

2010 No. 347

HOUSING; RATES; SOCIAL SECURITY

The Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) (Amendment) Regulations (Northern Ireland) 2010

Made - - - -

11th October 2010

Coming into operation in accordance with regulation 1

The Department for Social Development makes the following Regulations in exercise of the powers conferred by paragraphs 4(3) and 20(1)(b) of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(a) and sections 25(2) and 28(2) of, and paragraphs 1, 4 and 9 of Schedule 2 and paragraphs 1(1), 7 and 8(1) of Schedule 4 to, the Welfare Reform Act (Northern Ireland) 2007(b).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) (Amendment) Regulations (Northern Ireland) 2010.

(2) These Regulations shall come into operation on 1st November 2010 except for regulation 4 which shall come into operation on 31st January 2011.

(3) In these Regulations—

“the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations (Northern Ireland) 2008(c); and

“the Existing Awards Regulations” means the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010(d).

Amendment of the Existing Awards Regulations

2.—(1) The Existing Awards Regulations are amended in accordance with the following provisions of this regulation.

(2) In regulation 3 (persons to whom these Regulations apply) for “These” substitute “Regulations 4 to 22 of these”.

(a) 2000 c. 4 (N.I.)
(b) 2007 c. 2 (N.I.)
(c) S.R. 2008 No. 280
(d) S.R. 2010 No. 312

- (3) In regulation 7 (qualifying for conversion)—
- (a) the existing provision shall be numbered as paragraph (1);
 - (b) in that paragraph—
 - (i) for “For the purposes of regulation 5(2)(a)” substitute “Subject to paragraph (2), for the purposes of regulation 5(2)(a)”,
 - (ii) after “notified person” insert “(“P””,
 - (iii) after “employment and support allowance” insert “under these Regulations”, and
 - (iv) for “the person” substitute “P”; and
 - (c) after that paragraph add—

“(2) Where P is entitled to an award of an employment and support allowance under the Act and it has been determined in respect of that entitlement that P—

 - (a) has limited capability for work; or
 - (b) is to be treated as having limited capability for work, other than by virtue of regulation 30 of the Employment and Support Allowance Regulations,

in relation to the conversion of P’s existing award, P is to be taken as having satisfied the condition set out in section 1(3)(a) of the Act (limited capability for work).”
- (4) In regulation 8 (amount of an employment and support allowance on conversion)—
- (a) the existing provision shall be numbered as paragraph (1); and
 - (b) after that paragraph add—

“(2) In a case to which regulation 7(2) (cases where a person is already entitled to an award of an employment and support allowance) applies, a determination that the person has, or does not have, limited capability for work-related activity made in respect of the person’s current entitlement to an award of an employment and support allowance is to be treated as having been made for the purposes of Step 1.”
- (5) In regulation 10 (transitional addition: incapacity benefit or severe disablement allowance)—
- (a) in paragraph (5)—
 - (i) for sub-paragraph (a) substitute—

“(a) in the case of incapacity benefit, the weekly rate payable—

 - (i) under section 30B(2), (6) or (7) of the Contributions and Benefits Act(a) (incapacity benefit: rate), subject to any deduction made in accordance with section 42(3) of the Pension Schemes (Northern Ireland) Act 1993(b),
 - (ii) under section 40(5) or 41(4) of the Contributions and Benefits Act(c) (long-term incapacity benefit for widows and for widowers),
 - (iii) under section 80, 81 or 86A of that Act(d) (incapacity benefit: beneficiary’s dependent children; restrictions on increase – child not living with beneficiary, etc; and increase for adult dependants),
 - (iv) by virtue of regulation 11(4) of the Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995(e) (transitional awards of short-term incapacity benefit), or

(a) 1992 c. 7; section 30B was inserted by Article 4(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

(b) 1993 c. 49; section 42(3) was substituted by paragraph 54(4) of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(c) Sections 40 and 41 were substituted respectively by paragraphs 8 and 9 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(d) Sections 80 and 81 were repealed by Schedule 6 to the Tax Credits Act 2002 (c. 21). See Article 2 of S.R. 2003 No. 212 for savings provisions. Section 86A was inserted by Article 4(4) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(e) S.R. 1995 No. 35; regulation 11(4) was amended by regulation 3(2)(a) of S.R. 1996 No. 601

