
STATUTORY RULES OF NORTHERN IRELAND

2016 No. 219

SOCIAL SECURITY

**The Employment and Support Allowance
Regulations (Northern Ireland) 2016**

Made - - - - - *3rd May 2016*

Laid before Parliament *10th May 2016*

*Coming into operation in accordance with
regulation 1(2)*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 5(1A) and 165(4) to (6) of the Social Security Administration (Northern Ireland) Act 1992⁽¹⁾ and Article 21(1)(a) of the Social Security (Northern Ireland) Order 1998⁽²⁾ and sections 2(1)(a) and (c) and (4)(a) and (c), 3(1)(c), (2)(b) and (d) and (3), 8(1) to (3), (4)(a) and (b), (5) and (6), 9(1) to (3) and (4)(a) and (b), 11A(5), 11B(2) and (3), 11D(2)(d), 11E(1), 11H(7) and (8), 11J(3), (4) and (8), 17(1), (2) and (3)(a) and (b), 18(1), (2) and (4), 20(2) to (7), 24(1), (2)(b) and (3) and 25(1) and (2) of, and paragraphs 1(3) and (4), 3(2), 4(1)(a) and (c), (3) and (4) of Schedule 1 and paragraphs 1 to 4A, 5, 6, 9 and 10 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007⁽³⁾ and Article 5 and paragraphs 2(3) and 3 of Schedule 5 to the Welfare Reform (Northern Ireland) Order 2015⁽⁴⁾.

These powers are exercisable by the Secretary of State by virtue of Article 4(1)(b) of the Welfare Reform (Northern Ireland) Order 2015.

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- (1) 1992 c. 8; section 5(1A) was inserted by Article 104(3) of the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015 No. 2006 (N.I. 1))
- (2) S.I. 1998/1506 (N.I. 10)
- (3) 2007 c. 2 (N.I.); section 2(1) was amended by paragraph 19 of Schedule 3 and paragraph 6(2) of Schedule 5 to the Welfare Reform (Northern Ireland) Order 2015, section 3(2)(d) was amended by paragraph 21(c) of Schedule 3 to the Welfare Reform (Northern Ireland) Order 2015, sections 11A to 11J were inserted by Article 63(2) of the Welfare Reform (Northern Ireland) Order 2015, section 18(4) was amended by paragraph 21(d) of Schedule 3 to the Welfare Reform (Northern Ireland) Order 2015, section 20(2) to (7) was amended by paragraph 21(e) of Schedule 3 to the Welfare Reform (Northern Ireland) Order 2015, paragraph 1(3) of Schedule 1 was substituted by section 12(4) of the Welfare Reform Act (Northern Ireland) 2010 (c. 13) and paragraph 1(4) was amended by section 12(5) of that Act, paragraph 3(2) of Schedule 1 was amended by paragraph 21(f) of Schedule 3 to the Welfare Reform (Northern Ireland) Order 2015, paragraph 4A of Schedule 2 was inserted by Article 60(6) of the Welfare Reform (Northern Ireland) Order 2015 and paragraph 6 was amended by paragraph 21(g) of Schedule 3 to the Welfare Reform (Northern Ireland) Order 2015. Section 24(1) is cited for the meaning it gives to “prescribed” and “regulations”
- (4) S.I. 2015 No. 2006 (N.I. 1); Article 5 is cited for the meaning it gives to “the Contributions and Benefits Act” and “the Jobseekers Order”

PART 1

GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the Employment and Support Allowance Regulations (Northern Ireland) 2016.

(2) These regulations come into operation immediately after the coming into operation of the Universal Credit Regulations⁽⁵⁾.

(3) They apply in relation to a particular case on any day on which Article 39(1)(b) of the Welfare Reform (Northern Ireland) Order 2015 (abolition of income-related employment and support allowance) is in operation and applies in relation to that case.

Interpretation

2. In these Regulations—

“the Act” means the Welfare Reform Act (Northern Ireland) 2007;

“advanced education” means education for the purposes of—

- (a) a course in preparation for a degree, a diploma of higher education, a higher national diploma, a higher national diploma of the Business and Technology Education Council or the Scottish Qualifications Authority, or a teaching qualification; or
- (b) any other course which is of a standard above ordinary national diploma, a diploma of the Business and Technology Education Council or a higher or advanced higher national certificate of the Scottish Qualifications Authority or a general certificate of education (advanced level);

“benefit week” means a period of 7 days ending on such day as the Department may direct, but for the purposes of calculating any payment of income “benefit week” means the period of 7 days ending on—

- (a) the day before the first day of the first period of seven days which—
 - (i) ends on such day as the Department may direct, and
 - (ii) follows the date of claim for an employment and support allowance; or
- (b) the last day on which an employment and support allowance is paid if it is in payment for less than a week;

“carer’s allowance” means an allowance under section 70 of the Contributions and Benefits Act⁽⁶⁾;

“child” means a person under the age of 16;

“the Children Order” means the Children (Northern Ireland) Order 1995⁽⁷⁾;

“the Claims and Payments Regulations 2016” means the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016⁽⁸⁾;

⁽⁵⁾ [S.R. 2016 No. 216](#)

⁽⁶⁾ [1992 c.7](#); Section 70 was amended by Articles 2(2)(a) and 3 of [S.R. 2002 No. 321](#) and other amendments not relevant to these Regulations

⁽⁷⁾ [S.I. 1995/755 \(N.I. 2\)](#)

⁽⁸⁾ [S.R. 2016 No. 220](#)

“close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister or, if any of the preceding persons is one member of a couple, the other member of that couple;

“confinement” has the meaning given to it by section 167(1) of the Contributions and Benefits Act(9);

“councillor” means a member of a district council;

“councillor’s allowance” means such payments for or in connection with the work which a person undertakes as a councillor;

