

2012 No. 160

SOCIAL SECURITY

The Employment and Support Allowance (Amendment of Linking Rules) Regulations (Northern Ireland) 2012

Made - - - - - *4th April 2012*

Coming into operation - *1st May 2012*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 2(4), 4(6), 24(2)(b), 25(2) and 28(2) and paragraphs 1, 4 and 9 of Schedule 2 and paragraphs 1(1), and 7(1) and 8 of Schedule 4 to, the Welfare Reform Act (Northern Ireland) 2007(a).

Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance (Amendment of Linking Rules) Regulations (Northern Ireland) 2012 and shall come into operation on 1st May 2012.

Amendment of the Employment and Support Allowance Regulations

2.—(1) The Employment and Support Regulations (Northern Ireland) 2008(b) are amended in accordance with paragraphs (2) to (4).

(2) After regulation 5(2)(b)(c) (the assessment phase – previous claimants) insert—

- “(c) (i) the claimant’s current period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 145(1) or (2),
- (ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work,
- (iii) the previous period of limited capability for work was terminated by virtue of a determination that the claimant did not have limited capability for work,
- (iv) the period for which the claimant was previously entitled was no more than 13 weeks, and
- (v) a determination is made in relation to the current period of limited capability for work that the claimant has or is treated as having limited capability for work, other than under regulation 30; or
- (d) (i) the claimant’s current period of limited capability for work is to be treated as a condition of an earlier period of limited capability for work under regulation 145(1) or (2),

(a) 2007 c. 2 (N.I.)

(b) S.R. 2008 No. 280; relevant amending Regulations are S.R. 2008 No. 478 and S.R. 2010 No. 200

(c) Regulation 5 was amended by regulation 9(4) of S.R. 2010 No. 200

- (ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work,
- (iii) in relation to the previous award of an employment and support allowance, a determination was made that the claimant had limited capability for work or was treated as having limited capability for work, other than under regulation 30, and
- (iv) the period for which the claimant was previously entitled was no more than 13 weeks.”.

(3) In regulation 7 (circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work-related activity component arises does not apply)—

(a) for paragraph (1)(b)(a) substitute—

“(b) the case is a relevant linked case;”;

(b) after paragraph (1) insert—

“(1A) For the purposes of paragraph (1)(b) a relevant linked case is a case mentioned in paragraph (1B) where a period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 145(1) or (2).

(1B) Paragraph (1A) applies to the following cases—

(a) case 1 is where—

- (i) the claimant was entitled to an employment and support allowance (including entitlement to a component under sections 2(2), 2(3), 4(4) or 4(5) of the Act) in the earlier period of limited capability for work, and
- (ii) the previous period for which the claimant was entitled to an employment and support allowance was terminated other than by virtue of a determination that the claimant did not have limited capability for work;

(b) case 2 is where—

- (i) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work,
- (ii) the previous period for which the claimant was entitled to an employment and support allowance was 13 weeks or longer,
- (iii) the previous period for which the claimant was entitled to an employment and support allowance was terminated by virtue of a determination that the claimant did not have, or was treated as not having, limited capability for work, and
- (iv) it is determined in relation to the current period of limited capability for work that the claimant has limited capability for work or is treated as having limited capability for work, other than under regulation 30;

(c) case 3 is where—

- (i) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work,
- (ii) the previous period for which the claimant was entitled to an employment and support allowance was 13 weeks or longer,
- (iii) the previous period for which the claimant was entitled to an employment and support allowance was terminated before it could be determined whether the claimant had limited capability for work or was treated as having limited capability for work, other than under regulation 30, and

(a) Sub-paragraph (b) was amended by regulation 9(6)(a) of S.R. 2010 No. 200

- (iv) it is determined in relation to the current period of limited capability for work that the claimant has limited capability for work or is treated as having limited capability for work, other than under regulation 30; and
- (d) case 4 is where—
 - (i) the claimant was entitled to an employment and support allowance (including entitlement to a component under sections 2(2), 2(3), 4(4) or 4(5) of the Act) in the earlier period of limited capability for work,
 - (ii) the previous period for which the claimant was entitled to an employment and support allowance was terminated because it was determined that the claimant did not have limited capability for work or was treated as not having limited capability for work, and
 - (iii) it is determined in relation to the current period of limited capability for work that the claimant has limited capability for work or is treated as having limited capability for work, other than under regulation 30.”.