- (v) by virtue of regulation 17(1) or 17A of those Regulations(a) (transitional awards of long-term incapacity benefit or awards of incapacity benefit in cases where periods of interruption of employment and periods of incapacity for work link); or”, and
 - (ii) in sub-paragraph (b) for “sections 68(7) and 69(1)” substitute “sections 68(7), 69(1) and 90(b)”;
- (b) after paragraph (5) add—
- “(6) Subject to paragraph (7), in determining the weekly rate of incapacity benefit or severe disablement allowance for the purposes of paragraph (5) the following amounts shall be disregarded—
- (a) any relevant deduction; and
 - (b) any other deduction relating to the existing award which is made by virtue of the Contributions and Benefits Act, the Administration Act, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994(c) or any other statutory provision which is amended by Schedule 3 to the Act or by virtue of regulations made under those statutory provisions.
- (7) Where any of the statutory provisions referred to in paragraph (6)(b) provide for an additional amount of incapacity benefit or severe disablement allowance to be payable in prescribed circumstances (such as an increase for an adult dependant) but that additional amount is reduced or not payable in relation to P (such as where the dependant has earnings in excess of the standard amount of an increase), in determining the weekly rate of incapacity benefit or severe disablement allowance, only the reduced additional amount, if any, is to be taken into account.”
- (6) In regulation 14 (conversion decision that existing award qualifies for conversion)—
- (a) in paragraph (1) for “Paragraphs (2) and (3)” substitute “Subject to paragraph (2A), paragraphs (2) to (6)”;
 - (b) after paragraph (2) insert—
 - “(2A) Where P—
 - (a) has an existing award of income support;
 - (b) would, on the effective date of P’s conversion decision, remain entitled to income support by virtue of another provision of the Income Support (General) Regulations (Northern Ireland) 1987(d), were P not a person to whom regulation 6(4)(a) or 13(2)(b) or (bb) of, or paragraph 7(a) or (b), 10, 12 or 13 of Schedule 1B to, those Regulations (prescribed category of persons for the purposes of entitlement on grounds of incapacity or disability) applied; and
 - (c) notifies the Department before the effective date of P’s conversion decision that P wishes to remain entitled to income support on that date,
 paragraph (2B) applies instead of paragraphs (2) and (4).
 - (2B) Where paragraph (2A) applies, any entitlement of P to one or both of—
 - (a) an existing award of incapacity benefit or severe disablement allowance; or

(a) Regulation 17A was inserted by regulation 3(3) of S.R. 1995 No. 149

(b) Severe disablement allowance was abolished by Article 62 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and section 90 was amended by paragraph 25 of Schedule 8 to that Order. *See* Article 4 of S.R. 2000 No. 332 (C. 14) for savings provisions. Increases in benefits in respect of children under section 90 were abolished by section 1(3)(e) of the Tax Credits Act 2002 and section 90 was amended by Schedule 6 to that Act. *See* Article 2 of S.R. 2003 No. 212 for savings provisions

(c) S.I. 1994/1898 (N.I. 12)

(d) S.R. 1987 No. 459; regulation 6(4) was added by regulation 2(b)(iii) of S.R. 2000 No. 74 and sub-paragraph (a) was omitted subject to savings by regulation 4 of S.R. 2010 No. 6, regulation 13(2) was amended by regulation 6(2) of S.R. 1991 No. 338, regulation 2(3) of S.R. 2006 No. 128 and regulation 2(4)(a) of S.R. 2008 No. 112, Schedule 1B was inserted by regulation 22 of S.R. 1996 No. 199, paragraph 10 was amended by the Schedule to S.R. 2000 No. 241, paragraph 12 was substituted by regulation 2(7) of S.R. 2000 No. 242 and regulation 13(2)(b) and (bb) and paragraphs 7(a) and (b), 10, 12 and 13 of Schedule 1B were revoked subject to savings by regulation 2 of S.R. 2009 No. 418

- (b) a disability premium by virtue of paragraph 12(1)(b) of Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987(a) (additional condition for the higher pensioner and disability premiums),

shall terminate immediately before the effective date of P’s conversion decision.”; and

- (c) for paragraphs (3) and (4) substitute—

“(3) In a case to which regulation 7(2) applies (cases where a person is already entitled to an award of an employment and support allowance), any entitlement of P to an award of an employment and support allowance by virtue of the Act shall terminate immediately before the effective date of P’s conversion decision.

(4) Where, immediately before the effective date of the conversion decision, any relevant deduction was made from the existing award or awards, or from an award of an employment and support allowance which terminates in accordance with paragraph (3), an equivalent deduction shall be made from the award of an employment and support allowance to which P is entitled by virtue of these Regulations.

(5) Where, immediately before the effective date of the conversion decision, P is entitled to be credited with any earnings under regulation 8B(2)(a) of the Social Security (Credits) Regulations (Northern Ireland) 1975(b) (credits for incapacity for work and limited capability for work), P shall not be entitled to be so credited under that regulation on or after that date.

