

EXPLANATORY MEMORANDUM TO
THE JOBSEEKER'S ALLOWANCE (EXTENDED PERIOD OF SICKNESS)
AMENDMENT REGULATIONS 2016

2016 No. 502

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to clarify existing legislation, and improve the administration and support available to Jobseeker's Allowance (JSA) claimants when they have periods of sickness. The instrument:

- recognises an extended period of sickness (EPS) lasting up to a maximum of 13 weeks in a 12 month period applies even if their health condition changes during the period;
- provides for a short period of sickness (SPS) which becomes an EPS when the sickness lasts longer than two weeks to be disregarded from the maximum number of short sickness spells JSA claimants are permitted to have; and
- requires JSA claimants to provide a fit note when a SPS becomes an EPS.

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.

4. Legislative Context

4.1 A light touch internal (DWP) review of the EPS provisions and whether their implementation met the policy intent identified some areas where it was considered the regulations needed to be more explicit to ensure the policy intent is applied consistently to claimants and the process is straightforward to administer (see paragraphs 7.6 to 7.9). The changes made by this instrument are intended to have this effect.

5. Extent and Territorial Application

5.1 The extent of this instrument is Great Britain.

5.2 The territorial application of this instrument is Great Britain.

5.3 The Department for Social Development in Northern Ireland will be introducing its own legislation to replicate these provisions for Northern Ireland.

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 JSA claimants have long been able to have two short periods of sickness (SPS) of up to 14 days each in a 12 month period, and remain on JSA. No medical evidence is required and instead claimants self-certify their sickness. In March 2015, extended period of sickness (EPS) was introduced allowing claimants with a specific health condition expected to last for more than two weeks but fewer than 13 weeks to have the option to remain on JSA rather than having to switch to Employment and Support Allowance (ESA). It also applies to claimants who have already used their two spells of SPS, in which case an EPS can be used for a sickness of less than two weeks.
- 7.2 EPS is voluntary and claimants determine whether it is appropriate for their circumstances. Claimants are required to provide evidence to support their period of sickness; the evidence can be in the form of self-certification or the provision of a fit note depending on the length of the sickness. For the duration of the sickness, claimants are treated as available and actively seeking employment and can be required to undertake reasonable steps to find work. Work coaches can tailor the conditionality rules associated with receiving JSA including switching off all requirements.
- 7.3 The policy rationale for EPS is to enable JSA claimants with a temporary health condition the option of remaining on JSA and staying in touch with the personalised support available from their work coach. Switching benefits for a short period can be unnecessarily disruptive to the payment of benefit and can impact the payment of passported benefits¹ such as housing benefit, whilst also increasing the administrative burden of processing a short term change of benefit.
- 7.4 Prior to the introduction of EPS, around 300,000 claimants moved from JSA to ESA each year - since its launch, internal management information has shown that around 80,000 claimants have chosen to use the EPS provision, which equates to an average of 2000 claimants per week who have chosen to remain on JSA. The operational response is also positive in that it has introduced a cultural shift in the way that work coaches engage with claimants with health conditions.
- 7.5 A review on the implementation of the policy identified some areas where the regulations need to be clearer to ensure that the policy intent is applied consistently to claimants and ensure the process is straightforward to administer locally.
- 7.6 Firstly, it became apparent that if a claimant's health condition changed during their time on an EPS, the regulations would not necessarily support the claimant to continue on the EPS because the regulations arguably only allow for one specific health condition (disease or disablement) for the entire period of the EPS. We know that some claimants may for example have multiple, linked or changing health conditions and that the nature of the sickness can alter over the course of the EPS. This

¹ Passport benefits are benefits or schemes which some groups of people are entitled to because of their entitlement to certain benefits or tax credits. Benefits and tax credits which can passport people to other benefits or schemes include Income Support and income-based Jobseeker's Allowance.

instrument makes clear that there should not be a restriction to a single health condition, and ensures flexibility for claimants to remain on JSA irrespective of their health condition changing, provided there is no break between the onset of the various conditions within the course of the EPS .