“couple” means—

- (a) a man and woman who are married to each other and are members of the same household;
- (b) a man and woman who are not married to each other but are living together as husband and wife;
- (c) two people of the same sex who are civil partners of each other and are members of the same household; or
- (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners,

and for the purposes of paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners only if they would be regarded as living together as husband and wife were they instead two people of the opposite sex;

“the Decisions and Appeals Regulations 1999” means the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(10);

“the Decisions and Appeals Regulations 2016” means the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations (Northern Ireland) 2016(11);

“descriptor” means, in relation to an activity specified in column (1) of Schedule 2, a descriptor in column (2) of that Schedule which describes a person’s ability to perform that activity;

“the Disabled Persons (Employment) Act” means the Disabled Persons (Employment) Act (Northern Ireland) 1945(12);

“employed earner” means a person who is gainfully employed in Northern Ireland or the Republic of Ireland either under a contract of service or in an office (including elective office) with general earnings;

“employment” includes any trade, business, profession, office or vocation and “employed” has a corresponding meaning;

“the Employment and Training Act” means the Employment and Training Act (Northern Ireland) 1950(13);

“the Employment Rights Order” means the Employment Rights (Northern Ireland) Order 1996(14);

“family” means—

- (a) a couple;

(9) The definition of “confinement” was amended by Article 4(b) of the Still-Birth (Definition) (Northern Ireland) Order 1992. (S.I. 1992/1310 (N.I. 10))

(10) S.R. 1999 No. 162

(11) S.R. 2016 No. 221

(12) 1945 c. 6 (N.I.)

(13) 1950 c. 29 (N.I.)

(14) S.I. 1996/1919 (N.I.) 16)

(b) a couple and a member of the same household for whom one of them is or both are responsible and who is a child or a young person;

(c) a person who is not a member of a couple and a member of the same household for whom that person is responsible and who is a child or a young person;

“first contribution condition” means the condition set out in paragraph 1(1) of Schedule 1 to the Act(15);

“health care professional” means—

(a) a registered medical practitioner;

(b) a registered nurse; or

(c) an occupational therapist or physiotherapist registered with a regulatory body established by an Order of Council under section 60 of the Health Act 1999(16);

“the Health and Personal Social Services Order” means the Health and Personal Social Services (Northern Ireland) Order 1972(17);

“the Income Support Regulations” means the Income Support (General) Regulations (Northern Ireland) 1987(18);

“the Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations (Northern Ireland) 2016(19);

“limited capability for work assessment” means the assessment described in regulation 15(2) and Schedule 2;

“the Medical Evidence Regulations” means the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976(20);

“medical treatment” means medical, surgical or rehabilitative treatment (including any course or diet or other regimen), and references to a person receiving or submitting to medical treatment are to be construed accordingly;

“member of Her Majesty’s forces” means a person, other than one mentioned in Part 2 of Schedule 1, who is—

(a) over 16 years of age; and

(b) a member of an establishment or organisation specified in Part 1 of that Schedule,

but does not include any such person while absent on desertion;

“the Mental Health Order” means the Mental Health (Northern Ireland) Order 1986(21);

“national living wage” means the national living wage rate specified in regulation 4 of the National Minimum Wage Regulations 2015(22) (national minimum wage rates);

“net earnings” means such earnings as are calculated in accordance with regulation 81;

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993(23);

(15) Paragraph 1(1) of Schedule 1 was amended by section 12(2) of the Welfare Reform Act (Northern Ireland) 2010 (c. 13)

(16) 1999 c. 8. Section 60 was amended by section 26(9) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17), paragraph 1 of Schedule 8 and paragraph 10 of Schedule 10 to the Health and Social Care Act 2008 (c. 14), sections 209, 201 and 213 of, and paragraphs 60 and 72 of Schedule 15 to, the Health and Social Care Act 2012 (c. 7) and S.I.s 2002/253 and 2010/231

(17) S.I. 1972/1265 (N.I. 14)

(18) S.R. 1987 No.459

(19) S.R. 2016 218

(20) S.R. 1976 No. 175

(21) S.I. 1986/595 (N.I. 4)

(22) S.I. 2015/621, relevant amending instruments are S.I. 2015/1724 and 2016/68.

(23) 1993 c. 49; the definition “occupational pension scheme” was substituted by Article 216(3) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005 No. 255 (N.I. 1)) and amended by regulation 2(2) of S.R. 2007 No. 457

“part-time employment” means, if the claimant were entitled to income support, employment in which the claimant is not to be treated as engaged in remunerative work under regulation 5 or 6(1) and (4) of the Income Support Regulations(24) (persons treated, or not treated, as engaged in remunerative work);

“partner” means—

- (a) where a claimant is a member of a couple, the other member of that couple; or
- (b) where a claimant is a husband or wife by virtue of a polygamous marriage, the other party to the marriage or any spouse additional to either party to the marriage;

“payment” includes a part of a payment;

“pay period” means the period in respect of which a claimant is, or expects to be, normally paid by the claimant’s employer, being a week, a fortnight, 4 weeks, a month or other shorter or longer period as the case may be;

“period of limited capability for work” means, except in regulation 3(2), a period throughout which a person has, or is treated as having, limited capability for work under these Regulations, and does not include a period which is outside the prescribed time for claiming as specified in regulation 27 of the (Claims and Payments) Regulations 2016;

“permanent health insurance payment” means any periodical payment arranged by an employer under an insurance policy providing benefits in connection with physical or mental illness or disability, in relation to a former employee on the termination of that person’s employment;

“personal pension scheme” means—

- (a) a personal pension scheme as defined by section 1 of the Pension Schemes (Northern Ireland) Act 1993(25);
- (b) an annuity contract, trust scheme or substituted contract which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(f) of Schedule 36 to the Finance Act 2004(26);
- (c) a personal pension scheme which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(g) of Schedule 36 to the Finance Act 2004;