- (6) Where—

- (a) paragraph (2) applies;
- (b) P is a member of a joint-claim couple; and
- (c) immediately before the effective date of that conversion decision that couple was entitled to a disability premium by virtue of paragraph 20H(1)(b) or (d) of Schedule 1 to the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(c) (additional conditions for higher pensioner and disability premium: severe disablement allowance or incapacity benefit),

paragraph 20H(1)(ee) of that Schedule (limited capability for work) shall be treated as satisfied in relation to that couple on the effective date of that conversion decision.

- (7) In this regulation—

- (a) paragraphs (2) to (6) are subject to regulation 17 (changes of circumstances before the effective date); and
- (b) “joint-claim couple” has the same meaning as in Article 3(4) of the Jobseekers Order(d).”.

- (7) In regulation 15 (conversion decision that existing award does not qualify for conversion)—

- (a) in paragraph (1) for “Subject to paragraph (4), paragraphs (2) and (3) apply” substitute “Subject to paragraphs (2A) and (4), paragraphs (2), (3) and (6) apply”;

- (b) after paragraph (2) insert—

“(2A) Where P—

- (a) has an existing award of income support; and

(a) Paragraph 12(1)(b) was substituted by regulation 2(12)(a)(ii) of S.R. 1995 No. 67 and amended by regulation 2(8) of S.R. 1995 No. 367, regulation 3(3)(a) of S.R. 2005 No. 580 and regulation 2(7)(d)(i) of S.R. 2007 No. 154

(b) S.R. 1975 No. 113; regulation 8B was inserted by regulation 2(6) of S.R. 1996 No. 430 and paragraph (2)(a) was substituted by regulation 2(2)(a) of S.R. 2010 No. 109

(c) S.R. 1996 No. 198; paragraph 20H was inserted by paragraph 53(4) of Schedule 2 to S.R. 2000 No. 350 and amended by paragraph 20(e) of Schedule 2 to S.R. 2003 No. 195, regulation 13(12)(a) of S.R. 2006 No. 359 and regulation 19(24)(e) of S.R. 2008 No. 286

(d) S.I. 1995/2705 (N.I. 15); the definition was inserted by paragraph 2(3) of Schedule 7 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and amended by paragraph 131 of Schedule 24 to the Civil Partnership Act 2004 (c. 33)

- (b) would, on the effective date of P’s conversion decision, remain entitled to income support by virtue of another provision of the Income Support (General) Regulations (Northern Ireland) 1987, were P not a person to whom regulation 6(4)(a) or 13(2)(b) or (bb) of, or paragraph 7(a) or (b), 10, 12 or 13 of Schedule 1B to, those Regulations (prescribed category of persons for the purposes of entitlement on grounds of incapacity or disability) applied,

P’s existing award of income support shall only terminate under paragraph (2)(b) if P notifies the Department before the effective date of P’s conversion decision that P does not wish to remain entitled to income support on that date.

(2B) Where paragraph (2A) applies, and P’s existing award of income support does not terminate under paragraph (2)(b), any entitlement of P to a disability premium by virtue of paragraph 12(1)(b) of Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987 (additional condition for the higher pensioner and disability premiums), shall terminate immediately before the effective date of P’s conversion decision.”;

- (c) in paragraph (3) for “that date” substitute “the effective date of P’s conversion decision”;
- and

- (d) for paragraph (6) substitute—

“(6) Where—

- (a) paragraph (2) applies; and
- (b) P is a member of a joint-claim couple,

any entitlement of that couple to a disability premium by virtue of paragraph 20H(1)(b) or (d) of Schedule 1 to the Jobseeker’s Allowance Regulations (Northern Ireland) 1996 (additional conditions for higher pensioner and disability premium: severe disablement allowance or incapacity benefit) shall terminate immediately before the effective date of P’s conversion decision.

(7) In this regulation—

- (a) paragraphs (2), (2A), (3) and (6) are subject to regulation 17 (changes of circumstances before the effective date); and
- (b) “joint-claim couple” has the same meaning as in Article 3(4) of the Jobseekers Order.”.

- (8) In regulation 17 (changes of circumstances before the effective date)—

- (a) after “occurred before that date” insert “and which would have been relevant to the existing award or awards”; and

- (b) for paragraph (a) substitute—

“(a) must treat any award—

- (i) converted by virtue of regulation 14(2) (conversion decision that existing award qualifies for conversion), or
- (ii) terminated by virtue of regulation 14(2B)(a) (termination of an existing award of incapacity benefit or severe disablement allowance where entitlement to award of income support continues), regulation 14(3) (termination of award of an employment and support allowance where that entitlement already exists) or regulation 15(2) (termination of existing awards which do not qualify for conversion),

as if that award had not been converted or terminated;

- (aa) must treat any entitlement to be credited with earnings terminated by virtue of regulation 14(5) or 15(3) as if it had not been terminated;

- (ab) must treat any entitlement to a disability premium terminated by virtue of regulations 14(2B)(b), 15(2B) or 15(6) as if it had not been terminated;”.

