

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

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.