

EXPLANATORY MEMORANDUM TO
THE INCOME SUPPORT (WORK-RELATED ACTIVITY) AND MISCELLANEOUS
AMENDMENTS REGULATIONS (NORTHERN IRELAND) 2017

2017 No. 18

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Communities (Northern Ireland) on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 When Income Support (IS) is claimed solely on the basis of being a lone parent then the frequency and duration of work-focused interviews (WFI) for lone parents with a youngest child aged 1-4 can be determined by an adviser¹. Advisers can no longer waive the requirement for lone parents to attend an IS work-focused interview. A safeguard against more than one sanction being applied to IS in any 2 week period is also introduced.

2.2 Advisers can require lone parents with a youngest child aged 3 or 4 to undertake mandatory work-related activity (WRA) if they are awarded IS solely on the basis of being a lone parent or Employment and Support Allowance (ESA) and are in the Work-related Activity Group (WRAG). Changes are also made for lone parents and nominated carers with a youngest child age 3 or 4 who are awarded new-style ESA². They can currently be required to attend a WFI. This instrument will allow them to be required to prepare for work too. Changes are also made for Universal Credit claimants who are the responsible carer for a youngest child aged 3 or 4. Such claimants will now be required to attend a WFI.

2.3 The Regulations will come into operation immediately after the coming into operation of the Universal Credit Regulations (Northern Ireland) 2016 (S.R. 2016 No. 216) for all new and repeat lone parent and nominated carer claimants in scope of the change. Changes will be implemented for existing claimants at their next scheduled interview after that date.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

¹ An officer acting on behalf of the Department for Communities

² New-style ESA means contributory Employment and Support Allowance under the Employment and Support Allowance Regulations (Northern Ireland) 2016 (S.R. 2016 No. 219)

4. Legislative Context

- 4.1 Section 87 of the Northern Ireland Act 1998 places a statutory duty on the Northern Ireland Minister with responsibility for social security and the Secretary of State for Work and Pensions to consult with one another with a view to securing a single social security system for the United Kingdom. Section 88 of the 1998 Act makes provision for financial adjustments to support the maintenance of these parity arrangements.
- 4.2 Underpinning the parity principle is the argument that, as people in Northern Ireland pay the same rates of income tax and National Insurance contributions as people in Great Britain, they are entitled to the same rights and benefits paid at the same rates.
- 4.3 On 17 November 2015 “A Fresh Start: The Stormont Agreement and Implementation Plan” was agreed by the main political parties in Northern Ireland. Included in this agreement was the approach agreed by the Executive and HM Government to implementing welfare reform in Northern Ireland. Northern Ireland (Welfare Reform) Act 2015 provided a time-limited power for Her Majesty to legislate on social security, child support and certain matters related to employment and training in Northern Ireland by Order in Council until 31 December 2016. Any such Order in Council could then confer power on the Secretary of State or a Northern Ireland department to make further provision regarding these matters by regulations or order. The Welfare Reform (Northern Ireland) Order 2015 (the “2015 Order”) was made on 9 December 2015 and regulations stemming from the Order to implement the various welfare reforms set out in the Welfare Reform Act 2012 (the “2012” Act) in Northern Ireland are now being brought forward.
- 4.4 The 2012 Act introduced a number of reforms including Universal Credit, Personal Independence Payment, the Jobseeker’s Allowance Claimant Commitment and a cap on the amount of benefits working age people can receive.
- 4.5 HM Government announced in the Spending Review 2013 its intention to strengthen conditionality for lone parents with a youngest child aged 3 or 4 to increase the support they receive to help them prepare for the time when they can return to work.
- 4.6 In order to make the changes announced in the Spending Review, the Social Security Regulations for Work-focused Interviews (WFIs)³ are being amended so that, rather than being at fixed points during the life of a claim, the frequency of WFIs for lone parents that are entitled to Income Support (IS) will be determined by an employment adviser as part of providing lone parents with an individually tailored package of support. This change to WFIs does not apply to those parents with a child under 1.
- 4.7 The Welfare Reform Act (Northern Ireland) 2007 is being used to require old style Employment and Support Allowance (ESA) and IS claimants to undertake Work-related Activity (WRA) if their youngest child is aged 3 or 4.
- 4.8 The regulations also amend the Employment and Support Allowance Regulations (Northern Ireland) 2016 and Universal Credit Regulations (Northern Ireland) 2016 so that lone parents and nominated responsible carers with a youngest child aged 3 or 4 on those benefits can be required to prepare for work. They currently can only be required to participate in a WFI.