(9) In regulation 19 (reducing the transitional addition: increases for dependent children) for paragraph (3) substitute—

“(3) The amount of the transitional addition shall be reduced, but not below nil, by a sum equal to the amount of the increase referred to in paragraph (1)(a) payable to T on the day before the effective date, in respect of the child or qualifying young person in relation to whom child benefit terminated.”.

(10) In regulation 20(3) (reducing the transitional addition: increases for adult dependants) for “to which T was entitled” substitute “payable to T”.

(11) In regulation 21 (termination of transitional addition)—

(a) in paragraph (1)(b)—

(i) for “paragraphs (2) and (3)” substitute “paragraphs (2), (3) and (4)”, and

(ii) for “an employment and support allowance” substitute “an employment and support allowance which arises from section 1(2)(a) or (b) of the Act, or to a contributory allowance or to an income-related allowance”;

(b) in paragraph (2), for “the termination of the person’s entitlement to an employment and support allowance” substitute “a termination of the person’s entitlement to which that provision refers”; and

(c) for paragraphs (3) to (6) substitute—

“(3) Any termination by virtue of paragraph (1)(b) of T’s entitlement to a transitional addition under regulation 10(2)(a) (transitional addition: incapacity benefit or severe disablement allowance) shall instead have effect as a suspension of that entitlement in Case 1.

(4) Any termination by virtue of paragraph (1)(b) of T’s entitlement to a transitional addition under regulation 11(2)(a) (transitional addition: income support) shall instead have effect as a suspension of that entitlement in Case 1 or Case 2.

(5) Case 1 is where—

(a) on a subsequent claim made by T for an employment and support allowance, a period of limited capability for work is treated under regulation 145(1) or (2) of the Employment and Support Allowance Regulations (linking rules) as a continuation of an earlier period of limited capability for work;

(b) T’s entitlement to an allowance which is referred to in paragraph (1)(b) (“T’s old entitlement”) was in respect of that earlier period; and

(c) in a case to which regulation 145(1) of the Employment and Support Allowance Regulations applies (12 week linking rule), it is determined, in respect of that subsequent claim, that T has, or is treated as having, limited capability for work, other than under regulation 30 of those Regulations (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made).

(6) Case 2 is where—

(a) the reason for terminating T’s entitlement to an employment and support allowance arising from section 1(2)(b) of the Act (conditions relating to financial position), or to an income-related allowance, as the case may be, was that the condition set out in paragraph 6(1)(f) of Schedule 1 to the Act (no entitlement to income-related allowance where other member of a couple engages in remunerative work) had ceased to be satisfied in T’s case;

(b) the condition referred to in sub-paragraph (a) is subsequently satisfied;

(c) T again becomes entitled to an allowance which is referred to in sub-paragraph (a); and

(d) that entitlement commences before the end of the 12 week period which begins with the date of termination of T’s old entitlement.

(7) In Cases 1 and 2, the amount of the transitional addition or additions, as the case may be, to which T becomes entitled from the commencement of T's subsequent entitlement to an allowance which is referred to in paragraph (1)(b) is to be determined by reference to the amount of the transitional addition or additions, as the case may be, to which T was entitled on the termination of T's old entitlement, subject to any subsequent adjustment of that amount that would have been made under this Part."

(12) In regulation 22(a) (disapplication of certain statutory provisions following conversion decision) after "30A," insert "30C,".

(13) In Schedule 1 (modification of statutory provisions: making conversion decisions)—

(a) for paragraph 1(b)(i) substitute—

“(i) for subsection (2), there were substituted—

“(2) Subject to the provisions of this Part, a notified person is entitled to an employment and support allowance if the person satisfies the basic conditions and—

(a) is entitled to an existing award of incapacity benefit or severe disablement allowance;

(b) is entitled to an existing award of income support and satisfies the conditions set out in Part 2 of Schedule 1 unless paragraph (c) applies; or

(c) is entitled to an existing award of income support by virtue of—

(i) regulation 13(2)(b) or (bb) of the Income Support (General) Regulations (Northern Ireland) 1987 (circumstances in which persons in relevant education may be entitled to income support), or

(ii) paragraph 10 (disabled students) or 12 (deaf students) of Schedule 1B to those Regulations,

and satisfies the conditions set out in Part 2 of Schedule 1, with the exception of the condition in paragraph 6(1)(g).”;

(b) after paragraph 2(c) insert—

“(ca) in regulation 70 (special cases: supplemental – persons from abroad), in the case of a person who is entitled to an existing award of income support and who is a person to whom regulation 6(1) of the Social Security (Habitual Residence Amendment) Regulations (Northern Ireland) 2004(a) applies, in paragraph (4)—

(i) the word “or” at the end of sub-paragraph (k) were omitted, and

(ii) at the end of sub-paragraph (l) there were added—

“or

(m) a person who is entitled to an existing award of income support where that person is a person to whom regulation 6(1) of the Social Security (Habitual Residence Amendment) Regulations (Northern Ireland) 2004 applies.”;

and

(c) in paragraph 3(a) omit “a decision on”.

