

EXPLANATORY MEMORANDUM

THE EMPLOYMENT AND SUPPORT ALLOWANCE (AMENDMENT OF LINKING RULES) REGULATIONS (NORTHERN IRELAND) 2012 S.R. 2012 No. 160

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 powers conferred by the Welfare Reform Act (Northern Ireland) 2007 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 These Regulations amend the Employment and Support Allowance Regulations (Northern Ireland) 2008 and the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 with effect from 1 May 2012.
- 2.2 There are two linking rules in the Employment and Support Allowance Regulations, the 12 week linking rule and the 104 week linking rule. These Regulations clarify the circumstances in which entitlement to an Employment and Support Allowance component arises where a new claim is made which links to an earlier award ending.
- 2.4 The Statutory Rule also clarifies when entitlement to a transitional addition, originally awarded as part of an award of Employment and Support Allowance under the exercise to reassess claimants entitled to an incapacity benefit, is retained where a new Employment and Support Allowance claim is made and links to an earlier award ending.

3. Background

- 3.1 Employment and Support Allowance is paid at a lower rate for the first 13 weeks (the “assessment period”) during which time claimants are assessed to determine whether or not they have limited capability for work. If, following the medical assessment, it is decided that a claimant has limited capability for work the weekly rate of benefit is increased by the work-related activity component. If it is decided that the claimant has both limited capability for work and limited capability for work-related activity, the weekly rate of benefit is increased by the support component (which is paid at a higher rate than the work-related activity component). Payment of either component therefore depends on it being determined in the first instance that the claimant has limited capability for work.

- 3.2 The operation of the linking rules is being clarified following an Upper Tribunal decision in which the judge decided that, where a claim was made which linked to an earlier period of limited capability for work which had exceeded 13 weeks, the award in respect of that new claim should automatically include the work-related activity component, whether or not a work capability assessment had taken place during the currency of the earlier period of limited capability for work. This runs counter to the policy intention that a component can only be paid when the claimant has been medically assessed (i.e. the work capability assessment), and it has been determined they have limited capability for work.
- 3.3 The Employment and Support Allowance Regulations (Northern Ireland) 2008 (as amended by these regulations) make it clear that entitlement to a component does not arise until a medical assessment has been carried out. These regulations also clarify the circumstances where it is not necessary to serve a new assessment period before the component is paid.
- 3.4 The regulations clarify the policy intention that where:
- The first award lasted fewer than 13 weeks, the relevant component will be paid from the beginning of the 14th week of the aggregate of the two awards but only when a medical assessment has taken place;
 - The first award exceeded 13 weeks and was terminated for a reason other than that the claimant was fit for work and that award included a component, the new award will include the component from the outset. Where a component was not included in the first award, it will be paid following a medical assessment, from the start of the second award;
 - The first award exceeded 13 weeks and the award is terminated because the claimant is found fit for work, either component will be paid, following a medical assessment, from the beginning of the second award.
- 3.5 In consequence of the clarification of the linking rules the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 are amended to clarify that where, on conversion to Employment and Support Allowance, a claimant has been awarded a transitional addition, then, in the event of a repeat claim which satisfies the linking rules, where
- the first award was terminated for a reason other than that the claimant was fit for work, the new award will include the transitional addition from the outset, and
 - the first award was terminated because the claimant was found fit for work, the transitional addition will be paid (from the beginning of the second award) only following a medical assessment.

4. Consultation

- 4.1 The Social Security Advisory Committee were consulted and were in agreement that they did not require the proposals for these Regulations to be formally referred.

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 Employment and Support Allowance (Amendment of Linking Rules) Regulations 2011 (S.I. 2011/919 and come into force on 1 May 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.

The Statutory Instrument in Great Britain includes proposals to abolish the 104-week linking rule and makes consequential amendments to other regulations. This is to complement a measure in the Welfare Reform Act 2012 that will lead to awards of contributory ESA being limited to a total of 365 days. As the timescale for the introduction of time limiting contributory Employment and Support Allowance will differ between Great Britain and Northern Ireland the proposals to abolish the 104-week linking rule have not been taken forward at this time