“polygamous marriage” means any marriage entered into under a law which permits polygamy where—

- (a) either party has for the time being any spouse additional to the other party; and
- (b) the claimant, the other party to the marriage and the additional spouse are members of the same household;

“qualifying young person” has the meaning given by section 138(2) of the Contributions and Benefits Act(27) (child and qualifying young person);

“relative” means a close relative, grandparent, grandchild, uncle, aunt, nephew or niece;

“second contribution condition” means the condition set out in paragraph 2(1) of Schedule 1 to the Act;

(24) Relevant amending Rules are S.R. 1988 Nos. 146 and 318, S.R. 1990 No. 131, S.R. 1991 Nos. 338 and 381, S.R. 1992 Nos. 147 and 403, S.R. 1993 No. 373, S.R. 1994 No. 327, S.R. 1995 No. 86, S.R. 1996 No. 405, S.R. 1999 Nos. 342, 381 and 472 (C. 36), S.R. 2000 No. 74, S.R. 2001 No. 78, S.R. 2002 No. 363, S.R. 2004 No. 163, S.R. 2005 No. 458, S.R. 2007 No. 396 and S.R. 2010 No. 69

(25) The definition of “personal pension scheme” was substituted by Article 216(3) of the Pensions (Northern Ireland) Order 2005

(26) 2004 c. 12

(27) Section 138 was substituted by section 2(2) of the Child Benefit Act 2005 (c. 6)

“self-employed earner” means a person who is gainfully employed in Northern Ireland or the Republic of Ireland otherwise than in employed earner’s employment (whether or not he is also employed in such employment);

“state pension credit” means a state pension credit under the State Pension Credit Act (Northern Ireland) 2002(28);

“the Tax Credits Act” means the Tax Credits Act 2002(29);

“terminally ill”, in relation to a claimant, means the claimant is suffering from a progressive disease and death in consequence of that disease can reasonably be expected within 6 months;

“training” means—

- (a) training in pursuance of arrangements made under section 1 or 3 of the Employment and Training Act; or
- (b) any training received on a course which a person attends for 16 hours or more a week, the primary purpose of which is the teaching of occupational or vocational skills;

“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by a government department or by or on behalf of the Department for Employment and Learning;
- (b) to a person for that person’s maintenance or in respect of a member of that person’s family; and
- (c) for the period, or part of the period, during which the person is following a course of training or instruction provided by, or in pursuance of arrangements made with, a government department or approved by such department in relation to that person or so provided or approved by or on behalf of the Department for Employment and Learning,

but it does not include an allowance paid by any government department to, or in respect of, a person by reason of the fact that that person is following a course of full-time education, other than under provision or arrangements under sections 2 and 3 of the Disabled Persons (Employment) Act(30) or section 1(1) of the Employment and Training Act(31), or is training as a teacher;

“the Universal Credit Regulations” means the Universal Credit Regulations (Northern Ireland) 2016;

“voluntary organisation” means any association carrying on or proposing to carry on any activities otherwise than for the purpose of gain by the association or by individual members of the association;

“week” means a period of 7 days except in relation to regulation 22;

“working tax credit” means a working tax credit under section 10 of the Tax Credits Act;

“young person” is a person who, except where section 6 of the Children (Leaving Care) Act (Northern Ireland) 2002(32) (exclusion from benefits) applies, falls within the definition of qualifying young person in section 138 of the Contributions and Benefits Act.

(28) 2002 c. 14 (N.I.)

(29) 2002 c. 21

(30) Sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act 1960 (c. 4) (N.I.) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

(31) Section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

(32) 2002 c. 11 (N.I.). Section 6 was amended by Schedule 4 to the Welfare Reform Act (Northern Ireland) 2010

Further interpretation

3.—(1) In these Regulations, any reference to the claimant’s family is to be construed as if it included in relation to a polygamous marriage a reference to any partner and any child or young person who is a member of the claimant’s household.

(2) For the purposes of paragraph 4 of Schedule 1 to the Act (condition relating to youth), “period of limited capability for work” means a period throughout which a person has, or is treated as having, limited capability for work.

(3) For the purposes of paragraph 5 of Schedule 1 to the Act, “week” means a period of 7 days.

(4) The Interpretation Act (Northern Ireland) 1954(33) applies to these Regulations as it applies to an Act of the Assembly.

Rounding of fractions

4. For the purposes of these Regulations—

- (a) where any calculation under these Regulations results in a fraction of a penny, that fraction is, if it would be to the claimant’s advantage, to be treated as a penny, but otherwise it must be disregarded;
- (b) where an employment and support allowance is awarded for a period which is not a complete benefit week and the applicable amount in respect of the period results in an amount which includes a fraction of a penny, that fraction is to be treated as a penny.

PART 2

THE ASSESSMENT PHASE

The end of the assessment phase

5.—(1) Subject to paragraphs (2) and (3) and regulation 6, the assessment phase in relation to a claimant ends on the last day of the relevant period.

(2) Where paragraph (3) applies, the assessment phase is to end when it is determined whether the claimant has limited capability for work.

(3) This paragraph applies where, at the end of the relevant period—

- (a) the claimant has not been assessed in accordance with a limited capability for work assessment; and
- (b) the claimant has not been being treated as having limited capability for work in accordance with regulation 16, 21, 22 or 25.

(4) In this regulation “the relevant period” means the period of 13 weeks beginning with—

- (a) the first day of the assessment phase as determined under section 24(2)(a) of the Act; or
- (b) where that day immediately follows an extended period of sickness, the first day of the extended period of sickness.

(5) In paragraph (4) “extended period of sickness” means a period in which the claimant was—

- (a) entitled to a jobseeker’s allowance; and

- (b) treated as capable of work or as not having limited capability for work under regulation 55ZA of the Jobseeker's Allowance Regulations (Northern Ireland) 1996⁽³⁴⁾ or regulation 46 of the Jobseeker's Allowance Regulations (extended periods of sickness).

