EXPLANATORY MEMORANDUM TO

THE JOBSEEKER'S ALLOWANCE (DOMESTIC VIOLENCE) (AMENDMENT) REGULATIONS 2012

2012 No. 853

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

These Regulations amend the Jobseeker's Allowance Regulations 1996 ("JSA regulations") to provide that a jobseeker's allowance (JSA) claimant who has been a victim of domestic violence can, in certain circumstances, be treated as available for employment and actively seeking work, and as having a jobseeker's agreement if they do not already have one, for a set 13 week exemption period (if they provide relevant evidence during an initial 4 week exemption period) and remain entitled to JSA provided they meet the other conditions of entitlement.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

4.1. To be eligible to receive Jobseeker's Allowance (JSA) those claiming must be available for employment and actively seeking employment and have entered into a jobseeker's agreement ('the jobseeking conditions'). The JSA Regulations 1996 provide lists of specific circumstances when a person can be treated as having met those conditions even though they may not. Regulation 14 provides for circumstances in which a person will be treated as being available for employment, regulation 19 covers circumstances in which a person will be treated as actively seeking employment and regulation 34 covers circumstances in which a person will be treated as having agreed a jobseeker's agreement.

4.2. The Welfare Reform Act 2009 introduced a provision which, when brought into force, would require regulations under sections 6 and 7 of the Jobseekers Act 1996 to provide a right for claimants who have been subject to or threatened with domestic violence in specified circumstances to be treated as meeting the jobseeking conditions for a set period of 13 weeks. There is power for the regulations to set out the circumstances in which domestic violence will be regarded as having been inflicted or threatened on a person and to define the term "domestic violence". This period would provide victims with some time to organise new accommodation, children's schools etc without having to think about trying to find work.

4.3. These Regulations therefore amend regulations 14, 19 and 34 of the JSA regulations to provide for claimants to be treated as meeting the jobseeking conditions for an initial four week period if they notify the Secretary of State in the required way that they have been threatened with, or subjected to, domestic violence (as defined in the Regulations) during the previous 26 weeks by a partner, a former partner or a family member of the claimant or their partner or former partner. The person who inflicted or threatened the violence must not be living at the same address as the claimant at the time of the notification.

4.4. The purpose of the four week easement period is to enable the claimant time to obtain evidence about the incident in order to access the full 13 week period (which runs from the date on which the claimant first notified Jobcentre Plus about the incident, if the claimant provides the required evidence).

5. Territorial Extent and Application

The regulations extend to Great Britain.

6. European Convention on Human Rights

The Minister for Disabled People, Maria Miller MP, has made the following statement regarding Human Rights:

> "In my view the provisions of the Jobseeker's Allowance (Domestic Violence) (Amendment) Regulations 2012 are compatible with the Convention Rights."

7. Policy Background

What is being done and why

7.1. In order to receive Jobseeker's Allowance (JSA) those claiming must generally be available for work, actively seeking work and have a jobseeker's agreement which remains in force. However, the JSA regulations list a number of situations in which people can be treated as though they meet these conditions ('the jobseeking conditions'), for specified periods. This means that people who are unable to meet these conditions are not prevented from receiving JSA as a result.

7.2. This instrument is being made to allow claimants who are victims of domestic violence (as defined in the Regulations, and including domestic abuse) to be treated as though they meet the jobseeking conditions in certain circumstances for specified periods of time. This change will ensure that such victims are not prevented from accessing JSA even though work may not be their immediate priority. This is particularly relevant to those with dependant children who may have previously claimed Income Support on the grounds of being a lone parent but, owing to their youngest child being over the age of 7 years, are no longer able to do so.

7.3. Jobseeker's Allowance (JSA) claimants will be treated as meeting the jobseeking conditions if they notify Jobcentre Plus, in the required way, that they have been subject to domestic violence or the threat of domestic violence by a partner, former partner, or a family member (as defined in the Regulations) of the claimant or their partner or former partner, within the previous 26 weeks (the initial notification). The person who inflicted or threatened the violence must not be living with the claimant at the time of the notification. The main focus of this requirement is to help ensure that the claimant is no longer in circumstances where the domestic violence or threat of domestic violence is likely to continue.

