and subsequent failures (within 365 days but not 14 days of a previous failure).
- 6.11 This instrument amends the Jobseeker’s Allowance Regulations (Northern Ireland) 1996, the Universal Credit Regulations (Northern Ireland) 2016 and the Jobseeker’s Allowance Regulations (Northern Ireland) 2016 to amend the duration for third and subsequent failures so that the maximum length of a higher-level sanction will be 182 days or 26 weeks, as the case may be.

- 6.12 The instrument also contains transitional provisions to enable higher-level sanctions to be terminated once a claimant's award has been reduced for at least 182 days or 26 weeks from the date that the reduction took effect. This means that a person with an eighteen month sanction will have that sanction terminated after 182 days or 26 weeks. If the person's award has already been reduced for longer than 182 days or 26 weeks, the sanction will be terminated immediately.

## **7. Policy background**

### *What is being done and why?*

- 7.1 As mentioned above, a sanction is a reduction in benefit for a period of time as a result of a claimant failing to comply with work-related activity without good reason.
- 7.2 There are different levels of sanctions, depending on the severity of the failure. Higher-level sanctions are applied for the most severe failures and are only applicable in UC and JSA.
- 7.3 The policy intention is for claimants who persistently fail to meet their responsibilities to incur longer penalties. Therefore, claimants receive longer sanctions for second and third failures of the same type. This is called 'escalation' and only occurs if the next failure occurs within 12 months (but not within 14 days) of the last. Otherwise, the claimant will still receive a second sanction but it will be the same duration as the first.
- 7.4 The duration of higher-level sanctions is set out above and, broadly, the maximum duration is eighteen months. This SI would reduce the maximum duration of a higher-level sanction from eighteen months to six months. If sanctioned for eighteen months, there is a risk that claimants may decide to disengage entirely from the employment support on offer. This increases the likelihood of financial hardship for these claimants, for the duration of the sanction and afterwards. In light of this, the potential incentive provided by the eighteen-month sanction must be weighed against the possible negative consequences for claimants.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 Informal consolidated text of instruments is available to the public free of charge via the National Archive website: [www.legislation.gov.uk](http://www.legislation.gov.uk)

## **10. Consultation outcome**

- 10.1 This instrument makes a minor change to existing policy and so no public consultation was undertaken as part of the development of this policy.

## **11. Guidance**

- 11.1 All public guidance that specifies sanction durations will be updated when this instrument comes into operation. The Department for Work and Pensions will also be issuing internal guidance and memos to work coaches and decision makers. This is in

development and will be ready ahead of 27 November when this instrument is due to come into operation.

- 11.2 No further public communication is planned, either to claimants or to external stakeholders. Work coaches will be expected to make claimants aware of the change if it is relevant to them (i.e. if they have previously received a higher-level sanction). This instrument makes a minor change to existing policy and does not alter processes or expectation of claimants, and it therefore does not need to be communicated to all claimants.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. There may be a nominal impact on some charities in the need to update guidance to reflect the new duration.
- 12.2 There is no, or no significant, impact on the public sector. There is a nominal impact on the Department for Communities, in administration costs for implementation.
13. An Impact Assessment has not been prepared for this instrument because Northern Ireland currently has no higher-level sanctions.

## **14. Regulating small business**

- 14.1 The legislation does not apply to activities that are undertaken by small businesses.

## **15. Monitoring & review**

- 15.1 The approach to monitoring of this legislation is that it will be reviewed as part of the ongoing monitoring of sanctions.
- 15.2 The regulation does not include a statutory review clause because it is not expected to have an impact on small businesses.
- 15.3 As per Article 76(1) of the Social Security (Northern Ireland) Order 1998 (which was amended by Article 125 of the Welfare Reform (Northern Ireland) Order 2015) the Department for Communities is required to report on sanctions either annually or at such times or intervals as may be prescribed.

## **16. Contact**

- 16.1 Anne McCleary at the Department for Communities can be contacted with any queries regarding the instrument: Telephone: 028 90823332 or email: [annemccleary@communities-ni.gov.uk](mailto:annemccleary@communities-ni.gov.uk).
- 16.2 Anne McCleary, Director of Social Security Policy and Legislation Division, at the Department for Communities can confirm that this Explanatory Memorandum meets the required standard.
- 16.3 Mims Davies, the Minister for Employment at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.