EXPLANATORY MEMORANDUM TO

THE JOBSEEKER'S ALLOWANCE (EXTENDED PERIOD OF SICKNESS) AMENDMENT) REGULATIONS 2015

2015 No. 339

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 This instrument makes provision to enable Jobseeker's Allowance (JSA) claimants suffering from a short (or third) period of sickness to choose to remain on JSA whilst on what is termed as an extended period of sickness (EPS) for a continuous period of up to 13 weeks in a 12 month period. It also makes provision to enable both the Employment and Support Allowance (ESA) assessment phase before any additional ESA components become payable and the Universal Credit (UC) relevant period before any additional UC elements become payable, to be reduced by the time a claimant spends on an EPS.

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

3.1 None

4. Legislative Context

4.1 JSA is a benefit for claimants who are available for and actively seeking work and who do not have limited capability for work. The legislation governing entitlement to JSA is the Jobseeker's Allowance Regulations 1996 (S.I.1996/207)[1] and the Jobseeker's Allowance Regulations 2013 (S.I.2013/378)[2].

4.2 Both the 1996 Regulations and the 2013 Regulations allow a JSA claimant who is suffering from a specific disease or disablement, to remain entitled to JSA and be treated as capable of work for two periods of two weeks of sickness (health condition or disablement) in any one jobseeking period (JSP). If a JSA claimant provides evidence of a health condition that is expected to last for more than two weeks or for a third time in a JSP, at present, they are no longer entitled to JSA and must claim ESA.

4.3 ESA is a benefit for claimants who have limited capability for work. The legislation governing entitlement to ESA is the Employment and Support Allowance Regulations 2008 (SI 2008/794)[3] and the Employment and Support Allowance Regulations 2013 (SI 2013/379)[4].

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[1] http://www.legislation.gov.uk/uksi/1996/207/contents/made
[2] http://www.legislation.gov.uk/uksi/2013/378/contents/made
[3] http://www.legislation.gov.uk/uksi/2008/794/contents/made
[4] http://www.legislation.gov.uk/uksi/2013/379/contents/made

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain. The Department for Social Development in Northern Ireland will be introducing its own legislation for Northern Ireland.

6. European Convention on Human Rights

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 Under the 1996 Regulations, JSA claimants must normally be actively seeking work and available for work to be eligible for JSA. This does not apply to JSA claimants under the 2013 JSA Regulations but the Secretary of State must in those cases impose work search and work availability requirements except in prescribed circumstances. To be entitled to either type of JSA, claimants must normally be capable of work or not have limited capability for work.

7.2 The 2013 Regulations work alongside UC and make provision for an award of JSA based only on National Insurance contributions in areas where UC has been introduced. Similar arrangements are in place for ESA.

7.3 Current provisions in the JSA Regulations allow for two, two week periods of sickness during which claimants may be treated as available for work, as actively seeking work and as not having limited capability for work in a JSP or, if the JSP lasts longer than 12 months, two periods of two weeks in each successive 12 month period. A JSP is a period during which the claimant meets (or is treated as meeting) the conditions of entitlement or the conditions are not met but an award of JSA has been made under the hardship provisions.

7.4 This instrument will allow for a new extended period of sickness (EPS) for up to a total period of 13 weeks in one spell in the 12 months calculated from the start of the health condition. Claimants can use the current provisions for the first two weeks of sickness to maintain entitlement to JSA But if their sickness lasts continuously for longer than 2 weeks but no more than 13 weeks in total, they could under the new provisions maintain entitlement to JSA thereby keeping them in touch with the labour market. Medical evidence must be provided if their sickness extends beyond two weeks. This would also have the effect of reducing the administrative burden resulting from requiring claimants to switch to another benefit (from JSA to ESA) for a short time.

7.5 Jobcentre Plus work coaches will have the discretion to apply jobseeking conditions flexibly depending on the nature of the health condition and what steps the work coach and claimant consider reasonable for the claimant to take to look for work. Work coaches will review and revise the Claimant Commitment or, where appropriate, the Jobseeker's Agreement to take into account the reduced conditionality that will apply to the claimants during the EPS.

7.6 The changes to the 1996 JSA Regulations will allow claimants who fall within the provisions to be treated as available for work. Those claimants will also be treated as actively seeking employment if there are no steps in that week that it would be reasonable to expect them to take to seek work. The changes to the 2013 JSA Regulations align more closely with the conditionality regime for UC and will allow JSA claimants who are treated as capable of work or not having limited capability for work under the new provisions, to have no work search or availability requirements imposed on them if it would be unreasonable to do so.

