

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CORONAVIRUS) (MISCELLANEOUS AMENDMENTS)
REGULATIONS (NORTHERN IRELAND) 2021
S.R. 2021 No. 105

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under sections 70(8), 122(1)(a) and (d), 123, 129, 131(1), 133(2)(h) and (l), 167D and 171(1) and (3) and (5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, Articles 6(5) and (12), 8(4), 9(4), and 36(2) of, and paragraph 12 of Schedule 1 to, the Jobseekers (Northern Ireland) Order 1995, sections 2(3), (4), (6) and (9), 3(8), 17(2)(a) and 19(1) to (3) of the State Pension Credit Act (Northern Ireland) 2002, sections 4(2) and (3), 24(1) and 25(2) of, and paragraph 6(8) of Schedule 1 and paragraphs 1(a) and 2 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007 and Articles 7(2), 11(1) and 48(1) and (2) of, and paragraph 5(1) of Schedule 1 to, the Welfare Reform (Northern Ireland) Order 2015, and is subject to the negative resolution procedure.

2. Purpose

2.1. In response to the continuing outbreak of Coronavirus disease in Northern Ireland, this rule ensures:

Employment and Support Allowance

The expiry date of the provisions within the Employment and Support Allowance and Universal Credit (Coronavirus) Regulations (Northern Ireland) 2020 (S.R. 2020 No. 33) is further extended until 12th November 2021. For those claiming or entitled to Employment and Support Allowance (“ESA”), who meet the eligibility conditions and are:

- infected with Covid-19, or
- self-isolating in line with government guidance, or

- are looking after a child (or qualifying young person) who falls into either of these categories,

this rule ensures that they can be treated as having Limited Capability for Work for the purposes of ESA without the requirement to provide medical evidence or undergo a Work Capability Assessment. The regulations also remove the need for them to serve waiting days, enabling ESA to be paid from day one of the claim

2.2. Jobseeker's Allowance (Periods of Sickness)

This rule further extends the expiry date of regulation 8 of the Social Security (Coronavirus) (Further Measures) Regulations (Northern Ireland) 2020 (S.R. 2020 No. 53) (“the Further Measures Regulations”) until 31st August 2021 so that certain persons affected by Covid-19 can continue to be in receipt of Jobseeker's Allowance without any period of sickness/isolation counting as short or as an extended period of sickness.

2.3. Carer's Allowance

This rule further extends the expiry date of regulation 9 of the Further Measures Regulations until 31st August 2021. These changes are designed to ensure financial support continues during the pandemic for claimants receiving Carer's Allowance (“CA”) so that they are not penalised for following Government advice.

2.4. Prisoners on Temporary Release

This rule further extends the expiry date of the Social Security (Coronavirus) (Prisoners) Regulations (Northern Ireland) 2020 (S.R. 2020 No. 63) until 31st August 2021. In addition to extending the duration of the Regulations, the aim of these regulations is to be more targeted and qualify the current provisions, which temporarily remove the restriction that prohibits claims to specified income-related benefits, for those prisoners on temporary release. It is to only allow access to benefits where the Department decides that is necessary due to Covid-19, for example where that release has been approved by the Department of Justice through the Prison and Young Offenders Centre Rules (Northern Ireland) 1995 to allow prison governors, on behalf of the Department of Justice, to release certain prisoners temporarily to help manage the incidence or transmission of coronavirus and to facilitate the effective running of prisons and young offender institutions.]

This narrower provision has not been necessary up to now as ordinary use of temporary release has been suspended. However, in anticipation that temporary release may be resumed for reasons other than Covid-19 related risks, it is considered appropriate to narrow this provision.

3. Legislative Context

3.1. In response to the continuing outbreak of Coronavirus disease in Northern Ireland, these Regulations extend the expiry date of the Employment and Support Allowance and Universal Credit (Coronavirus) Regulations (Northern Ireland) 2020 (S.R. 2020 No. 33) to 12th November 2021, as well as amending both the Social Security (Coronavirus) (Prisoners) Regulations (Northern Ireland) 2020 (S.R. 2020 No. 63) and regulations 8 and 9 of the Social Security (Coronavirus) (Further Measures) Regulations (Northern Ireland) 2020 (S.R. 2020 No. 53) so that they expire on 31st August 2021.

4. Background

4.1. This continues to be a fast-paced situation with frequent changes to public health guidance, and uncertainty about when the pandemic may end. The Department continues to receive ESA claims under the Employment and Support Allowance and Universal Credit (Coronavirus) Regulations (Northern Ireland) 2020, which play an important role in supporting people who might otherwise not be entitled to ESA because they do not have a health condition or disability, to self-isolate in accordance with public health guidance. In addition, people who are infected with Covid-19 would not receive payment of ESA until day 8 of their claim.

4.2. The regulations, which came into operation on 13th March 2020 and were further extended from 12th November 2020, will expire on 12th May 2021. Further extending the expiry date in the regulations to 12th November 2021 will allow us to continue to provide support and give certainty to those affected by the Covid-19 pandemic, as part of the Government's strategy. This extension will ensure that ESA claimants who satisfy the eligibility conditions and have Covid-19, or are self-isolating because of Covid-19, or are caring for a child (or qualifying young person) who has Covid-19 or is self-isolating, in line with government guidance, will continue to be supported.

4.3. By not extending the regulations, people may be deterred from claiming ESA and instead they may be inclined to continue working, against government and public

health advice to self-isolate. This in turn has implications for the wider general public and the Government who are trying to contain the spread of the virus as far as possible.