7.4. Claimants will be treated as meeting the jobseeking conditions for an initial period of 4 weeks (the '4 week exemption period'). During the 4 week exemption period they must provide Jobcentre Plus with written evidence, from a person acting in an official capacity, as defined in the Regulations, confirming they have contacted such a person about an incident or threat of domestic violence against them or that the claimant's circumstances are consistent with them being a victim of domestic violence, in either case relating to an incident that occurred within the 26 weeks before the date of the initial notification of domestic violence. The evidence may be from a health care professional, a police officer, a registered social worker, the claimant's employer, a representative of the claimant's trade union or any public, voluntary or charitable body which has had direct contact with the claimant in connection with domestic violence. The terms "health care professional" and "registered social worker" are defined in the Regulations.

7.5. On production of acceptable evidence, the 4 week period will effectively be extended to 13 weeks (though in fact the 13 week period is separate from the 4 week period and overlaps with it, also running from the date of the initial notification of domestic violence). This will allow the claimant time to address any immediate issues concerned with leaving the abusive relationship such as securing new accommodation, changing children's schools or taking legal advice.

7.6. The 4/13 week easement will be available once in any 12 month period and the period will run for 4/13 weeks consecutively whether or not the claimant is entitled to JSA for the whole of that period. The last 9 weeks of the 13 week period may be non-continuous at the request of the claimant. The suspended period can be restarted at the request of the claimant at any time but may not continue after 12 months from the date of the initial notification.

7.7 For the purpose of the change, "domestic violence" refers to abuse of a kind specified on page 11 in section 2.2 of the Department of Health's publication "Responding to domestic abuse: a handbook for health professionals" (2005), regardless of the gender or sexuality of the victim, which covers the same types of abuse as the cross-government definition of domestic violence – that is, physical, emotional, sexual, psychological or financial abuse. The cross-government definition is not a statutory definition but is used by government departments to inform policy development and, for

example, by the police, the Crown Prosecution Service and the UK Border Agency to inform the identification of domestic violence cases. Page 11 of the handbook provides examples of these different kinds of abuse which will be included in guidance for Jobcentre Plus staff to consider when determining whether evidence provided by a claimant relates to an incident of domestic violence. A copy of the guidance can be obtained from the Department of Health, Room 212 Wellington House, 133-135 Waterloo Road, London SE1 and at: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyandGuidance/DH_4126161.

7.8 The Home Office launched a consultation on the cross-government definition of domestic violence on 14 December 2011. If the definition is amended in any way, consideration will be given to whether the definition used in the regulations should also be amended.

Consolidation

7.9 There are no immediate plans to consolidate the statutory instrument which these Regulations amend. However, the Department for Work and Pensions publishes the "Blue Volumes" which are online and can be accessed by members of the public. The Blue Volumes contain the legislation for which the Department is responsible. The legislation is presented in a consolidated form and is updated regularly. The consolidated version including the changes made by these Regulations will be available in due course. However, in due course the Department will make available informal consolidated versions of the legislation, as amended, on its website at. http://www.dwp.gov.uk/publications/specia list-guides/law-volumes/the-law-relating-to-social-security/

8. Consultation outcome

8.1 A small consultation workshop was held in September 2010 attended by the following organisations and individuals: IMKAAN, Southall Black Sisters, NSPCC, Against Violence and Abuse (Ava) Project, Women's National Commission, Maypole Women, Victim Support; Maddy Coy London Metropolitan University and Hilary Abrahams Bristol University. Other organisations, like Refuge and Respect, were invited but could not attend. As a result of the workshop the time allowed to provide evidence was changed from 2 weeks to 4 weeks and it was agreed that abusers did not have to be living in the same household as the victim at the time of the last incidence of abuse.