The assessment phase – previous claimants

6.—(1) Where the circumstances in paragraph (3) apply in relation to a claimant the assessment phase—

- (a) begins on the first day of the period for which the claimant was previously entitled to an employment and support allowance; and
 - (b) subject to paragraphs (4), (5) and (6), ends on the day when the sum of the period for which the claimant was previously entitled to an employment and support allowance and the period for which the claimant is currently entitled to such an allowance is 13 weeks.
- (2) For the purposes of paragraph (1), any period when the claimant was—
- (a) entitled to a jobseeker's allowance; and
 - (b) treated as capable of work or as not having limited capability for work under regulation 55ZA of the Jobseeker's Allowance Regulations (Northern Ireland) 1996 or regulation 46 of the Jobseeker's Allowance Regulations,

is to be treated as a period when the claimant was previously entitled to an employment and support allowance.

(3) The circumstances are that—

- (a)
 - (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 86,
 - (ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work,
 - (iii) the assessment phase had not ended in the previous period for which the claimant was entitled to an employment and support allowance, and
 - (iv) the period for which the claimant was previously entitled was no more than 13 weeks;
- (b)
 - (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 86,
 - (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 26; or
- (c)
 - (i) the claimants' 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 86,
 - (ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work,

⁽³⁴⁾ S.R. 1996 No. 198; Regulation 55ZA was inserted by regulation 2(5) of S.R. 2015 No. 138.

- (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 26, and
 - (iv) the period for which the claimant was previously entitled was no more than 13 weeks.
- (4) Where paragraph (5) applies, the assessment phase is to end when it is determined whether the claimant has limited capability for work.
- (5) This paragraph applies where, on the day referred to in paragraph (1)(b)—
- (a) the claimant has not been assessed in accordance with a limited capability for work assessment; and
 - (b) the claimant has not been treated as having limited capability for work in accordance with regulation 16, 21, 22 or 25.
- (6) Where a person has made and is pursuing an appeal against a decision of the Department that embodies a determination that the claimant does not have limited capability for work—
- (a) paragraphs (4) and (5) do not apply; and
 - (b) paragraph (1) does not apply to any period of limited capability for work to which regulation 87(2) applies until a determination of limited capability for work has been made following the determination of the appeal by the appeal tribunal.

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

- 7.—(1) Subject to paragraph (4), section 2(2)(a) and (3)(a) of the Act does not apply where—
- (a) a claimant is terminally ill and has either—
 - (i) made a claim expressly on the ground of being terminally ill, or
 - (ii) made an application for supersession or revision in accordance with the Decisions and Appeals Regulations 1999 or the Decisions and Appeals Regulations 2016 which contains an express statement that the claimant is terminally ill;
 - (b) the case is a relevant linked case;
 - (c)
 - (i) the claimant's entitlement to an employment and support allowance commences within 12 weeks of the claimant's entitlement to income support coming to an end,
 - (ii) in relation to that entitlement to income support, immediately before it ended, the claimant's applicable amount included the disability premium by virtue of their satisfying the conditions in paragraphs 11 and 12 of Schedule 2 to the Income Support Regulations, and
 - (iii) that entitlement to income support ended only by virtue of the coming into operation, in relation to the claimant, of the Social Security (Lone Parents and Miscellaneous Amendments) Regulations (Northern Ireland) 2008⁽³⁵⁾; or
 - (d) a claimant is entitled to an employment and support allowance by virtue of section 1B of the Act⁽³⁶⁾ (further entitlement after time-limiting).
- (2) For the purposes of paragraph (1)(b) a relevant linked case is a case mentioned in paragraph (3) 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 86.
- (3) Paragraph (2) applies to the following cases—
- (a) case 1 is where—

⁽³⁵⁾ S.R. 2008 No. 478

⁽³⁶⁾ Section 1B was inserted by Article 58(1) of the Welfare Reform (Northern Ireland) Order 2015

- (i) the claimant was entitled to an employment and support allowance (including entitlement to a component under section 2(2) or 2(3) 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 26;
- (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 26, 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 26; and
- (d) case 4 is where—
- (i) the claimant was entitled to an employment and support allowance (including entitlement to a component under section 2(2) or (3) 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 26.
- (4) Paragraph 1(b) does not apply to any period of limited capability for work to which regulation 87(2) applies until the determination of limited capability for work has been made following the determination of the appeal by the appeal tribunal.

PART 3

CONDITIONS OF ENTITLEMENT

Conditions relating to national insurance and relevant earnings

8.—(1) A claimant's relevant earnings for the purposes of paragraph 1(2)(a) of Schedule 1 to the Act (employment and support allowance: conditions relating to national insurance)(37) are the total amount of the claimant's earnings equal to the lower earnings limit for the base tax year.

(2) For the purposes of paragraph (1), earnings which exceed the lower earnings limit are to be disregarded.

Relaxation of the first contribution condition

9.—(1) A claimant who satisfies any of the conditions in paragraph (2) is to be taken to satisfy the first contribution condition if—

- (a) the claimant paid Class 1 or Class 2 contributions before the relevant benefit week in respect of any one tax year; and
- (b) the claimant has—
 - (i) earnings equal to the lower earnings limit in that tax year on which primary Class 1 contributions have been paid or treated as paid which in total, and disregarding any earnings which exceed the lower earnings limit for that year, are not less than that limit multiplied by 26, or
 - (ii) earnings factors in that tax year derived from Class 2 contributions multiplied by 26.
- (2) The conditions referred to in paragraph (1) are that the claimant—
 - (a) was entitled to a carer's allowance in the last complete tax year immediately preceding the relevant benefit year;
 - (b) had been—
 - (i) engaged in qualifying remunerative work (which has the meaning given by Part 1 of the Tax Credits Act) for a period of more than 2 years immediately before the first day of the period of limited capability for work, and
 - (ii) entitled to working tax credit where the disability element or the severe disability element of working tax credit specified in regulation 20(1)(b) or (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(38) was included in the award;
 - (c) in respect of any week in any tax year preceding the relevant benefit year—
 - (i) is entitled to be credited with earnings or contributions in accordance with regulation 9D of the Social Security (Credits) Regulations (Northern Ireland) 1975(39) (credits for certain periods of imprisonment or detention in legal custody), or
 - (ii) would have been so entitled had an application to the Department been made for the purpose of that regulation; or
 - (d) in respect of any week in the last complete tax year preceding the relevant benefit year, is entitled to be credited with earnings in accordance with regulation 9E of the Social

