EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CONTRIBUTION CONDITIONS FOR JOBSEEKER'S ALLOWANCE AND EMPLOYMENT AND SUPPORT ALLOWANCE) REGULATIONS 2011

2011 No. 2862

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 From 1 January 2012, certain spouses and civil partners, who accompany a member of Her Majesty's forces on a posting outside the United Kingdom, will have entitlement to an easement of the first National Insurance (NI) contribution conditions[1] when they make a claim for either contributory Employment and Support Allowance (ESA) or contributory Jobseeker's Allowance (JSA). Such spouses and civil partners will be able to benefit from the easement on return from their posting, where they would not have otherwise met the first NI contribution condition.

2.2 These Regulations make provision for this particular easement, which will apply to such spouses and civil partners who choose to accompany a member of Her Majesty's forces on a posting abroad, in respect of any week during the last complete tax year[2] preceding the start of a new benefit year[3] in which the claim for benefit was made. Such spouses and civil partners will also need to have been awarded a NI credit[4] in respect of at least one week during the last complete tax year prior to their claim to use the easement.

2.3 It will allow such people to be taken to have satisfied the first contribution condition where they had paid sufficient NI contributions in any previous complete tax year before the beginning of the relevant benefit year. This differs from the current rules where sufficient NI contributions must have been paid in one of the last two complete tax years before the beginning of the relevant benefit year. As such, the easement provided by these Regulations will relax the conditions of entitlement in a similar way to the easement used for carers claiming ESA contained in regulation 8(2)(a) of the Employment and Support Allowance Regulations 2008 ("the Employment and Support Allowance Regulations").

2.4 The easement applies to spouses and civil partners who accompanied a member of Her Majesty's forces on a posting abroad after April 2010. Therefore, this is clearly a change that will help claimants to meet the benefit qualifying criteria as it will be easier for them to satisfy the first contribution conditions.

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1 See Appendix A for an explanation of the first contribution condition.

2 6 April - 5 April.

3 Benefit year commences on the first Sunday of the calendar year and ends on the last Saturday of the calendar year (see the Social Security Contributions and Benefits Act 1992, s.21(6)).

4 The NI credit is awarded under regulation 9E of the Social Security (Credits) Regulations 1975.

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

3.1 None.

4. Legislative Context

4.1 The Government recognises the special circumstances surrounding spouses and civil partners who choose to accompany members of Her Majesty's forces on postings outside the UK. Particularly as they have no control over where their spouse or civil partner is posted, so they may encounter difficulties finding employment during their time abroad. This, in turn, could hinder their ability to maintain their NI contribution record.

4.2 Consequently, the Government introduced a NI credit, on 6 April 2010, to help such spouses and civil partners maintain both their NI contributory record[5] and their entitlement towards ESA and JSA by protecting the second of two contribution conditions[6]. The easement introduced by these Regulations relies on the claimant being entitled to such a credit. The easement will work in tandem with the NI credits by helping to protect the first contribution condition and allowing such spouses and civil partners to meet the first contribution condition through a relaxed set of criteria.

4.3 These Regulations achieve that policy aim by inserting a new regulation 45B into the Jobseeker's Allowance Regulations 1996 ("the Jobseeker's Allowance Regulations") and a new regulation 8(2)(ca) into the Employment and Support Allowance Regulations.

4.4 Section 2(3B)(a) of the Jobseekers Act 1995 and paragraph 1(4)(a) of Schedule 1 to the Welfare Reform Act 2007 provide the legislative authority for the introduction of this measure. These primary provisions are inserted and amended, respectively, by sections 12(5) (conditions for contributory JSA) and 13(5) (conditions for contributory ESA) of the Welfare Reform Act 2009. Sections 12(5) and 13(5) are commenced to the extent necessary to make these Regulations by virtue of the Welfare Reform Act 2009 (Commencement No. 6) Order 2011.

4.5 In particular, section 2(3B)(a)(ii) of the Jobseekers Act 1995 and paragraph 1(4)(a)(ii) of Schedule 1 to the Welfare Reform Act 2007 both contain regulation-making powers providing that the first contribution condition is to be taken to be satisfied in the case of persons who satisfy "other prescribed conditions". These Regulations prescribe such circumstances.