(4) After regulation 35 (certain claimants to be treated as having limited capability for work-related activity) insert—

“Relevant linked cases – limited capability for work-related activity

35A. A claimant is to be treated as having limited capability for work-related activity where—

- (a) they fall within case 1, as defined in regulation 7(1B)(a)(a); and
- (b) in respect of the earlier period of limited capability for work referred to in regulation 7(1B)(a)(i), they had been entitled to a support component under sections 2(2) or 4(4) of the Act.”.

Amendment of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations

3. For regulation 21(5)(c) of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010(**b**) (termination of transitional addition) substitute—

- “(c) in a case to which regulation 145(1) of the Employment and Support Allowance Regulations applies (12 week linking rule), in respect of that earlier period, it was terminated—
 - (i) other than by virtue of a determination that T did not have, or was treated as not having, limited capability for work, or
 - (ii) by virtue of a determination that the claimant did not have, or was treated as not having, limited capability for work, and, in respect of that subsequent claim, it is determined that T has, or is treated as having, limited capability for work, other than under regulation 30 of those Regulations.”.

(a) Paragraph (1B) is inserted by regulation 2(3)(b) of these Regulations
 (b) S.R. 2010 No. 312; paragraph (5) was substituted by regulation 2(11)(c) of S.R. 2010 No. 347

Revocation

4. Regulation 9(6)(a) of the Social Security (Miscellaneous Amendments No. 4) Regulations (Northern Ireland) 2010(a) is revoked.

Sealed with the Official Seal of the Department for Social Development on 4th April 2012

(L.S.)

Anne McCleary

A senior officer of the Department for Social Development

(a) S.R. 2010 No. 200

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to legislation to clarify the operation of the linking rules in regulation 145(1) and (2) of the Employment and Support Allowance Regulations (Northern Ireland) 2008 (“the Employment and Support Allowance Regulations”).

Regulation 2 amends the Employment and Support Allowance Regulations.

Paragraph (2) amends regulation 5, principally to provide for two specific circumstances in which the assessment phase for employment and support allowance (“ESA”) ends.

Paragraph (3) amends regulation 7 in order to provide for four specific exceptions to the rule that the assessment phase has to have ended before entitlement arises to the work-related activity or support components of ESA.

Paragraph (4) inserts a new regulation 35A to provide that where a claimant falls into one of those specific exceptions (case 1) and they had previously been entitled to a support component, they are to be treated as having limited capability for work-related activity.

Regulation 3 amends regulation 21(5) of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 (“the Reassessment Regulations”). Regulation 21 provides for the circumstances in which a transitional addition is terminated. A transitional addition is based on the difference between specified elements of a person’s existing award (of incapacity benefit, severe disablement allowance or income support on disability grounds) and specified elements of the ESA for which a claimant is entitled following their reassessment. Paragraph (b) substitutes a new sub-paragraph (c) which provides, with the rest of regulation 21(5) of the Reassessment Regulations, for a termination of the transitional addition to take effect as a suspension instead where a subsequent claim for ESA links to an earlier period of limited capability for work under regulation 145(1) of the Employment and Support Allowance Regulations.

Regulation 4 makes a consequential revocation.

In so far as these Regulations are required, for the purposes of regulations 2(2) and (3) and 3, to be referred to the Social Security Advisory Committee under section 149(2) of the Social Security Administration (Northern Ireland) Act 1992, after agreement by the Social Security Advisory Committee, they have not been so referred by virtue of section 150(1)(b) of that Act. Otherwise they 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, that Act, are not subject to the requirement of section 149(2) for prior reference to the Social Security Advisory Committee.

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