³ The Social Security (Work-focused Interviews for Lone Parents) Regulations (Northern Ireland) 2001 (S.R. 2001 No. 152) and the Social Security (Work-focused Interviews) Regulations (Northern Ireland) 2003 (S.R. 2003 No. 274)

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Northern Ireland.
- 5.2 The territorial application of this instrument is Northern Ireland.
- 5.3 These regulations replicate for Northern Ireland the legislation that applies to Great Britain by virtue of the Income Support (Work-Related Activity) and Miscellaneous Amendments Regulations 2014 (S.I. 2014/1097).

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 Currently, lone parents with a youngest child aged 1 or over who are awarded Income Support (IS) solely on the basis of being a lone parent are not required to seek work until their youngest child reaches age 5. Until then they are required to attend regular Work-focused Interviews (WFIs) once their youngest child is aged 1. IS lone parents with a youngest child age 1-3 are required to attend six-monthly WFIs. These interviews become quarterly when the youngest child is aged 4. As part of these interviews, lone parents are required to agree an Action Plan with their adviser, but are not required to undertake those activities as a condition of continued receipt of benefit.
- 7.2 Lone parents with children under age 5 may also be in receipt of old style Employment and Support Allowance (ESA) and be in the Work-related Activity Group (WRAG). These lone parents are required to attend WFIs the frequency of which is already determined at the discretion of the employment adviser and must agree an Action Plan with their adviser as a condition of continued receipt of benefit.
- 7.3 Currently there are no conditionality requirements for parents in scope of this change if they have a youngest child under age 1. These regulations do not change this position.

Changes to the Lone Parent Regime

- 7.4 These Regulations introduce changes to the lone parent regime so that the frequency and timing of IS WFIs for lone parents with a youngest child aged 1-4 years can be determined at the discretion of an employment adviser instead of conducted at fixed points in the claim (“the WFI changes”). These changes enable advisers to determine the frequency and duration of the interviews to tailor the services and engagement they have with lone parents at all points throughout their claim.
- 7.5 Also employment advisers would be able to require lone parents in IS with a youngest child aged 3 or 4 to undertake mandatory work-related activity. The Work-related Activity (WRA) changes are, in line with the IS WFI changes, expected to support lone parents, particularly in the year before they lose entitlement to claim IS solely on the basis of being a lone parent when their youngest child is age 5. However it will be for advisers to determine if a lone parent would benefit from Work-related Activity (WRA) if they have barriers to employment. The changes mean that advisers will be

able to offer them this support at the most appropriate point at which the individual needs it.

Work-Related Activity changes

- 7.6 In addition employment advisers would be able to require lone parents in old style Employment and Support Allowance (ESA)⁴ with a youngest child aged 3 or 4 to undertake mandatory work-related activity. Similarly, lone and responsible nominated carers in Universal Credit and new-style ESA with a youngest child aged 3 or 4 can be required to prepare for work. These requirements (“the WRA changes”) will apply where WRA would improve the claimant’s prospects of a return to work and/or sustaining such employment.
- 7.7 The new requirements for claimants to undertake WRA or prepare for work can result in claimants carrying out various activities. These are activities which make it more likely that a claimant will obtain or remain in work. They are not activities which require claimants to undertake work or apply for a job. The activities may only be imposed where it is reasonable to do so, having regard to the claimant’s circumstances. These changes for WRA and preparation for work do not apply to lone parents or nominated responsible carers who have children younger than 3.
- 7.8 These changes support the aim of delivering a welfare system that recognises work as the primary route out of poverty. Children in workless families are much more likely to live in low income households than those in families with at least one adult working. Children living in lone parent families were more likely to be in relative poverty when compared with children living in families with two adults (Households Below Average Income, 2013-14). The changes introduced by these Regulations also reflect the emphasis on personalised support into work. They recognise that in order to return to work, the level of the support required will vary from one person to the next, and acknowledge that advisers are best placed to identify the support and guidance that is appropriate to each claimant. Advisers will have the flexibility to engage with the diverse group of claimants, both lone and couple parents, in a way which best suits each individual.
- 7.9 Under Universal Credit and new style Employment and Support Allowance, there is a strong emphasis on adviser discretion in determining what type of activity is suitable for each claimant, for example, any requirements placed on 16-17 year olds will focus on learning and skills for this age group.

