

These notes refer to the Social Security (Terminal Illness) Act (Northern Ireland) 2022 (c.7) which received Royal Assent on 30th March 2022

Social Security (Terminal Illness) Act (Northern Ireland) 2022

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Social Security (Terminal Illness) Act (Northern Ireland) 2022 which received Royal Assent on 30 March 2022. They have been prepared by the Department for Communities (the “Department”) in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. Currently fast track access is provided to five different social security benefits (Attendance Allowance (AA), Disability Living Allowance (DLA), Personal Independence Payment (PIP), Employment and Support Allowance (ESA) and Universal Credit (UC)) where a person is “terminally ill” within the definition set out in legislation governing these benefits: a person is “terminally ill” at any time if at that time the person suffers from a progressive disease and the person's death in consequence of that disease can reasonably be expected within 6 months.
4. In these circumstances legislative provision enables benefit to be paid without the need to, amongst other things, undergo face to face assessments, serve qualifying periods or waiting days, demonstrate care or supervision needs or undertake any work-related activity for the purposes of the respective benefits.
5. An individual with a terminal condition with a life expectancy beyond the period of 6 months is not precluded from applying for any of the five benefits; however, they still need to satisfy the usual qualifying conditions in the benefit and follow the normal application and assessment route.
6. There has been significant lobbying over the last three years, both here and in Great Britain, from charities, clinicians and politicians for changes to be made

to the “6 months” criterion to improve access to fast track support for terminally ill people who have a longer life expectancy.

7. On 6 October 2020 the Assembly agreed on a motion that called for the removal of the “6 months” criterion from the special rules for terminal illness. The motion called on the Minister for Communities to immediately bring forward legislation to remove the six month rule, to provide guidance to health professionals and adopt a fairer definition of terminal illness. It was supported by all of the Executive parties.
8. A judicial review challenge was taken previously around the “6 months” criterion in social security terminal illness provision and whilst the judgment handed down by the High Court here in July 2020 found the provision in place to be discriminatory on ECHR grounds, this was subsequently overturned by the Court of Appeal in August 2021 following an appeal by the Department.
9. Removal of the “6 months” criterion was also included as a recommendation in the Walter Rader Independent Review of the Personal Independence Payment Assessment Process published in June 2018, and was reiterated in the recommendations that emerged from the Second Independent Review by Marie Cavanagh, laid before the Assembly in December 2020.
10. Evaluation and analytical work was undertaken by the Department to consider reform of the current system. Following Executive agreement Minister Hargey announced the way forward on 30 June 2021 by way of Written Ministerial Statement before the Assembly:
11. http://www.niassembly.gov.uk/globalassets/documents/official-reports/written-ministerial-statements/2020-2021/bv141_wms_dfc_300621.pdf
12. In line with that statement, the change brought forward by this Act will replace the life expectancy timeframe of “6 months” with “12 months” in the definition of “terminally ill” in the relevant primary and secondary legislation governing each of the five social security benefits.
13. This reform will open up the scope of the current system to enable more terminally ill people to qualify for fast track access to the relevant benefits.

COMMENTARY ON SECTIONS

Section 1: Special rules to apply where death expected within 12 months

Subsections (1) and (2) amend the life expectancy timeframe to 12 months in the definitions of “terminally ill” which are used for the purposes of fast track access to AA, DLA, PIP, ESA and UC. Subsection (2) also contains amendments to enable the new timeframe to apply for the purposes of provisions in decisions and appeals legislation and those relating to passporting advantages, such as premia and disregards, in certain income-related benefits.

Subsections (3) and (4) make amendments to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to enable the modified version of the prospective test in DLA to apply where death is expected within 12 months.

Subsection (5) adds wording to the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992 so that the amended “terminally ill” definition can apply for the purposes of these Regulations.

Subsection (6) updates an older reference to the definition of “terminally ill” in the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992 with the current one that applies to attendance allowance claimants.

Subsection (8) ensures that the amendments made by the Act do not apply for the purposes of the Individual Savings Account Regulations 1998 and the Child Trust Funds Regulations 2004. Certain provisions within those Regulations include reference to a “terminally ill” definition used in social security legislation. As those Regulations extend to the entire UK and deal with income tax and child trust funds which are excepted matters, it is considered that changing them is likely to fall outside the competency of the Assembly.

Section 2: Consequential provision

Section 2 allows the Department to make by regulations any consequential provision necessary to give full effect to the Act. Regulations which amend, revoke or repeal any primary legislation cannot come into operation unless and until approved by the Assembly.

Section 3: Commencement and short title

Section 3 makes provision about the commencement of the provisions in the Act and provides for the short title of the Act to be the Social Security (Terminal Illness) Act (Northern Ireland) 2022.

HANSARD REPORTS

14. The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly and the date Royal Assent was received.

<i>Stage</i>	<i>Date</i>
First Stage	29 November 2021
Accelerated Passage	7 December 2021
Second Stage	7 December 2021
Committee Stage	N/A
Consideration Stage	14 December 2021
Further Consideration Stage	19 January 2022

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<i>Stage</i>	<i>Date</i>
Final Stage	24 January 2022
Royal Assent	30 March 2022