(14) In Schedule 2 (modification of statutory provisions: after the conversion phase)—

(a) for paragraph 1(b)(i) substitute—

“(i) for subsection (2), there were substituted—

“(2) Subject to the provisions of this Part, a person is entitled to an employment and support allowance if the person satisfies the basic conditions and—

(a) in accordance with Part 2 of the Existing Awards Regulations, the effect of the conversion decision that was made in relation to the person was to convert the person's existing award or awards into a single award of an employment and support allowance;

(a) S.R. 2004 No. 197; these Regulations were revoked subject to savings by regulation 8 of S.R. 2006 No. 178

- (b) that conversion decision has come into effect; and
- (c) where—
 - (i) the effect of that conversion decision is that the person is entitled to an income-related allowance, or
 - (ii) the effect of that conversion decision is that the person is entitled to a contributory allowance and the person subsequently becomes entitled to an income-related allowance,

the person also satisfies the conditions set out in Part 2 of Schedule 1 (conditions relating to financial position), except for the condition in paragraph 6(1)(g) in the case of a person who, before that conversion decision was made, had been entitled to an existing award of income support by virtue of regulation 13(2)(b) or (bb) of the Income Support (General) Regulations (Northern Ireland) 1987 (circumstances in which persons in relevant education may be entitled to income support), or paragraph 10 (disabled students) or 12 (deaf students) of Schedule 1B to those Regulations.”, and”;

- (b) after paragraph 1(d) insert—

“(e) in section 24(1) after the definition of “entitled” there were inserted—

““the Existing Awards Regulations” means the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010;”;

- (f) in Schedule 1, in paragraph 6 after sub-paragraph (1) there were inserted—

“(1A) Paragraphs (1B) and (1C) apply where any person (“P”) is entitled by virtue of the Existing Awards Regulations to an employment and support allowance which is attributable to an income-related allowance.

(1B) In determining for the purposes of sub-paragraph (1)(a) whether P’s income exceeds the applicable amount, the amount of any transitional addition to which P is entitled under the Existing Awards Regulations shall be disregarded.

(1C) Where—

- (a) P ceases to satisfy the condition set out in sub-paragraph (1)(a); but
- (b) otherwise remains entitled to an amount by way of a transitional addition under the Existing Awards Regulations,

the condition set out in sub-paragraph (1)(a) shall be treated as satisfied in P’s case and the amount of income-related allowance to which P is entitled shall be the amount of the transitional addition.”. ”;

- (c) in paragraph 4(i), after paragraph (1) of the modified regulation 147A insert—

“(1A) A person to whom this regulation applies who has made and is pursuing an appeal against a conversion decision in respect of an existing award of incapacity benefit or severe disablement allowance shall be treated as having satisfied the conditions in Part 1 of Schedule 1 to the Act (contributory allowance: conditions relating to national insurance).”; and

- (d) after paragraph 5 (modification of the Social Security (Claims and Payments) Regulations) insert—

“The Social Security and Child Support (Decisions and Appeals) Regulations

5A. The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(a) are to be read as if—

(a) S.R. 1999 No. 162: relevant amending Regulations are S.R. 1999 No. 408, S.R. 2002 No. 189, S.R. 2003 No. 224, S.R. 2005 No. 46 and S.R. 2008 No. 286

- (a) in regulation 1(2)(a) (interpretation), after the definition of “the Employment and Support Allowance Regulations” there were inserted—
- ““the Existing Awards Regulations” means the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010;”;
- (b) in regulation 3 (revision of decisions)—
- (i) in paragraph (1)(a)(b), in the case of a revision of a decision to award jobseeker’s allowance made following the reinstatement of an existing award in accordance with regulation 15(5) of the Existing Awards Regulations (conversion decision that existing award does not qualify for conversion), the words “within one month of the date of notification of the original decision” were omitted,
- (ii) in paragraph (9)(c), in the case of a conversion decision where there has been a change of circumstances to which regulation 12(4) of the Existing Awards Regulations (regulations 10 and 11: supplementary) applies, sub-paragraph (a) were omitted, and
- (iii) in paragraph (9)(a) for “in the case of an advance award under regulation 13, 13A or 13C of the Claims and Payments Regulations” there were substituted “in the cases of an advance award under regulation 13, 13A or 13C of the Claims and Payments Regulations or a conversion decision within the meaning of regulation 5(2)(a) of the Existing Awards Regulations”;
- (c) in regulation 6(2)(a)(i)(d) (supersession of decisions) for “in the case of an advance award under regulation 13, 13A or 13C of the Claims and Payments Regulations or regulation 146 of the Employment and Support Allowance Regulations” there were substituted “in the cases of an advance award under regulation 13, 13A or 13C of the Claims and Payments Regulations or regulation 146 of the Employment and Support Allowance Regulations or a conversion decision within the meaning of regulation 5(2)(a) of the Existing Awards Regulations”.”.