- 7.7 Secondly, it was identified that at present, the provisions potentially produce an inconsistency in the number of sickness spells claimants can have. This inconsistency arises where a claimant initially expects to be sick for up to two weeks and starts on a Short Period of Sickness (SPS), but then finds that their period of sickness lasts longer than two weeks, in which case, they go on to satisfy the requirements of the Extended Period of Sickness (EPS) provision. As the regulations are currently drafted, this could count as two spells of sickness (i.e. 1 x SPS plus 1 x EPS) whereas, if the claimant had known at the outset that their sickness would exceed two weeks, then they would have started on an EPS at the outset and only one spell of sickness will have been used i.e. the EPS. This instrument will amend the regulations to ensure that any SPS that becomes an EPS is disregarded, therefore ensuring that claimants who start on a SPS which becomes an EPS, are treated the same in this respect as claimants who start on an EPS.
- 7.8 To mitigate the risk of abuse of the EPS provisions, the regulations require claimants to provide fit notes to be eligible for an EPS. In addition this instrument makes changes to the evidence required where a claimant who starts on an EPS as a 3rd sickness spell (because they have exhausted their two SPS periods and expect to be sick for two weeks or less) later finds that their sickness is going to extend beyond two weeks. Currently the regulations do not explicitly require medical evidence to be provided in this situation. In practice work coaches will ask claimants to provide fit notes in these circumstances so the change should not place an additional burden on claimants. The amendments made by this instrument will put the requirement to provide a fit note for an EPS which lasts for more than two weeks beyond doubt.
- 7.9 As a whole the changes set out in this instrument are beneficial to claimants who want to remain on JSA and access the support that is available to them to help find work. They ensure the regulations are explicitly consistent with the original policy intent and overall aims of keeping claimants close to the labour market and avoiding unnecessary cycling or switching between benefits whilst reducing administrative burden on the Department.

Consolidation

- 7.10 Informal consolidated text of instruments is available to the public free of charge via ‘The Law Relating to Social Security’ (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website [legislation.gov.uk](http://www.legislation.gov.uk). An explanation as to which instruments are maintained on each site is available from <http://www.dwp.gov.uk/docs/lawvolnews.pdf>.

8. Consultation outcome

- 8.1 An external consultation was not undertaken as the instrument makes small amendments to existing sickness provisions. A light touch policy review of the original EPS provision from March 2015 was undertaken during the implementation stages to ensure the changes were understood by Operational staff. This involved visits to some local sites and holding discussions with work coaches. During those

meetings clarification of policy intent was sought on issues which caused us to look again at the Regulations.

- 8.2 DWP presented the proposals to the Social Security Advisory Committee (SSAC) on 9 March 2016. The Members recognised the changes were, as a whole, beneficial to claimants and welcomed the amendments as a good instance of monitoring the operation of the policy and making adjustments in the light of what emerges. SSAC advised that it did not want to take these regulations on formal reference.

9. Guidance

- 9.1 Operational guidance for DWP staff will be updated when the regulations come into force to ensure changes are fully reflected. The Department has produced a Fact Sheet for JSA claimants who report sickness that could be treated as an extended period of sickness. This is available on request from the Jobcentre.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is negligible impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument. Since April 2015, an estimated 80,000 extended periods of sickness have been recorded on Departmental management information systems. Going forward, the Department estimates that this legislation will be relevant to only a proportion of those starting an extended period of sickness, although data is not available to quantify the proportion exactly.
- 10.4 There are quantifiable benefits from these changes for JSA claimants from increased flexibility to remain on JSA and stay in touch with the personalised support available from their work coach. Unnecessary cycling or switching between benefits will also reduce the administrative burden on the Department.

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 Department will continue to monitor the use of EPS through its internal management information systems. A review of the implementation on the original policy has been undertaken and a further review is not planned. The Department will continue to elicit feedback from work coaches to identify whether further issues arise.

13. Contact

- 13.1 Abdul Ahmed at the Department for Work and Pensions, Telephone: 0207 449 7435 or email: Abdul.Ahmed1@dwp.gsi.gov.uk can answer any queries regarding the instrument.