Sanctions

- 7.10 The consequences for failing to attend a mandatory interview within Income Support (IS), without good cause, will remain unchanged. Lone parents who fail to attend a Work-focused Interview (WFI) face a 20% sanction of their personal allowance, which reduces benefit by an amount equal to 20% of the over age 25 single adult rate for IS and for every subsequent failure, up to 100% sanction (less 10 pence to protect passported benefits, such as free school meals, etc.) The regulations make changes such that this sanction rate will also apply within IS for failures to participate in WRA without good cause.
- 7.11 Lone parents and nominated responsible carers awarded new-style ESA whose youngest child is aged 3 or 4 will move into the Work Preparation Group as a result of

⁴ Old style ESA means Employment and Support Allowance under the Employment and Support Allowance Regulations (Northern Ireland) 2008 (S.R. 2008 No. 280)

these Regulations. Consequently, they may be subject to a low level sanction if they fail without good reason to comply with a work-related requirement. At present, they may only be subject to a lowest level sanction. A low level sanction has two components – an open ended period which lasts for the number of days until the claimant does something which they are required to do and a fixed period of 1, 2 or 4 weeks depending on the number of failures over the last 365 days. The sanction amount which is deducted from the claimant’s award is calculated to be broadly equivalent to, and no more than, the standard allowance amount (or half that amount for a joint claimant).

Safeguards

- 7.12 The regulations specify matters to be taken into account when determining good cause when a lone parent in receipt of IS fails to meet requirements to attend/participate in a Work-focused Interview (WFI) or Work-related Activity (WRA). We have also specified in regulations that where a notification is sent by post, the 5 days in which the person has to demonstrate good cause for not meeting a requirement will be counted as starting two days after the notification was posted, to provide the person with reasonable opportunity to establish good cause for not meeting a requirement. This mirrors arrangements in the Employment and Support Allowance Regulations (Northern Ireland) 2008. These Regulations remove the provision to waive the next scheduled WFI as this will now be arranged at the advisers’ discretion. They retain the safeguard that enables advisers to defer a WFI in instances where it would not be of assistance to the person or appropriate in their circumstances.
- 7.13 Also included is a safeguard so that Income Support (IS) lone parents can restrict their availability for WRA unless this falls within their child’s normal school hours or any time when they have entrusted the care of their child to a person over the age of 18, not including any form of healthcare. Guidance will reflect the policy intention that this provision applies to all claimants affected by this change.
- 7.14 The Department for Work and Pensions have stated that evidence to date on the impact of introducing WFIs shows that ensuring that content and timing of the interviews are flexible to the individual needs of lone parents and building a relationship with advisers are critical to them being effective. However, it is not possible to quantify that the degree of flexibility contributes to the overall effectiveness of such interviews in helping lone parents to leave IS and to move into employment; this is because these elements of the regime are relatively small and are somewhat qualitative in their nature, making their effect very difficult to isolate in any evaluation. There is widespread recognition that a degree of flexibility is required with lone parents to meet the diversity of their needs, and research with lone parents and advisers showed that they value flexible support.

