

## **EXPLANATORY MEMORANDUM TO**

### **THE JOBSEEKER'S ALLOWANCE AND EMPLOYMENT AND SUPPORT ALLOWANCE (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2021**

**S.R. 2021 No. 288**

#### **1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Department for Communities (DfC) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under Articles 8J(5)(b) and 8K(4)(b) of the Jobseekers (Northern Ireland) Order 1995 and section 11J(3)(b) of the Welfare Reform Act (Northern Ireland) 2007, and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1 This Rule amends the Jobseeker's Allowance Regulations (Northern Ireland) 2016 (S.R. 2016 No. 218 – "JSA Regulations") and the Employment and Support Allowance Regulations (Northern Ireland) 2016 (S.R. 2016 No. 219 – "ESA Regulations") to correct an error which exists in these regulations causing ambiguity, and clarify when sanctions can be escalated. The changes do not change current policy.

#### **3. Background**

- 3.1 The JSA Regulations and the ESA Regulations make provision for New Style Jobseeker's Allowance (NS JSA) and Employment and Support Allowance (NS ESA) which consist of a contributory element only. A sanction is a reduction in benefit for a period of time as a result of a claimant failing to comply with work-related requirements without good reason. There are different levels of sanctions, depending on the severity of the failure.
- 3.2 At the time of designing the policy, the Department intended that NS JSA and NS ESA sanctions would escalate, to match the approach to sanctions in Universal Credit, with increasing penalties for subsequent failures. When the legislation was originally passed (in the JSA Regulations and the ESA Regulations), the provision was there for sanctions to escalate in New Style awards in the same way as other benefits.
- 3.3 When a claimant receives two or more sanctions at the same level within 365 days but not 14 days, the second or subsequent sanction will escalate. This means that the length of the second or subsequent sanction will increase. The sanction reduction periods are set out in the tables in regulations 20 to 22 of the JSA Regulations and regulation 52 of the ESA Regulations.
- 3.4 The legislation was subsequently amended through the Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2017 as it was discovered that the provisions did not work as the policy intended. However a consequential amendment should have been included. Not having this amendment may cause ambiguity around whether a sanction can escalate, which may cause confusion for claimants and DfC staff.

- 3.5 This Rule will amend the JSA Regulations and the ESA Regulations to omit the provision that may cause ambiguity.
- 3.6 The disregard in the provision being removed has not been applied in practice and so no claimants will be adversely affected by the removal of this provision and it is simply a minor correction.

#### **4. Consultation**

- 4.1 There is no requirement to consult on these Regulations.

#### **5. Equality Impact**

- 5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has considered a screening exercise on the legislative proposals for these Regulations and as they merely correct a defect to restore the original policy intention, has concluded that they do not have significant implications for equality of opportunity. In light of this, the Department considers that an Equality Impact Assessment is not necessary.

#### **6. Regulatory Impact**

- 6.1 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.

#### **7. Financial Implications**

- 7.1 None for the Department.

#### **8. Section 24 of the Northern Ireland Act 1998**

- 8.1 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.

#### **9. EU Implications**

- 9.1 Not applicable.

#### **10. Parity or Replicatory Measure**

- 10.1 The corresponding Great Britain provisions are contained in the Jobseeker's Allowance and Employment and Support Allowance (Amendment) Regulations 2021 (S.I 2021/1132) in Great Britain which were made on 8th October 2021, which come into force on 1st November 2021. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions in line with section 87 of the Northern Ireland Act 1998.

## **11. Additional Information**

- 11.1 Current guidance is already reflective of escalations and as such, no new guidance is necessary as a result of this amendment.