Jobseeker's Allowance (JSA)

- 4.4. Regulatory provision was made on 13th March 2020 to prevent people from losing their entitlement to JSA if they are infected with coronavirus, self-isolating or caring for a child who is infected or self-isolating. The regulations which were further extended from 12th November 2020, will expire on 12th May 2021.
- 4.5. This provision treats such claimants as not having limited capability for work and excludes periods of sickness or self-isolation due to Covid from the maximum permitted number of sickness periods applicable to recipients of old style or new style JSA.
- 4.6. Currently, claimants awarded JSA can have the following before losing entitlement to JSA:
- two short periods of sickness of up to 2 weeks in any jobseeking period, within each successive 12-month period, if their jobseeking period lasts longer than 12 months, or
 - a third or longer period of sickness of up to 13 weeks in a fixed 12-month period starting from the first date of their sickness.
- 4.7. By extending this regulation beyond 12th May 2021 to 31st August 2021, means that claimants will continue to have their entitlement to JSA protected despite any periods where they are infected with Covid-19 or where they are self-isolating.

Carer's Allowance

- 4.8. In March 2020, temporary changes were made to extend the Government's support for those in receipt of Carer's Allowance affected by Covid-19. These changes were further extended in November 2020. This further amendment extends the date to 31st August 2021 on which this temporary amendment will cease. The provision treats a person who is in receipt of Carer's Allowance and has only temporarily ceased providing care for the severely disabled person because either they or the cared for person are infected or contaminated with Covid-19 or are self-isolating, as continuing to meet the conditions.

4.9. Where an alternative carer claims benefit for providing the necessary care and meets the qualifying conditions, they will receive the carer benefit instead and the original carer will be advised to claim another benefit, such as Universal Credit.

Prisoners on Temporary Release

4.10. In March 2020, as part of the Government's strategy of supporting people affected by Covid-19, the Department of Justice made provision for the urgent temporary release of prisoners, where necessary, to allow for the safe running of the prison estate. This measure was further extended in November 2020. The Department of Justice anticipates the continued need of the scheme in appropriate cases. This rule responds to that, by extending the removal of restrictions which otherwise prevent prisoners on temporary release from claiming means tested benefits until 31st August 2021. The effect of this rule is to continue to provide the same financial support to these prisoners, while on temporary release, as other comparable claimants of these benefits, which helps these individuals weather the financial impacts arising from the Covid-19 outbreak.

Rationale for the difference in extension periods

4.11. The JSA, CA and Prisoners measures are due to end in August 2021 and reflect the current planning assumption for completion of the vaccination roll-out, whereas the ESA measure is being extended to support the test and trace programme which continues to operate as part of the measures introduced to contain the spread of Covid-19.

4.12. ESA Measure

For ESA the changes are related to the wider economic and fiscal impacts of the virus and the ESA regulations are playing an important function in supporting people, who might otherwise not be entitled to ESA, to self-isolate in accordance with public health guidance. The changes support the test and trace programme which continues to operate as part of the measures introduced to contain the spread of Covid-19.

4.13. JSA Measure

The expiry date of the JSA measure exempting periods of sickness and self-isolation due to Covid-19 reflects the current planning assumption for completion of the vaccination roll-out. The fundamental condition of entitlement for JSA is that claimants

be available for work and take reasonable steps to look for work, which means claimants are not eligible for JSA if they have an illness or disability which stops them from working. The expiry date of August 31st reflects a return to business as usual and this requirement will apply equally to Covid-19 as to all other illnesses and health conditions. JSA claimants who then exceed the maximum permitted periods of sickness will be treated as having limited capability for work and may transition to claiming either Universal Credit or New Style ESA depending on their circumstances.

4.14. CA Measure

The current vaccination roll-out will enable carers and the disabled person they care for to return to normal patterns of care with greater confidence. The vaccine has a direct and quick impact on the sorts of care people can confidently provide.

4.15. Prisoners on Temporary Release measure

The roll-out of the vaccination programme means vulnerable low-risk prisoners will have protection from Covid-19. This will allow the Department of Justice to end their use of temporary release for medically vulnerable prisoners at risk from the virus, and recall such prisoners who still have part of their prison sentence to serve. In turn, this will enable the Department of Justice to re-commence normal business as usual temporary release of other prisoners, mostly day release, for example to gain work experience.

5. Consultation

5.1 There is no requirement to consult on these Regulations.

6. Equality Impact

6.1. An equality impact assessment has not been carried out in relation to this Statutory Rule because of the need to make and lay urgently to provide support and give certainty to those affected by the Covid-19 pandemic.

7. Regulatory Impact

7.1. The proposed Rule does not require a Regulatory Impact Assessment as it does not impose any new costs on business, charities or voluntary bodies or on the public sector.

8. Financial Implications

8.1. None for the Department.

9. Section 24 of the Northern Ireland Act 1998

9.1. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that the Rule –

- (a) is not incompatible with any of the Convention rights;
- (b) is not incompatible with Community law;
- (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion; and
- (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

10. EU Implications

10.1. Not applicable.

11. Parity or Replicatory Measure

11.1. These Regulations are equivalent to the Social Security (Coronavirus) (Miscellaneous Amendments) Regulations 2021 in Great Britain which come into force on 12th May 2021.

12. Additional Information

12.1. Guidance will be issued to Department for Communities staff prior to this Statutory Rule becoming operational.