(37) Paragraph 1(2) was substituted by section 12 of the Welfare Reform Act (Northern Ireland) 2010

(38) S.I. 2002/2005

(39) S.R. 1975 No. 113; regulation 9D was inserted by regulation 2 of S.R. 2001 No. 88

Security (Credits) Regulations (Northern Ireland) 1975(40) (credits for certain spouses and civil partners of members of Her Majesty's forces).

Condition relating to youth – claimants aged 20 or over but under 25

10.—(1) For the purposes of paragraph 4(1)(a) of Schedule 1 to the Act, a claimant who satisfies the conditions specified in paragraph 2 falls within a prescribed case.

(2) The conditions are that the claimant—

(a) registered on a course of—

- (i) full-time advanced or secondary education, or
- (ii) training,

at least 3 months before attaining the age of 20; and

(b) not more than one academic term immediately after registration attended one or more such courses in respect of a period referred to in paragraph (3).

(3) The period mentioned in sub-paragraph 2(b) is a period which—

(a) began on or before a day at least 3 months before the day the claimant attained the age of 20; and

(b) ended no earlier than the beginning of the last 2 complete tax years before the relevant benefit year which would have applied if the claimant was entitled to an employment and support allowance having satisfied the first contribution condition and the second contribution condition.

(4) For the purposes of this regulation a claimant is to be treated as attending a course on any day on which the course is interrupted by an illness or domestic emergency.

(5) In this regulation—

“full-time” includes part-time where the person's disability prevents attendance at a full-time course;

“secondary education” means a course of education below a course of advanced education by attendance—

(a) at an establishment recognised by the Department—

- (i) as being a university, college or school, or
- (ii) as comparable to a university, college or school; or

(b) at an establishment that is not mentioned in paragraph (a) where the Department is satisfied that the education is equivalent to that given in an establishment recognised—

- (i) as being a university, college or school, or
- (ii) as comparable to a university, college or school.

(6) A claimant is to be treated as not having limited capability for work on a day which is not, for the purposes of paragraph 4(1)(d)(ii) of Schedule 1 to the Act (period of 196 consecutive days preceding the relevant period of limited capability for work), part of a period of consecutive days of limited capability for work.

Condition relating to youth – previous claimants

11.—(1) Paragraph 4(1)(a) of Schedule 1 to the Act does not apply to a claimant—

- (a) who has previously ceased to be entitled to an employment and support allowance, entitlement to which was as a result of satisfying the condition set out in sub-paragraph (1) of that paragraph;
 - (b) whose previous entitlement had not been ended by a decision which embodied a determination (other than a determination in the circumstances applicable to a claimant under paragraph(2)(a)) that the claimant did not have limited capability for work;
 - (c) in relation to whom regulation 86 (linking period) does not apply;
 - (d) who is aged 20 or over or, where regulation 10 would otherwise apply to the person, aged 25 or over; and
 - (e) to whom paragraph (2) applies.
- (2) This paragraph applies to a claimant—
- (a) whose previous entitlement to an employment and support allowance ended only with a view to that person taking up employment or training;
 - (b) whose earnings factor from an employment or series of employments pursued in the period from the end of the previous entitlement to the beginning of the period of limited capability for work, was below the lower earnings limit multiplied by 25 in any of the last 3 complete tax years before the beginning of the relevant benefit year; and
 - (c) who—
 - (i) in respect of the last 2 complete tax years before the beginning of the relevant benefit year has either paid or been credited with earnings equivalent in each of those years to the year's lower earnings limit multiplied by 50, of which at least one such payment or credit, in the last complete tax year, was in respect of the disability element or severe disability element of working tax credit, or
 - (ii) makes a claim for an employment and support allowance within the period of 12 weeks after the day on which the last employment referred to in sub-paragraph (b) ceased.

Condition relating to youth – residence or presence

12.—(1) The conditions prescribed for the purposes of paragraph 4(1)(c) of Schedule 1 to the Act as to residence or presence in Northern Ireland are that the claimant—

- (a) is ordinarily resident in Northern Ireland;
 - (b) is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999⁽⁴¹⁾ or is a person to whom paragraph (3) applies;
 - (c) is present in Northern Ireland; and
 - (d) has been present in Northern Ireland for a period of, or for periods amounting in aggregate to, not less than 26 weeks in the 52 weeks immediately preceding the relevant benefit week.
- (2) For the purposes of paragraph (1), a claimant is to be treated as being resident and present in Northern Ireland where the claimant is absent from Northern Ireland by reason only of being—
- (a) the spouse, civil partner, son, daughter, father, father-in-law, mother or mother-in-law of, and living with, a member of Her Majesty's forces who is abroad in that capacity; or
 - (b) abroad in the capacity of being an aircraft worker or mariner.
- (3) This paragraph applies where a person is—
- (a) a member of a family of a national of an European Economic Area state;