(15) In Schedule 3 after “The Social Security Benefits (Maintenance Payments and Consequential Amendments) Regulations (Northern Ireland) 1996” insert—

“The Employment Protection (Recoupment of Jobseeker’s Allowance and Income Support) Regulations (Northern Ireland) 1996(e)”.

Amendment of the Income Support (General) Regulations

3.—(1) Subject to paragraph (4), paragraph 12 of Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987(f) (additional condition for the higher pensioner and disability premiums) is amended in accordance with the following provisions of this regulation.

(2) For sub-paragraph (1)(b) substitute—

“(b) the claimant—

(i) is entitled to statutory sick pay,

-
- (a) The definition of “the Employment and Support Allowance Regulations” was inserted by regulation 22(2)(d) of S.R. 2008 No. 286
- (b) Paragraph (1)(a) was substituted by regulation 2(3)(a) of S.R. 2002 No. 189
- (c) Paragraph (9) was substituted by regulation 3(2)(b) of S.R. 1999 No. 408 and sub-paragraph (a) was amended by regulation 3(3) of S.R. 2003 No. 224 and regulation 7(2)(c) of S.R. 2005 No. 46
- (d) regulation 6(2)(a)(i) was amended by regulation 3(4)(a) of S.R. 2003 No. 224, regulation 7(4)(a)(i) of S.R. 2005 No. 46 and regulation 22(4)(a)(i) of S.R. 2008 No. 286
- (e) S.R. 1996 No. 459
- (f) In paragraph 12, sub-paragraph (1)(b) was substituted by regulation 2(12)(a)(ii) of S.R. 1995 No. 67 and amended by regulation 2(8) of S.R. 1995 No. 367, regulation 3(3)(a) of S.R. 2005 No. 580 and regulation 2(7)(d)(i) of S.R. 2007 No. 154, paragraph (1A) was inserted by regulation 8(3)(b) of S.R. 1998 No. 324 and amended by regulation 5(6)(a) of S.R. 2006 No. 359 and paragraph (5) was added by regulation 15(b) of S.R. 1988 No. 431 and amended by regulation 6(e) of S.R. 1989 No. 395 and regulation 3(5)(b) of S.R. 1990 No. 387

- (ii) has been so entitled for a continuous period of not less than 196 days, and
- (iii) is terminally ill within the meaning of section 30B(4) of the Contributions and Benefits Act(a),

and for these purposes any two or more periods of entitlement separated by a break of not more than 56 days shall be treated as one continuous period; or”.

(3) Sub-paragraphs (1A) and (5) are omitted.

(4) Where a person—

(a) is or becomes entitled to an award of income support; and

(b) is a person to whom paragraph 7(a) or (b) of Schedule 1B to the Income Support (General) Regulations (Northern Ireland) 1987 (persons incapable of work) applies,

paragraph 12(1)(b), (1A) and (5) of Schedule 2 to those Regulations continues to apply to that person as if paragraphs (2) and (3) of this regulation had no effect.

Amendment of the Jobseeker’s Allowance Regulations

4.—(1) The Jobseeker’s Allowance Regulations (Northern Ireland) 1996(b) are amended in accordance with the following provisions of this regulation.

(2) In regulation 55(4)(c) (short periods of sickness) for the words from “8 weeks of” to the end of the paragraph substitute “8 weeks of the person’s entitlement to statutory sick pay.”.

(3) In regulation 55A(1)(d) (periods of sickness and persons receiving treatment outside Northern Ireland) omit “incapacity benefit,” and “, severe disablement allowance or income support”.

(4) In paragraph 20H of Schedule 1(e) (additional conditions for higher pensioner and disability premium) omit sub-paragraph (2).

Amendment of the Housing Benefit (Decisions and Appeals) Regulations

5. In regulation 7(2)(1)(ii) of the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001(f) (decisions superseding earlier decisions) for “the claimant is appealing a conversion decision” substitute “the claimant or the claimant’s partner is appealing a conversion decision”.

Amendment of the Employment and Support Allowance Regulations

6.—(1) The Employment and Support Allowance Regulations are amended in accordance with the following provisions of this regulation.