Consolidation

- 7.15 This instrument will be informally consolidated in the NI equivalent of the GB Law Relating to Social Security (or “Blue Volumes”). It will be available to the public at no cost via the internet at: <https://www.communities-ni.gov.uk/services/law-relating-social-security>.

8. Consultation outcome

- 8.1 As this is a consequence of wider welfare reforms the Department for Communities has not consulted on these regulations specifically. The Department for Communities

consulted extensively about the implications of the wider reforms in the Welfare Reform Bill (which fell in Northern Ireland) consultation process, and has also discussed informally with stakeholders to ensure that the operational implications are fully understood and that processes are in place to ensure that the change is implemented correctly in Northern Ireland.

- 8.2 The Social Security Advisory Committee (SSAC) considered the proposal to make the equivalent GB regulations and decided to formally refer these for consultation between 11 July to 13 September 2013. There were six responses; two were broadly supportive of the changes. The remainder raised a number of concerns mainly around the mandatory nature of the change and the financial impact for parents if sanctions were applied for failing to meet requirements. Several respondents advocated the use of specialist lone parents advisers to maximise opportunities to prepare for work. The report recommended enacting secondary legislation to provide for the welfare of a child because the change impacts on claimants with caring responsibilities for a child. The majority questioned the rationale for removing from Income Support a list of matters to be considered when determining whether a parent had good cause for failing to attend work-focused interviews or attend work-related activity. Other matters for concern included the accessibility and affordability of childcare to support attendance and participation in work-focused interviews and work-related activity. Feedback was that parents should have access to funds to cover additional costs incurred as part of this proposal, for example those associated with travel costs to attend more frequent interviews, childcare and training.
- 8.3 The Department for Communities believes it is reasonable to require claimants in receipt of welfare benefits to take up support where this will help them prepare for the time they can return to work. It has due regard to the welfare of the child and it is satisfied that existing legislation together with the regulations themselves already provide safeguards. In response to SSAC's concerns about increased conditionality an easement has been included in the regulations to prevent lone parents that claim Income Support (IS) being subject to more than one sanction for failing to participate in a work-focused interview or failing to undertake work-related activity in any two week period. This takes into account the fact that, unlike other parents in scope of this change lone parents do not have access to Hardship Payments if their benefit is reduced by a sanction if they fail to meet a requirement without good cause. In IS, the list of matters to be considered when determining good cause if a claimant fails to undertake a requirement to attend a work-focused interview or undertake work-related activity will be retained. It is recognised that childcare is a key enabler in supporting parents to successfully undertake work-related activity and return to work. Employment advisers will receive timely awareness training with access to guidance to help them support parents affected by the change. Not all work-related activity will require a parent to secure childcare but where this is needed the parent can restrict their availability for such activity if their child is not in childcare or school. HM Government response to the SSAC report was laid with the GB regulations.

9. Guidance

- 9.1 Detailed guidance on both regulatory and operational changes will be provided to operational staff and decision makers, ensuring they are familiar with the changes and consolidate learning before implementation. All new and repeat claims will be advised about the change at their first contact with operational staff. Existing

claimants will be told about the change and how it affects them at their next scheduled Work-focused Interview (WFI) after the change date.

- 9.2 Prior to the implementation of these regulations, changes will also be made to the Decision Makers Guide (DMG) which is also available free on the internet at: <https://www.communities-ni.gov.uk/articles/decision-makers-guide>.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is negligible, with the impact dependant on the response to this change by claimants. This measure is part of the welfare reform package that will restore parity with the rest of the UK and contribute toward sustainable finances for the Executive. We anticipate that there will be some costs incurred by the Department for Communities as a result of providing extra support to lone parents and nominated responsible carers with younger children to help them reconnect with the labour market.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The operation of the Regulations will continue to be reviewed through the normal avenues of guidance enquiries received from the Department for Communities' offices and correspondence from members of the public.

13. Contact

- 13.1 Anne McCleary at the Department for Communities. Telephone: 02890 819984 or email: anne.mccleary@communities-ni.gov.uk can answer any queries regarding the instrument.