

EXPLANATORY MEMORANDUM

THE SOCIAL SECURITY (CONTRIBUTION CONDITIONS FOR JOBSEEKER'S ALLOWANCE AND EMPLOYMENT AND SUPPORT ALLOWANCE) REGULATIONS (NORTHERN IRELAND) 2011 S.R. 2011 No. 434

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under Articles 4(3B)(a) of the Jobseekers (Northern Ireland) Order 1995 and paragraph 1(4)(a) of Schedule 1 to the Welfare Reform Act (Northern Ireland) 2007 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 These Regulations amend the Jobseeker's Allowance Regulations (Northern Ireland) 1996 and the Employment and Support Allowance Regulations (Northern Ireland) 2008 with effect from 1 January 2012.
- 2.2 The Regulations make provision for certain spouses and civil partners, who accompany a member of Her Majesty's forces on a posting outside the United Kingdom, to have entitlement to an easement of the first National Insurance contribution condition (see Appendix A) when they make a claim for either contribution-based Jobseeker's Allowance or contributory Employment and Support Allowance. Such spouses and civil partners will be able to benefit from the easement on their return, where they would not have otherwise met the first National Insurance contribution condition.
- 2.4 It will allow such people to be taken to have satisfied the first contribution condition where they had paid sufficient National Insurance contributions in any previous complete tax year before the beginning of the relevant benefit year. This differs from the current rules where sufficient National Insurance contributions must have been paid in one of the last two complete tax years before the beginning of the relevant benefit year. As such, the easement provided by these Regulations will relax the conditions of entitlement in a similar way to the easement used for carers claiming Employment and Support Allowance.
- 2.5 The easement applies to spouses and civil partners who accompanied a member of Her Majesty's forces on a posting abroad after April 2010.

3. Background

- 3.1 As part of the Armed Forces Service Personnel Command Paper, *'The Nation's Commitment: Cross Government Support to our Armed Forces, their Families and Veterans'* published in July 2008, it was agreed by the then Government that spouses and civil partners who chose to accompany a member of Her Majesty's forces on a posting abroad would be entitled to National Insurance credits, for any periods where they were unable to find work during the posting. The credits are used to protect such people's entitlement to the basic State Pension and working age contributory benefits, such as contribution-based Jobseeker's Allowance or contributory Employment and Support Allowance. However, as National Insurance credits only protect the second contribution condition (see Appendix A), for both Jobseeker's Allowance and Employment and Support Allowance, it was decided to introduce an additional easement for such spouses and civil partners, which relaxed the qualifying criteria of the first contribution condition.
- 3.2 The National Insurance credit was introduced, on 6 April 2010, to help such spouses and civil partners maintain both their National Insurance contributory record and their entitlement towards Jobseeker's Allowance and Employment and Support Allowance by protecting the second of two contribution conditions. The easement introduced by these Regulations relies on the claimant being entitled to such a credit. The easement will work in tandem with National Insurance credits by helping to protect the first contribution condition and allowing such spouses and civil partners to meet the first contribution condition through a relaxed set of criteria
- 3.3 Under current legislation, to satisfy the first contribution condition for contribution-based Jobseeker's Allowance or contributory Employment and Support Allowance, people must have worked for at least 26 weeks and paid or be treated as paid National Insurance contributions at the Lower Earnings Limit (£102.00 per week for 2011/12) in one of the last two complete tax years before the relevant benefit year. However, under the easement, the spouses and civil partners in question can be treated as having satisfied the conditions where they have paid sufficient National Insurance in any previous complete tax year prior to the overseas posting.
- 3.4 The purpose of the easement is to help such spouses and civil partners overcome some of the disadvantages they face when accompanying service personnel posted abroad, as they have no control over where they are posted and may encounter difficulties finding employment. It is recognised that this could affect their ability to maintain their National Insurance records and therefore, their entitlement to contribution-based Jobseeker's Allowance or contributory Employment and Support Allowance.

4. Consultation

- 4.1 As the Regulations are being made before the end of the period of six months from the commencement of the primary powers, they are exempt from prior reference to the Social Security Advisory Committee.

5. Equality Impact

- 5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on these legislative proposals and has concluded that the proposals do not have significant implications for equality of opportunity. In light of this, the Department considers that an equality impact assessment is not necessary.

6. Regulatory Impact

- 6.1 These Regulations do not require a Regulatory Impact Assessment as they do not impose any new costs on business, charities or voluntary bodies.

7. Financial Implications

- 7.1 These Regulations do not have any significant financial implications for the Department.

8. Section 24 of the Northern Ireland Act 1998

- 8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the Rule—
- (a) is not incompatible with any of the Convention rights,
 - (b) is not incompatible with Community law,
 - (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and
 - (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1 Not applicable.

10. Parity or Replicatory Measure

- 10.1 The corresponding Great Britain Regulations are the Social Security (Contribution Conditions for Jobseeker's Allowance and Employment and Support Allowance) Regulations 2011 and come into force on 1 January 2012. Parity of timing and substance is an integral part of the maintenance

of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.

National Insurance Contribution Conditions for Jobseeker's Allowance

To qualify for contribution-based Jobseeker's Allowance on the basis of their national insurance contributions, a claimant has to satisfy two conditions.

First Contribution Condition – Jobseeker's Allowance

- a claimant has actually paid Class 1 National Insurance contributions in respect of one ("the base year") of the last two complete years before the beginning of the relevant benefit year;
 - the contributions have been paid before the week for which Jobseeker's Allowance is claimed; and
 - the claimant's relevant earnings for the base year upon which primary Class 1 contributions have been paid or treated as paid are not less than the base year's lower earnings limit multiplied by 26.
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- Does not include Class 2 contributions (self-employed contributions).

Second condition – Jobseeker's Allowance

- for each of the previous two tax years, a claimant must have either paid Class 1 National Insurance contributions or been credited with earnings, and
 - the earnings factor derived from earnings upon which primary Class 1 contributions have been paid or treated as paid from earnings credited is not less, in each of the two complete years, than 50 times the lower earnings limit for that tax year.
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- Does not include Class 2 contributions.

National Insurance Contribution Conditions for Employment and Support Allowance

To qualify for contributory Employment and Support Allowance on the basis of their national insurance contributions, a claimant has to satisfy two conditions

First Contribution Condition – Employment and Support Allowance

- a claimant has actually paid Class 1 National Insurance contributions in respect of one (“the base tax year”) of the last two complete years before the beginning of the relevant benefit year;
- the contributions have been paid before the week for which the Employment and Support Allowance is claimed; and
- the claimant’s relevant earnings for the base tax year upon which primary Class 1 contributions have been paid or treated as paid are not less than the base tax year’s lower earnings limit multiplied by 26 (that earnings factor being the aggregate of claimant’s earnings factors derived from (1) so much of the claimant’s earnings as did not exceed the base tax year’s upper earnings limit and upon which primary Class 1 contributions have been paid or treated as paid, and (2) Class 2 contributions).

Second Contribution Condition - Employment and Support Allowance

- for each of the previous 2 tax years, a claimant must have been paid or credited with class 1 or class 2 contributions on earnings of no less than 50 times the lower earnings limit for that tax year