

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT AND SUPPORT ALLOWANCE (EXEMPT WORK &
HARDSHIP AMOUNTS) (AMENDMENT) REGULATIONS 2017

2017 No. 205

1. Introduction

- 1.1 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 makes amendments to the Employment and Support Allowance Regulations 2008, removing the current 52 week restriction on undertaking permitted work for Employment and Support Allowance (ESA) claimants in the work related activity group (WRAG) and the assessment phase of the benefit, who are currently limited to no more than 52 weeks of permitted work. The term “permitted work” is used to describe various forms of “exempt work” which claimants are allowed to undertake and still keep their benefit.
- 2.2 This instrument also increases the hardship payment to ESA claimants who have been sanctioned because of failure to comply with labour market requirements to 80 percent of the basic ESA rate. This applies to claimants in the work-related activity group, but not in receipt of the work-related activity component who are pregnant or seriously ill.

3. Matters of special interest to Parliament

- 3.1 *Matters of special interest to the Joint Committee on Statutory Instruments*
- 3.2 None.

Other matters of interest to the House of Commons

- 3.3 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The main legislation governing entitlement to ESA is contained in the Welfare Reform Act 2007 and the Employment and Support Allowance Regulations 2008. (SI 2008/794)
- 4.2 This instrument amends the above regulations to remove the 52 week limit on permitted work so that all ESA claimants, including those in the WRAG and ESA assessment phase, will be able to continue to undertake permitted work while retaining all of their benefit for an indefinite period.
- 4.3 Also from 3 April 2017, the Employment and Support Allowance Regulations 2008 will be amended to allow 80 percent of the basic Employment and Support Allowance (ESA) rate (rather than 60 percent), to be paid to ESA claimants who are sanctioned and no longer receive the additional work related activity component.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is Great Britain.
- 5.3 Subject to the agreement of the Northern Ireland Assembly, the Department for Communities in Northern Ireland will be introducing its own corresponding legislation for Northern Ireland.

6. European Convention on Human Rights

- 6.1 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 and why

- 7.1 When the Welfare Reform and Work Act 2016 was going through its parliamentary stages, concerns were expressed that the rules which allow claimants to do a certain amount permitted work and retain all their ESA are unnecessarily restrictive. As a consequence it is intended to abolish the rule which limits such work to a maximum of 52 weeks. Affected ESA claimants also have to wait a year to restart permitted work after completing a 52 week period of permitted work. These limitations will be removed to improve work incentives. In the 2015 calendar year there were 8,900 permitted work starts for people in the work related activity group (WRAG). The changes would also apply to people claiming Incapacity Benefit (IB), Severe Disablement Allowance (SDA), and Housing Benefit (HB).

Hardship Payments

- 7.2 Currently an ESA work related activity group (WRAG) claimant who has their benefit sanctioned for failing to participate in mandated work-related activity without a good cause could receive a hardship payment of 60 percent of the basic ESA rate plus the work related activity component.
- 7.3 From 3 April 2017, the additional component will no longer be available to new claimants¹, The Department has therefore decided to increase the ESA hardship rates for those claimants who will no longer receive the work-related activity component. If an ESA WRAG claimant in this situation, or member of their household, is pregnant or is seriously ill, then the claimant could receive a hardship rate of 80 percent of the basic ESA rate, rather than 60 percent currently. In 2014/15 there were around 7,800 hardship awards compared to 31,300 sanctions.

Consolidation

- 7.4 Informal consolidated text of instruments is available to the public free of charge via: www.legislation.gov.uk.

8. Consultation outcome

- 8.1 The Social Security Advisory Committee was formally consulted about the Employment and Support Allowance (ESA) hardship and permitted work provisions

¹ Subject to certain protections in the Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional and Savings Provisions) Regulations 2017

and agreed not to refer the regulations for consultation. The Committee did request that the Department ensure that the guidance for the hardship payments change would need to reflect the specific needs of ESA claimants.

9. Guidance

- 9.1 Guidance is under development to support advisers and decision makers. The Advice for Decision Making and the Decision Makers Guide are published on the DWP website and will be updated prior to the coming into force of the Regulations.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector will involve changes in guidance to Department staff.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

- 12.1 The Department is committed to monitoring the impacts of its policies and we will use evidence from a number of sources on the experiences and outcomes of the protected groups.
- 12.2 We will use administrative datasets, including the Department's Work and Pensions Longitudinal Study (WPLS), to monitor trends in the benefit caseloads for the protected groups and in the level and distribution of benefit entitlements. The administrative data will provide robust material for age and sex although not, as a rule, for the other protected groups. Where it is practical we will endeavour to incorporate information for the other protected groups.
- 12.3 The Department will also use survey data, such as the Family Resources Survey (FRS) and Labour Force Survey (LFS), to assess trends in the employment outcomes of the protected groups. Both the FRS and LFS will collect information on age, disability, gender, ethnicity, sexual orientation, religion and civil partnerships.
- 12.4 The Department will:
- continue to monitor feedback from claimants through our normal feedback channels to assess whether there are unintended consequences or adverse consequences for protected groups and assess the broader impact of the policy changes;
 - engage stakeholders through regular meetings to discuss progress of these measures and seek feedback about the changes and whether they are working as intended for claimants; and
 - ask stakeholders to review the learning and development and operational guidance and any written communication to claimants that will support the change.
- 12.5 The Department is looking across its activities to identify and address further gaps in data provision, for protected groups, wherever reasonable.

13. Contact

- 13.1 Paul Robinson, at the Department for Work and Pensions. Telephone 020 7449 5584. Email: paul.robinson4@dpw.gsi.gov.uk can answer any queries regarding the instrument.