

EXPLANATORY MEMORANDUM TO

The Social Security (Jobseeker's Allowance and Employment and Support Allowance) (Waiting Days) Amendment Regulations 2014

2014 No. 2309

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 This instrument increases the number of “waiting days” served following a new claim to Jobseeker's Allowance (JSA) or Employment and Support Allowance (ESA) from 3 days to 7 days. Waiting days are the days at the start of a claim in respect of which claimants (who otherwise satisfy the conditions of entitlement) are not entitled to benefit.
 - 2.2 The changes will apply to new claims made in respect of a waiting period which starts on or after 27 October 2014.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 Under primary legislation¹, claimants are not entitled to JSA or ESA for a prescribed number of “waiting days” at the beginning of a jobseeking period or a period of limited capability for work. The prescribed number of days has been set at 3 since the introduction of these benefits².
 - 4.2 The intention to increase the number of waiting days to 7 was announced by the Chancellor of the Exchequer on 26 June 2013 and it was confirmed in the [Budget statement of 19 March 2014](#) that this would apply to ESA as well as to JSA.
 - 4.3 These Regulations duly increase the prescribed number of waiting days for JSA and ESA from 3 to 7. They make no change to any other aspect of waiting days policy.
5. **Territorial Extent and Application**

This instrument applies to Great Britain. The Department for Social Development in Northern Ireland will be producing its own legislation for Northern Ireland.

¹ [The Jobseekers Act 1995](#), paragraph 4 of Schedule 1 and the [Welfare Reform Act 2007](#), paragraph 2 of Schedule 2.

² The Jobseeker's Allowance (Amendment) Regulations 1998/71 which were to come into force on 5th April 1999 increased the waiting days in JSA from 3 to 7. However, they were revoked before they came into force by regulation 2 of the Social Security (Miscellaneous Amendments) (No 4) Regulations 1998/1174 which came into force on 5th June 1998.

6. European Convention on Human Rights

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

7. Policy background

- What is being done

7.1 Since the introduction of JSA and ESA, claimants have been required to serve waiting days before becoming entitled to either the contributory or income-based elements of these benefits. These Regulations increase the prescribed number of waiting days from 3 to 7.

7.2 This increase will apply to jobseeking periods and periods of limited capability for work which start on or after 27 October 2014.³ It will also apply to the new style contributory-only JSA and ESA which may be claimed in areas where Universal Credit has been introduced. Apart from the increase in the prescribed number of waiting days, these Regulations introduce no change to the waiting days policy.

7.3 Claimants who are exempt from waiting days under current rules will continue to be exempt. These exemptions generally apply where a claimant or partner has received a prescribed benefit within the last 12 weeks. In addition, exemptions apply to JSA claimants who are under 18 years old and in severe hardship, and to ESA claimants who are terminally ill.

- Reason for the change

7.4 The principle behind the waiting days policy is that benefits are not intended to provide financial support for very brief breaks in employment or periods of sickness. Many people come to benefits directly from employment and increasing numbers are monthly paid. Their final earnings are disregarded in the assessment of their benefit, so it is reasonable to expect them to use those earnings to budget for an initial period of unemployment.

7.5 The increase in waiting days is therefore designed to discourage people from claiming benefit when they have only a short gap between jobs or a short period of sickness. If, on the other hand, claimants have no job to go to, the increase in waiting days may encourage them to claim benefit more quickly so that they do not lose out on their entitlement and can access labour market support at the earliest opportunity.

7.6 The Department estimates that this change will generate savings of approximately £50 million in 2015/16, although these will decrease in subsequent years as Universal Credit is rolled out. These savings will be invested in new measures to support people into work.

³ The first day of a claimant's jobseeking period is in most cases the day of the claim to JSA. The start of a period of limited capability for work is normally the first day for which the claimant provides medical evidence.

- Effects of the change on benefit claimants

7.7 Our analysis indicates that approximately 70% of Jobseeker's Allowance (JSA) claimants and 40% of Employment and Support Allowance (ESA) claimants will serve waiting days at the start of their award, because they are not in one of the exempt groups. The change will have the effect of reducing the value of their first benefit payment by an average of £40 for JSA claimants and £50 for ESA claimants.

8. Consultation outcome

8.1 A full public consultation on the increase to waiting days in Jobseeker's Allowance (JSA) and Employment and Support Allowance (ESA) has not been undertaken. The proposals in respect of these Regulations were subject to statutory formal consideration by the Social Security Advisory Committee⁴. The Committee subsequently consulted with a broad range of organisations and individuals, between 23 May 2014 and 13 June 2014. In particular the Committee sought further evidence of the potential impacts this proposal could have upon claimants. There were around 80 responses to the consultation exercise and most respondents had concerns about the potential hardship that may be caused to claimants in vulnerable circumstances.

8.2 On 1 July 2014 the Committee delivered its report on the proposed regulations to the Secretary of State for Work and Pensions. The report and the Secretary of State's response are available with the regulations. The Secretary of State accepted the Committee's main recommendation to carry out a robust analysis of costs and benefits, and has published a full impact assessment. He decided, in light of this assessment, to proceed with the regulations, judging that the potential risks of the policy were outweighed by the benefits that could be derived to claimants from re-investment of the financial savings.

9. Consolidation

9.1 Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website legislation.gov.uk. An explanation as to which instruments are maintained on each site is available [here](#).

10. Guidance

10.1 Guidance for decision-makers, which is available to the public on the government website, will be amended to reflect the change.

10.2 For ESA and JSA claimants, telephony scripts will be amended to ensure that an explanation about the requirement to serve waiting days is given in the course of a telephone claim to benefit. The JSA On-Line application process will also describe

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325370/ssac-minutes-070514.pdf

the change. Guidance to staff who work with JSA and ESA claimants is being enhanced to ensure that an explanation of the waiting days change can be provided and to ensure that where the claimant declares that they are in urgent financial need, they will be advised of the Short Term Benefit Advance facility. Where the circumstances are appropriate for a benefit advance to be considered, they will be advised how to make an application.. All relevant staff will receive awareness training and information packs which describe the change. Staff not directly affected by this change will receive awareness communications.

11. Impact

11.1 There is no impact on business or civil society organisations.

11.2 An Impact Assessment will be published on www.legislation.gov.uk.

12. Regulating small business

12.1 The legislation does not apply to small business.

13. Monitoring & review

13.1 DWP will monitor the impact of the increase in waiting days, particularly in relation to the level of recourse to Short Term Benefit Advances that may result from the implementation of the policy.

14. Contact

14.1 Neil Walker at the Department for Work and Pensions, Tel: 0113 2324242 or email: neil.walker@dwp.gsi.gov.uk, can answer any queries regarding the instrument.