

WELFARE REFORM ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Working-age benefits

Section 50: Dual entitlement

263. *Section 50* inserts a new *subsection (6A)* into section 1 of WRA 2007 to ensure that people who have limited capability for work may be entitled to contributory ESA in some circumstances where they are, at the same time, a member of a couple entitled to joint-claim JSA.
264. Section 1(3)(f) of WRA 2007 provides that a person is not entitled to ESA if they are a member of a couple who are entitled to joint-claim JSA.
265. The new subsection (6A) ensures that, for the purposes of section 1(3)(f), the reference to a couple does not include any couple entitled to joint-claim JSA by virtue of regulations made under paragraph 8A of Schedule 1 to JSA 1995.
266. Paragraph 8A of Schedule 1 to the JSA 1995 allows for regulations to prescribe circumstances in which a joint-claim couple may be entitled to joint-claim JSA without both members meeting the basic conditions of entitlement for JSA (for example, if one member of the couple has limited capability for work).
267. *Subsection (2)* of the section has the effect that where ESA had been paid to a person before the amendment to section 1 of WRA 2007 came into force, and they were a member of a joint-claim couple by virtue of regulations made under paragraph 8A of Schedule 1 of the JSA 1995, the change should be treated as having already been in force. This will have the effect of regularising such payments, which should not have been made because the claimant was a member of a couple entitled to joint-claim JSA.