(41) 1999 c. 33

- (b) a person who is lawfully working in Northern Ireland and is a national of a State with which the European Union has concluded an agreement under Article 217 of the Treaty on the Functioning of the European Union providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families;
 - (c) a person who is a member of a family of, and living with, a person specified in subparagraph (b); or
 - (d) a person who has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules within the meaning of the Immigration Act 1971(42)) to be responsible for that person’s maintenance and accommodation.
- (4) A person is to be treated as having satisfied the residence or presence conditions in paragraph (1) throughout a period of limited capability for work where those conditions are satisfied on the first day of that period of limited capability for work.
- (5) In this regulation—
- “aircraft worker” means a person who is, or has been, employed under a contract of service either as a pilot, commander, navigator or other member of the crew of any aircraft, or in any other capacity on board any aircraft where—
- (a) the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mail carried on that aircraft; and
 - (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the aircraft is in flight,
- but does not include a person who is in employment as a member of Her Majesty’s forces;
- “mariner” means a person who is, or has been, in employment under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—
- (a) the employment in that other capacity is for the purposes of that ship or vessel or its crew or any passengers or cargo or mail carried by the ship or vessel; and
 - (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or part) while the ship or vessel is on its voyage,
- but does not include a person who is in employment as a member of Her Majesty’s forces.
- (6) In the definition of “mariner” in paragraph (5), “passenger” means any person carried on a ship or vessel except—
- (a) a person employed or engaged in any capacity on board the ship or vessel on the business of the ship or vessel; or
 - (b) a person on board the ship or vessel either in pursuance of an obligation to carry shipwrecked, distressed or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.

Condition relating to youth – full-time education

- 13.—**(1) For the purposes of paragraph 4(1)(b) of Schedule 1 to the Act, a claimant is to be treated as receiving full-time education for any period during which the claimant—
- (a) is at least 16 years old but under the age of 19; and
 - (b) attends a course of education for 21 hours or more a week.

(2) For the purposes of paragraph (1)(b), in calculating the number of hours a week during which a claimant attends a course, no account is to be taken of any instruction or tuition which is, in the opinion of the Department, not suitable for persons of the same age who do not have a disability.

(3) In determining the duration of a period of full-time education under paragraph (1) any temporary interruption of that education may be disregarded.

(4) A claimant who is 19 years of age or over is not to be treated for the purposes of paragraph 4(1)(b) of Schedule 1 to the Act as receiving full-time education.

Modification of the relevant benefit year

14.—(1) Where paragraph (2) applies, paragraph 3(1)(f) of Schedule 1 to the Act has effect as if the “relevant benefit year” were any benefit year which includes all or part of the period of limited capability for work which includes the relevant benefit week.

(2) This paragraph applies where a claimant has made a claim for employment and support allowance but does not satisfy—

- (a) the first contribution condition;
- (b) the second contribution condition; or
- (c) either contribution condition,

but would satisfy both of those conditions if the modified definition of “relevant benefit year” provided in paragraph (1) applied.

PART 4

LIMITED CAPABILITY FOR WORK

Determination of limited capability for work

15.—(1) For the purposes of Part 1 of the Act, whether a claimant’s capability for work is limited by the claimant’s physical or mental condition and, if it is, whether the limitation is such that it is not reasonable to require the claimant to work is to be determined on the basis of a limited capability for work assessment of the claimant in accordance with this Part.

(2) The limited capability for work assessment is an assessment of the extent to which a claimant who has some specific disease or bodily or mental disablement is capable of performing the activities prescribed in Schedule 2 or is incapable by reason of such disease or bodily or mental disablement of performing those activities.

(3) Subject to paragraph (6), for the purposes of Part 1 of the Act a claimant has limited capability for work if, by adding the points listed in column (3) of Schedule 2 against each descriptor listed in that Schedule which applies in the claimant’s case, the claimant obtains a total score of at least—

- (a) 15 points whether singly or by a combination of descriptors specified in Part 1 of that Schedule;
- (b) 15 points whether singly or by a combination of descriptors specified in Part 2 of that Schedule; or
- (c) 15 points by a combination of descriptors specified in Parts 1 and 2 of that Schedule.

(4) In assessing the extent of a claimant’s capability to perform any activity listed in Part 1 of Schedule 2, the claimant is to be assessed as if—

- (a) fitted with or wearing any prosthesis with which the claimant is normally fitted or normally wears; or, as the case may be,

- (b) wearing or using any aid or appliance which is normally, or could reasonably be expected to be, worn or used.
- (5) In assessing the extent of a claimant's capability to perform any activity listed in Schedule 2, it is a condition that the claimant's incapability to perform the activity arises—
 - (a) in respect of any descriptor listed in Part 1 of Schedule 2, from a specific bodily disease or disablement;
 - (b) in respect of any descriptor listed in Part 2 of Schedule 2, from a specific mental illness or disablement; or
 - (c) in respect of any descriptor or descriptors listed in—
 - (i) Part 1 of Schedule 2, as a direct result of treatment provided by a registered medical practitioner for a specific physical disease or disablement, or
 - (ii) Part 2 of Schedule 2, as a direct result of treatment provided by a registered medical practitioner for a specified mental illness or disablement.
- (6) Where more than one descriptor specified for an activity applies to a claimant, only the descriptor with the highest score in respect of each activity which applies is to be counted.
- (7) Where a claimant—
 - (a) has been determined to have limited capability for work; or
 - (b) is to be treated as having limited capability for work under regulation 16, 21, 22 or 25,
 the Department may, if paragraph (8) applies, determine afresh whether the claimant has or is to be treated as having limited capability for work.
- (8) This paragraph applies where—
 - (a) the Department wishes to determine whether there has been a relevant change of circumstances in relation to the claimant's physical or mental condition;
 - (b) the Department wishes to determine whether the previous determination of limited capability for work or that the claimant is to be treated as having limited capability for work, was made in ignorance of, or was based on a mistake as to, some material fact; or
 - (c) at least 3 months have passed since the date on which the claimant was determined to have limited capability for work or to be treated as having limited capability for work.