(2) In regulation 148 (work or training beneficiaries)—

(a) in paragraph (1)—

(a) Section 30B was inserted by Article 4(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

(b) S.R. 1996 No. 198; relevant amending Regulations are S.R. 2000 No. 350, S.R. 2003 No. 195, S.R. 2004 No. 308, S.R. 2006 No. 308 and S.R. 2008 No. 286

(c) Regulation 55(4) was amended by regulation 19(9)(b) of S.R. 2008 No. 286

(d) Regulation 55A was inserted by regulation 3(6) of S.R. 2004 No. 308 and amended by regulation 19(10) of S.R. 2008 No. 286

(e) Paragraph 20H was inserted by paragraph 53(4) of Schedule 2 to S.R. 2000 No. 350 and amended by paragraph 20(e) of Schedule 2 to S.R. 2003 No. 195, regulation 13(12)(a) of S.R. 2006 No. 359 and regulation 19(24)(e) of S.R. 2008 No. 286

(f) S.R. 2001 No. 213; regulation 7(2)(1)(i) was added by paragraph 2(3)(b) of Schedule 4 to S.R. 2010 No. 312

- (i) for sub-paragraph (a) substitute—
 - “(a) had limited capability for work—
 - (i) for more than 13 weeks in the most recent past period of limited capability for work, or
 - (ii) for 13 weeks or less in the most recent past period of limited capability for work where the claimant became entitled to an award of an employment and support allowance by virtue of a conversion decision which took effect from the commencement of the most recent past period of limited capability for work;”, and
 - (ii) for sub-paragraph (c) substitute—
 - “(c) became engaged in work or training within one month of so ceasing to be entitled.”; and
- (b) in paragraph (3) after the definition of “allowance or advantage” insert—
 - ““conversion decision” has the meaning given in regulation 5(2)(a) of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010;”.
- (3) Subject to paragraph (4), in regulation 149 (linking rules – limited capability for work)—
 - (a) for paragraph (1) substitute—
 - “(1) Where the circumstances in paragraph (2) apply, a work or training beneficiary is to be treated as having limited capability for work from the first day within the linking term in respect of which that beneficiary claims an employment and support allowance.”; and
 - (b) in paragraph (2)(b) for “in the most recent past period of limited capability for work, it had been determined that the work or training beneficiary had limited capability for work” substitute “it had been determined that the work or training beneficiary had limited capability for work in the most recent past period of limited capability for work or where that determination was embodied in a conversion decision”;
- (4) Paragraph (3) applies only in relation to the following cases—
 - (a) a claim for an employment and support allowance made on or after 1st November 2010, whether or not the claim is in respect of a period commencing before that date, and
 - (b) a claim for an advance award under regulation 13 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(a)—
 - (i) made before 1st November 2010, and
 - (ii) in respect of a period beginning on or after that date.
- (5) Subject to paragraph (6), for regulation 150 (linking rules – limited capability for work-related activity) substitute—

“Linking Rules – limited capability for work-related activity

150. Where a work or training beneficiary was a member of the support group when the most recent past period of limited capability for work came to an end, that work or training beneficiary is to be treated as having limited capability for work-related activity from the first day within the linking term in respect of which that beneficiary claims an employment and support allowance.”.

(a) S.R. 1987 No. 465; regulation 13 was amended by regulation 6(4) of S.R. 1991 No. 488, regulation 6 of S.R. 1992 No. 7, regulation 7(6) of S.R. 1992 No. 83, regulation 2(3) of S.R. 1994 No. 345, Article 9(2) and (5) of S.R. 1999 No. 472 (C. 36), regulation 6(1) of S.R. 2003 No. 191, regulation 2(5) of S.R. 2005 No. 299, regulation 2(2) of S.R. 2007 No. 263 and regulation 13(10) of S.R. 2008 No. 286

- (6) Paragraph (5) applies only in relation to the following cases—
- (a) a claim for an employment and support allowance made on or after 1st November 2010, whether or not the claim is in respect of a period commencing before that date; and
 - (b) a claim for an advance award under regulation 13 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987—
 - (i) made before 1st November 2010, and
 - (ii) in respect of a period beginning on or after that date.

Sealed with the Official Seal of the Department for Social Development on 11th October 2010

(L.S.)

Anne McCleary
A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 (“the Existing Awards Regulations”), the Employment and Support Allowance Regulations (Northern Ireland) 2008 (“the Employment and Support Allowance Regulations”) and the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001.