5. Territorial Extent and Application

This instrument applies to Great Britain. Equivalent provision will be made for Northern Ireland by statutory rules.

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5 This position was provided for in law by the introduction of regulation 9E of the Social Security (Credits) Regulations 1975 by regulation 2(3) of S.I. 2010/385

6 See Annex A for an explanation of the second contribution condition

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 As part of the Armed Forces Service Personnel Command Paper[7], *'The Nation's Commitment: Cross Government Support to our Armed Forces, their Families and Veterans'* published in July 2008, it was agreed by the then Government that spouses and civil partners who chose to accompany a member of Her Majesty's forces on a posting abroad would be entitled to NI credits, for any periods where they were unable to find work during the posting. The credits are used to protect such people's entitlement to the basic State Pension and working age contributory benefits, such as contributory JSA or contributory ESA. However, as the NI credits only protect the second contribution condition[8], for both ESA and JSA, the Government decided to introduce an additional easement for such spouses and civil partners, which relaxed the qualifying criteria of the first contribution condition.

7.2 Under current legislation, to satisfy the first contribution conditions for contributory JSA or contributory ESA, people must have worked for at least 26 weeks and paid or be treated as paid NI contributions at the Lower Earnings Limit (£102.00 per week for 2011/12) in one of the last two complete tax years before the relevant benefit year. However, under the easement, the spouses and civil partners in question can be treated as having satisfied the conditions where they have paid sufficient NI in any previous complete tax year prior to their overseas posting.

7.3 The purpose of the easement is to help such spouses and civil partners overcome some of the disadvantages they face when posted abroad, as they have no control over where they are posted and may encounter difficulties finding employment. The Government recognised that this could affect their ability to maintain their NI records and therefore, their entitlement to contributory ESA or JSA. The purpose of this easement is to help remove some of those disadvantages by treating such spouses and civil partners as having satisfied the conditions where they have paid sufficient NI contributions in any previous complete tax year prior to their overseas posting. Whilst further changes to ESA are under proposal, within the Welfare Reform Bill 2011, this easement will continue to remain effective following the changes and offer the on-going support to such people as intended. It is estimated that around 100 ESA claimants and 400 JSA claimants will benefit from this easement each year.

Consolidation

7.3 Informal consolidation will be included in the Department's 'the Law Relating to Social Security' (the Blue Volumes). These are available at no cost to the public at: http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/pdf/c_0031.pdf

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7 http://www.mod.uk/NR/rdonlyres/415BB952-6850-45D0-B82D-C221CD0F6252/0/Cm7424.pdf

8 See Appendix A for an explanation of the second contribution condition

8. Consultation outcome

8.1 As these draft regulations do not represent a significant shift in policy and as they are both beneficial nature and only impact on a relatively small number of people (estimated to be around 500 per year) the DWP did not consider that a specific consultation exercise was necessary. However, the proposals to ease the contribution conditions were included in the Ministry of Defence (MoD) Command Paper *'The Nation's Commitment: Cross Government Support to our Armed Forces, their Families and Veterans'* which was published in 2008. In July 2009, the MoD issued a further consultation document[9], '*The Nation's Commitment to the Armed Forces Community: Consistent and Enduring Support'*. The responses showed that the majority of people supported the changes proposed in the Command Paper.

8.2 The DWP is not required to refer any regulations to the Social Security Advisory Committee where they are made within 6 months of the commencement of their enabling powers[10]. As such, these Regulations were not referred to the Social Security Advisory Committee.

9. Guidance

9.1 The DWP aims to ensure that all customers and stakeholders understand the rules and obligations related to both ESA and JSA. The DWP ensures this happens by communicating information about changes to relevant customers, explaining when and how they will be affected by changes and what it means for them. For this measure this will involve working with MoD and updating external products and publications such as the annual reports published by the MoD, which chart the progress that is being made on cross-government initiatives that support families and members of Her Majesty's forces.

9.2 With regards to staff, a launch bulletin alongside staff guidance will be available via the intranet explaining the changes. This will ensure that staff from DWP, Jobcentre Plus and Her Majesty's Revenue and Customs understand the new policy and are able to explain it clearly to customers.