Certain claimants to be treated as having limited capability for work

- 16.—**(1) A claimant is to be treated as having limited capability for work if—
- (a) the claimant is terminally ill;
 - (b) the claimant is—
 - (i) receiving treatment for cancer by way of chemotherapy or radiotherapy,
 - (ii) likely to receive such treatment within 6 months after the date of the determination of capability for work, or
 - (iii) recovering from such treatment,
 and the Department is satisfied that the claimant should be treated as having limited capability for work;
 - (c) the claimant is—
 - (i) excluded or abstains from work pursuant to a request or notice in writing lawfully made under a statutory provision, or
 - (ii) otherwise prevented from working pursuant to a statutory provision,

- by reason of it being known or reasonably suspected that the claimant is infected or contaminated by, or has been in contact with a case of, a relevant disease;
- (d) in the case of a pregnant woman, there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work;
- (e) in the case of a pregnant woman, she—
- (i) is within the maternity allowance period (which has the meaning it has in the Contributions and Benefits Act), and
 - (ii) is entitled to a maternity allowance under section 35(1) or 35B(1) of the Contributions and Benefits Act⁽⁴³⁾;
- (f) in the case of a pregnant woman whose expected or actual date of confinement has been certified in accordance with the Medical Evidence Regulations, on any day in the period—
- (i) beginning with the first date of the 6th week before the expected week of her confinement or the actual date of her confinement, whichever is earlier, and
 - (ii) ending on the 14th day after the actual date of her confinement,
- if she would have no entitlement to a maternity allowance or statutory maternity pay were she to make a claim in respect of that period.
- (g) the claimant meets any of the descriptors at paragraph 15 or 16 of Schedule 3 in accordance with regulation 30(2), (3) and (6) where applicable; or
- (h) the claimant is entitled to universal credit and it has previously been determined that the claimant has limited capability for work on the basis of an assessment under Part 5 of the Universal Credit Regulations⁽⁴⁴⁾.
- (2) In this regulation, “relevant disease” means an infectious disease to which—
- (a) section 15(1) of the Public Health Act (Northern Ireland) 1967⁽⁴⁵⁾ (power to require person in contact with infectious disease to discontinue employment and compensation therefor.) applies;
 - (b) regulations 8 and 9 of the Public Health (Ships) Regulations (Northern Ireland) 2008⁽⁴⁶⁾ (examination etc., of persons on ships and powers in respect of persons leaving ships) apply; or
 - (c) regulations 7 and 8 of the Public Health (Aircraft) Regulations (Northern Ireland) 2008⁽⁴⁷⁾ (examination etc., of persons on aircraft and powers in respect of persons leaving aircraft) apply.

Information required for determining capability for work

- 17.—(1) Subject to paragraphs (2) and (3), the information or evidence required to determine whether a claimant has limited capability for work is—
- (a) evidence of limited capability for work in accordance with the Medical Evidence Regulations (which prescribe the form of doctor’s statement or other evidence required in each case);

⁽⁴³⁾ Section 35(1) was substituted by Article 50(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and amended by paragraph 2(a) of Schedule 1 to the Social Security Act (Northern Ireland) 2002 (c. 10 (N.I.)) and Article 68(2) of the Welfare Reform (Northern Ireland) Order 2015. Section 35B(1) was inserted by regulation 2(5) of S.R. 2014 No. 102 and amended by paragraph 16 of Schedule 1 to the National Insurance Contributions Act 2015 (c. 5)

⁽⁴⁴⁾ S.R. 2016 No. 216

⁽⁴⁵⁾ 1967 c. 36: section 15(1) was amended by paragraph 75(c) of Schedule 16 to the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) and Article 32(1) and (2)(c) of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1))

⁽⁴⁶⁾ S.R. 2008 No. 333

⁽⁴⁷⁾ S.R. 2008 No. 436

- (b) any information relating to a claimant's capability to perform the activities referred to in Schedule 2 as may be requested in the form of a questionnaire; and
- (c) any such additional information as may be requested.

(2) Where the Department is satisfied that there is sufficient information to determine whether a claimant has limited capability for work without the information specified in paragraph (1)(b), that information must not be required for the purposes of making the determination.

(3) Paragraph (1) does not apply in relation to a determination whether a claimant is to be treated as having limited capability for work under any of regulations 16 (certain claimants to be treated as having limited capability for work), 21 (hospital patients) and 22 (claimants receiving certain treatment).

Failure to provide information in relation to limited capability for work

18.—(1) Where a claimant fails without good cause to comply with the request referred to in regulation 17(1)(b), the claimant is, subject to paragraph (2), to be treated as not having limited capability for work.

(2) Paragraph (1) does not apply unless—

- (a) the claimant was sent a further request at least 3 weeks after the date of the first request; and
- (b) at least 1 week has passed since the further request was sent.

Claimant may be called for a medical examination to determine whether the claimant has limited capability for work

19.—(1) Where it falls to be determined whether a claimant has limited capability for work, that claimant may be called by or on behalf of a health care professional approved by the Department to attend for a medical examination.

(2) Subject to paragraph (3), where a claimant fails without good cause to attend for or to submit to an examination mentioned in paragraph (1), the claimant is to be treated as not having limited capability for work.

(3) Paragraph (2) does not apply unless—

- (a) written notice of the date, time and place for the examination was sent to the claimant at least 7 days in advance; or
- (b) that claimant agreed to accept a shorter period of notice whether given in writing or otherwise.

Matters to be taken into account in determining good cause in relation to regulation 18 or 19

20. The matters to be taken into account in determining whether a claimant has good cause under regulation 18 (failure to provide information in relation to limited capability for work) or 19 (failure to attend a medical examination to determine limited capability for work) include—

- (a) whether the claimant was outside Northern Ireland at the relevant time;
- (b) the claimant's state of health at the relevant time; and
- (c) the nature of any disability the claimant has.