7.7 This instrument also amends the 2008 and 2013 ESA Regulations. ESA claimants found to have limited capability for work or work-related activity following a medical assessment called the work capability assessment (WCA) are paid an additional ESA main phase component after a 13 week 'assessment phase'. The changes ensure that those claimants who stay on JSA during an EPS but who subsequently move to ESA because their health condition did not improve sufficiently for them to meet the full conditionality requirements for JSA before their JSA claim ends, do not have to wait a further 13 weeks for the payment of the additional main phase ESA components should they be found to have limited capability for work or work-related capability following the WCA.

7.8 This instrument also amends the legislation governing revisions and supersessions of ESA decisions (the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I. 1999/ 991)[5] and the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (S.I 2013/381)[6]). Firstly, so that claimants moving from an EPS on JSA immediately on to ESA are not financially disadvantaged, provision is made to enable the decision to award the additional ESA component from week 14 of the ESA award to be revised at any time so that the payment of that component can be made from day 1 of the ESA award. Secondly, to enable the supersession decision relating to the award of the additional component to take effect from an earlier date where the assessment phase is less than 13 weeks.

7.9 The instrument also amends the Universal Credit (Transitional) Regulations 2014 (2014/1230).[7] UC is a new working age income-related social security benefit that will replace current income-related benefits. In a similar way to ESA, UC claimants who are found to have limited capability for work or limited capability for work and work-related activity must complete a 3 month period before the additional UC elements become payable. This is called the UC 'relevant period'. The amendment enables the calculation of the UC relevant period to include the EPS where JSA claimants make a claim for UC and move immediately into the UC relevant period.

- 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-

[5] http://www.legislation.gov.uk/1999/991
[6] http://www.legislation.gov.uk/2013/381
[7] http://www.legislation.gov.uk/uksi/2014/1230/contents/made

guides/law-volumes/the-law-relating-to-social-security/ or the National Archive website legislation.gov.uk . An explanation as to which instruments are maintained on each site is available here.

8. Consultation outcome

8.1 A full formal consultation by the Department for Work and Pensions (DWP) was not considered necessary for these changes because these are small and largely beneficial changes which introduce more flexibility for jobseekers and because the changes are voluntary in that claimants could claim ESA at any time. An informal consultation exercise was conducted by representatives from DWP Strategy and Policy Group who discussed the changes at a meeting with representatives of disabled claimants from SCOPE, MIND, RNIB, Disability Rights UK and Leonard Cheshire Disability at a meeting on 7th October 2014. Representatives observed the potential delay to the payment of the ESA components for claimants who decided to stay on JSA under the new provisions but who subsequently moved to ESA and were found to have limited capability for work or work-related activity. They identified the potential for misdirection for work coaches when discussing the choice to either stay on JSA or move to ESA that could result in financial loss for claimants due to such delay. These amending provisions now include the amendments to the ESA, UC and Decision Making and Appeals regulations which remove this risk.

8.2 In addition DWP presented the proposals for the Regulations to the Social Security Advisory Committee (SSAC) on 5th November 2014. They were broadly positive about the suggested change but also highlighted the potential financial disadvantage for claimants moving to ESA. The draft regulations presented to SSAC were amended as a result of this recommendation. On 3rd February 2015, SSAC advised it does not wish to take these regulations, in their revised form, on formal reference.

9. Guidance

9.1 Operational guidance for DWP has been revised to take account of the changes. The changes will be also mirrored within the Decision Makers Guide that provides legal guidance for DWP decision makers and is published at www.gov.uk. The Department has produced a Fact Sheet for JSA claimants who report sickness and could be treated as an extended period of sickness. This is available on request.

10. Impact

10.1 There is no impact on business or civil society.

10.2 Estimates indicate that around 30,000 claimants might benefit from the change. Implementation costs to the Department are estimated to be around £0.14m in 2014/15 and £0.6m in 2015/16 and an additional £0.17m per annum thereafter to be funded by savings from a wider package of reforms. There may be longer term savings by keeping claimants more engaged with the labour market and supporting a return to work more quickly. This is a longer term aim that is harder to measure at this stage.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 We will monitor the impact of the change through established customer feedback processes. We will also seek feedback from external stakeholders through regular informal meetings to help ensure that the policy design meets its objective and that those with short-term illnesses are given the right advice.

12.2 We want to assess the effectiveness of the policy by gathering Management Information through DWP systems to capture the number of claimants who stay on JSA on an extended period of sickness and the numbers who move from an extended period of sickness on JSA onto ESA after 13 weeks. In the short term we want to gather information on those who stay on JSA on an extended period of sickness into employment.

13. Contact

Emma Watson at the Department for Work and Pensions can answer any queries regarding the instrument email: lmstrategy.jcpinterventions@dwp.gsi.gov.uk