Regulation 2 amends the Existing Awards Regulations as follows—

paragraph (2) amends regulation 3 to make clear that regulations 4 to 22 apply to any person who, on or after 1st October 2010, is entitled to an existing award;

paragraph (3) amends regulation 7 to provide that where a person’s existing award qualifies for conversion but that person is already entitled to an award of employment and support allowance such a person is to be taken as having satisfied the limited capability for work condition;

paragraph (4) amends regulation 8 so that where a person who is already entitled to employment and support allowance qualifies for conversion (under regulation 7 as amended) any determination in relation to limited capability for work-related activity applies for the purposes of step 1 of determining the amount of employment and support allowance to which a person is entitled;

paragraph (5) amends regulation 10 to list all the elements of incapacity benefit and severe disablement allowance needed to calculate the weekly payable rate of those benefits and therefore the correct amount of transitional addition;

paragraph (6) amends regulation 14 in relation to cases where a person’s existing award of income support qualifies for conversion to employment and support allowance and that person satisfies another condition of entitlement to income support. If the person notifies the Department for Social Development of their wish to remain entitled to income support, then any entitlement to incapacity benefit, severe disablement allowance or an income support disability premium (where entitlement arises solely on the grounds of incapacity) terminates immediately before the effective date of the conversion decision. It also provides that where a person is already entitled to an award of employment and support allowance by virtue of the Welfare Reform Act (Northern Ireland) 2007, and not by virtue of the Existing Awards Regulations, then that award shall terminate immediately before the effective date of a person’s conversion decision;

paragraph (7) amends regulation 15 to make similar provision to paragraph (6) where the conversion decision is that an existing award of income support does not qualify for conversion;

paragraph (8) amends regulation 17 in consequence of the amendments made to regulations 14 and 15;

paragraph (9) amends regulation 19 to clarify how the amount of the transitional addition is to be reduced where a person has dependent children;

paragraph (10) makes a similar amendment to regulation 20 to clarify how the amount of the transitional addition is to be reduced where a person has a dependent adult;

paragraph (11) amends regulation 21 to provide that where regulation 145(1) of the Employment and Support Allowance Regulations applies, what would otherwise have been a termination of a transitional addition is instead a suspension., where it is determined that a person has limited capability for work in relation to a claim subsequent to when that determination was first made as part of a conversion decision;

paragraph (12) adds the provision in the Social Security (Contributions and Benefits) (Northern Ireland) Act 1992 covering days and periods of incapacity for work to the list of provisions disappplied following a conversion decision;

paragraph (13) amends Schedule 1 to ensure that persons who are receiving relevant education and are entitled to an existing award of income support as a result, can qualify for an award of employment and support allowance;

paragraph (14) makes a number of amendments to Schedule 2, including amending the conditions of entitlement for employment and support allowance following the conversion phase to include the conditions relating to financial position in Part 2 of Schedule 1 to the Welfare Reform Act (Northern Ireland) 2007 where a person's award of income support converts to an award of employment and support allowance; it also provides that a person who has made and is pursuing an appeal against a conversion decision where they had previously been entitled to an existing award of incapacity benefit or severe disablement allowance is treated as having already satisfied the contributions conditions for contributory employment and support allowance and modifies the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 to make it possible to revise certain types of decisions relating to the conversion process in particular circumstances;

paragraph (15) amends Schedule 3 to include the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations (Northern Ireland) 1996.

Regulation 3 amends the Income Support (General) Regulations (Northern Ireland) 1987 so that, subject to savings, entitlement to an income support disability premium ceases where it solely relates to being incapable of work.

Regulation 4 amends the Jobseeker's Allowance Regulations (Northern Ireland) 1996 to remove the disapplication from regulation 55 where a person had been unable to work within 8 weeks of an entitlement to incapacity benefit, severe disablement allowance or income support and remove references to those benefits from regulation 55A.

Regulation 5 amends the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001 to ensure that certain housing benefit decisions may be superseded where a claimant's partner is appealing a conversion decision.

Regulation 6 amends regulation 148 to 150 of the Employment and Support Allowance Regulations in relation to "work or training beneficiaries". The amendments expand the definition of a work or training beneficiary to include those whose previous period of limited capability for work lasted for less than 13 weeks immediately following their migration to employment and support allowance from another benefit. A work or training beneficiary is also treated as having limited capability for work from the first day within a linking term rather than for a 13 week period within that linking term.

Paragraphs 7 and 8 of Schedule 4 to the Welfare Reform Act (Northern Ireland) 2007, some of the enabling provisions under which these Regulations are made, were brought into operation on 9th September 2010, by virtue of the Welfare Reform (2007 Act) (Commencement No. 8) Order (Northern Ireland) 2010 (S.R. 2010 No. 308 (C. 17)).

These Regulations make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992, are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.

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HOUSING; RATES; SOCIAL SECURITY

The Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) (Amendment) Regulations (Northern Ireland) 2010