8.2 An informal written consultation with a number of specialist organisations, including lone parent organisations, was held in the month of August 2011 to test the full high level design. Those organisations invited to comment are listed below:

NSPCC; Against Violence and Abuse (AVA) Project; Southall Black Sisters; IMKAAN; Standing Together; Refugee Council; Asylum Aid; Co-ordinated Action Against Domestic Abuse (CAADA); Rights Of Women; Iranian and Kurdish Women's Rights Organisation (IKWRO); Eaves Housing; Advocacy After Fatal Domestic Abuse (AAFDA); Amnesty; Respect; Forward UK; Equality and Human Rights Commission; Action Aid; Women in Prison; South East Essex Rape and Incest Crisis Centre (SERICC); Woman Kind; Women's Resource Centre; National Union of Students; L Kelly at London Metropolitan University; Women's Aid; Refuge; Gingerbread; Daycare Trust; One Parent Families Scotland; Child Poverty Action Group(CPAG); Single Parent Action Network (SPAN) UK; Family Action; Scoopaid UK; Share Ability; Young Peoples Project; TUC; Citizens Advice; Welsh Government

14 responses were received, including responses from Abused Men in Scotland (AMIS), Child and Family Services Swansea and Portsmouth City Council, who had heard of the consultation by other means. In addition, the devolved administrations have been informed of the proposed change.

8.3 As a result of the consultation, the following changes were accepted:

- The first 4 weeks will be consecutive (and all claimants will be able to access this, if they meet the conditions, without the need to provide evidence).

- The remaining 9 weeks need not be consecutive (and can only be accessed on the production of relevant evidence).

- Jobcentre Plus will introduce a pro forma for use by victims and organisations who wish to use it.

- Evidence from the claimant's employer or and trade union representative will be accepted.

8.4 Of the organisations which provided comments, all were in favour of the basic change of offering a 13 week deferral but some had concerns about some of the detail. In both consultations concern was expressed about imposing time limits on the time a claimant can have to obtain evidence, and about having a maximum allowable deferral period. This was because research on behaviour in abuse cases shows that victims may take two or three years to leave the abusive relationship permanently, there may be a number of incidents of abuse in that time and the victim may therefore need support over a longer period than 13 weeks.

8.5 The Government consider it to be unacceptable to offer longer periods on Jobseeker's Allowance without the need to meet the jobseeking conditions because JSA must remain a benefit for those able to seek and undertake work. It is therefore necessary to limit the time that claimants can be treated as

meeting the jobseeking conditions. Those with problems that cannot be resolved within the 13 weeks of the deferral may be able to be treated as available for and actively seeking employment for up to a further 11 weeks, at adviser discretion[1]. The Government consider that anyone who is not able to undertake jobseeking activity after the maximum periods should not be eligible for JSA. Those who cannot work for reasons of illness can claim Employment and Support Allowance.

9. Guidance

Guidance will be developed and delivered for Jobcentre Plus operational staff and decision makers so they are aware of the new right for certain victims of domestic violence. Final decisions have yet to be made but it is likely that guidance for staff will be part of the computerised system. Claimants will be able to access information online and will also be able to obtain information in a paper format from advisers.

10. Impact

10.1 There is no impact on the private sector or civil society organisations.

10.2 The impact on the public sector is minimal.

10.3 A full impact assessment has not been prepared for this instrument.

11. Regulating small business

This change has no impact on small businesses.

12. Monitoring & review

Only a basic count will be made of the number of times the new easement is relied upon over periods of time. In the absence of evidence on rates of domestic abuse amongst JSA claimants it is the Department's intention to ensure that, where possible, it includes a question on domestic abuse in forthcoming DWP surveys of the JSA population.

13. Contact

Olwen Mitton at Jobcentre Plus, Tel: 0114 240 8614 or e-mail: olwen.mitton@jobcentreplus.gsi.gov.uk, can answer any queries regarding the instrument.

[1] The discretionary easement is available to deal with domestic emergencies affecting the claimant or a close friend or relative. The claimant can be treated as meeting the requirement to be available for work for the time needed to deal with the incident. Four one week periods are allowed in a year. If the claimant has caring responsibilities in relation to a child, one of these periods can be extended to 8 weeks.