10. Impact

10.1 This legislation does not impact on business, charities or voluntary bodies.

10.2 This legislation has a low impact on the public sector as the changes are being delivered using existing Jobcentre Plus and Her Majesty's Revenue and Customs computer systems and procedures. In addition, the numbers affected by the change are estimated to be relatively low.

10.3 It is estimated that this change will generate an estimated 100 additional ESA claimants per year and 400 additional JSA claimants per year. Initial estimates suggest ESA benefit expenditure or Annually Managed Expenditure (AME) cost for the change will start at £0.1m in 2011/12 and remain at £0.2 million for each subsequent year until

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[9] http://www.contracts.mod.uk/pdfs/23.pdf

[10] As provided under section 173(5) of the Social Security Administration Act 1992

2015/16. JSA benefit expenditure or AME cost for the change are estimated at around £0.4m for each year between 2011/12 and 2015/16[11].

10.4 An Impact Assessment has not been prepared for this instrument. However, an Equality Impact Assessment has been produced and is available by visiting the DWP website at: http://www.dwp.gov.uk/publications/impact-assessments/equality-impact-assessments/2011/

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This policy will be subject to ongoing review. The introduction of ESA will be fully evaluated by 2014. The introduction of this easement to help spouses and civil partners of HM forces meet the first contribution condition for ESA will be reviewed as part of that process. In addition, the MoD's external reference group continues to monitor and report on the content of the Armed Forces Command Paper '*The Nation's Commitment: Cross Government Support to our Armed Forces, their Families and Veterans'*.

13. Contact

Trevor Pendergast at the Department for Work and Pensions (Tel: 020 7449 5639 email: trevor.pendergast@dwp.gsi.gov.uk) can answer any queries regarding this instrument.

14. Appendices

Appendix A
Contribution conditions for Employment and Support Allowance and Jobseeker's Allowance.

[11] DWP analysis based on an estimated 5,000 spouses and civil partners (supplied by MoD) who have accompanied service personnel abroad returning to the UK in 2008, reducing by 25 per cent over the five years.

Appendix A

National Insurance Contribution Conditions for Jobseeker's Allowance

First Contribution Condition – Jobseeker's Allowance[12]

- (i) a claimant has actually paid Class 1 NI contributions in respect of one ("the base year") of the last two complete years before the beginning of the relevant benefit year,
- (ii) the contributions have been paid before the week for which the JSA is claimed and
- (iii) the claimant's relevant earnings for the base year upon which primary Class 1 contributions have been paid or treated as paid are not less than the base year's lower earnings limit multiplied by 26.

- Does not include Class 2 contributions (self-employed contributions).

Second condition – Jobseeker's Allowance[13]

- For each of the previous two tax years, a claimant must have either paid Class 1 NI contributions or been credited with earnings, and
- The earnings factor derived from earnings upon which primary Class 1 contributions have been paid or treated as paid from earnings credited is not less, in each of the two complete years, than 50 times the lower earnings limit for that tax year.

- Does not include Class 2 contributions.

National Insurance Contribution Conditions for Employment and Support Allowance

First Contribution Condition – Employment and Support Allowance[14]

- (i) a claimant has actually paid Class 1 NI contributions in respect of one ("the base tax year") of the last two complete years before the beginning of the relevant benefit year,
- (ii) the contributions have been paid before the week for which the ESA is claimed and
- (iii) the claimant's relevant earnings for the base tax year upon which primary Class 1 contributions have been paid or treated as paid are not less than the base tax year's lower earnings limit multiplied by 26 (that earnings factor being the aggregate of claimant's earnings factors derived from (1) so much of the claimant's earnings as did not exceed the base tax year's upper earnings limit and upon which primary Class 1 contributions have been paid or treated as paid, and (2) Class 2 contributions.

Second Contribution Condition - Employment and Support Allowance[15]

- For each of the previous 2 tax years, a claimant must have been paid or credited with class 1 or class 2 contributions on earnings of no less than 50 times the lower earnings limit for that tax year.

[12] As contained in s.2(1)(a) and (2) of the Jobseekers Act 1995.
[13] As contained in s.2(1)(b) and (3) of the Jobseekers Act 1995.
[14] As contained in paragraph 1 of Schedule 1 to the Welfare Reform Act 2007.
[15] As contained in paragraph 2 of Schedule 1 to the Welfare Reform Act 2007.