Hospital patients

21.—(1) A claimant is to be treated as having limited capability for work on any day on which that claimant is undergoing medical or other treatment as a patient in a hospital or similar institution, or on any day which is a day of recovery from that treatment.

(2) The circumstances in which a claimant is to be regarded as undergoing treatment falling within paragraph (1) include where the claimant is attending a residential programme of rehabilitation for the treatment of drug or alcohol addiction.

(3) For the purposes of this regulation, a claimant is to be regarded as undergoing treatment as a patient in a hospital or similar institution only if that claimant has been advised by a health care professional to stay for a period of 24 hours or longer following medical or other treatment.

(4) For the purposes of this regulation, “day of recovery” means a day on which a claimant is recovering from treatment as a patient in a hospital or similar institution as referred to in paragraph (1) and the Department is satisfied that the claimant should be treated as having limited capability for work on that day.

Claimants receiving certain treatment

22.—(1) Subject to paragraph (2), a claimant receiving—

- (a) regular weekly treatment by way of haemodialysis for chronic renal failure;
- (b) treatment by way of plasmapheresis; or
- (c) regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function,

is to be treated as having limited capability for work during any week in which that claimant is engaged in receiving that treatment or has a day of recovery from that treatment.

(2) A claimant who receives the treatment referred to in paragraph (1) is only to be treated as having limited capability for work from the first week of treatment in which the claimant undergoes no fewer than—

- (a) two days of treatment;
- (b) two days of recovery from any of the forms of treatment listed in paragraph (1)(a) to (c); or
- (c) one day of treatment and one day of recovery from that treatment,

but the days of treatment or recovery from that treatment or both need not be consecutive.

(3) For the purpose of this regulation “day of recovery” means a day on which a claimant is recovering from any of the forms of treatment listed in paragraph (1)(a) to (c) and the Department is satisfied that the claimant should be treated as having limited capability for work on that day.

Claimant to be treated as having limited capability for work throughout a day

23. A claimant who, at the commencement of any day has, or after that develops, limited capability for work as determined in accordance with the limited capability for work assessment is to be treated as having limited capability for work throughout that day.

Night workers

24.—(1) Where a claimant works for a continuous period which extends over midnight into the following day, that claimant is to be treated as having limited capability for work on the day on which the lesser part of that period falls if that claimant had limited capability for work for the remainder of that day.

(2) Where, in relation to a period referred to in paragraph (1), the number of hours worked before and after midnight is equal—

- (a) if the days in question fall at the beginning of a period of limited capability for work, the claimant is to be treated as having limited capability on the second day; and

- (b) if the days in question fall at the end of a period of limited capability for work, the claimant is to be treated as having limited capability for work on the first day.

Exceptional circumstances

25.—(1) A claimant who does not have limited capability for work as determined in accordance with the limited capability for work assessment is to be treated as having limited capability for work if paragraph (2) applies to the claimant.

(2) Subject to paragraph (3), this paragraph applies if—

- (a) the claimant is suffering from a life threatening disease in relation to which—
 - (i) there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure, and
 - (ii) in the case of a disease that is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure; or
- (b) the claimant suffers from some specific disease or bodily or mental disablement and, by reason of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if the claimant were found not to have limited capability for work.

(3) Paragraph (2)(b) does not apply where the risk could be reduced by a significant amount by—

- (a) reasonable adjustments being made in the claimant’s workplace; or
- (b) the claimant taking medication to manage the claimant’s condition where such medication has been prescribed for the claimant by a registered medical practitioner treating the claimant.

(4) In this regulation “medical evidence” means—

- (a) evidence from a health care professional approved by the Department; and
- (b) evidence (if any) from any health care professional or a hospital or similar institution,

or such part of such evidence as constitutes the most reliable evidence available in the circumstances.

Conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made

26.—(1) A claimant is, if the conditions set out in paragraph (2) are met, to be treated as having limited capability for work until such time as it is determined—

- (a) whether or not the claimant has limited capability for work;
- (b) whether or not the claimant is to be treated as having limited capability for work otherwise than in accordance with this regulation; or
- (c) whether the claimant falls to be treated as not having limited capability for work in accordance with regulation 18 (failure to provide information in relation to limited capability for work) or 19 (failure to attend a medical examination to determine limited capability for work).

(2) The conditions are—

- (a) that the claimant provides evidence of limited capability for work in accordance with the Medical Evidence Regulations; and
- (b) in relation to the claimant’s entitlement to any benefit, allowance or advantage which is dependent on the claimant having limited capability for work, it has not been determined—
 - (i) in the last determination preceding the date of claim for an employment and support allowance, that the claimant does not have limited capability for work, or

- (ii) within the 6 months preceding the date of claim for an employment and support allowance, that the claimant is to be treated as not having limited capability for work under regulation 18 or 19, unless paragraph (4) applies.

(3) Paragraph (2)(b) does not apply where a claimant has made and is pursuing an appeal against a relevant decision of the Department, and that appeal has not yet been determined by an appeal tribunal.

(4) This paragraph applies where—

- (a) the claimant is suffering from some specific disease or bodily or mental disablement from which the claimant was not suffering at the time of that determination;
- (b) a disease or bodily or mental disablement from which the claimant was suffering at the time of that determination has significantly worsened; or
- (c) in the case of a claimant who was treated as not having limited capability for work under regulation 18, the claimant has since provided the information requested under that regulation.

(5) In this regulation a “relevant decision” means—

- (a) a decision that embodies the first determination by the Department that the claimant does not have limited capability for work; or
- (b) a decision that embodies the first determination by the Department that the claimant does not have limited capability for work since a previous determination by the Department or appellate authority that the claimant does have limited capability for work.

(6) In this regulation “appellate authority” means an appeal tribunal, a Commissioner (as defined in section 167 of the Social Security Administration (Northern Ireland) Act 1992), the Court of Appeal or the Supreme Court.

Certain claimants to be treated as not having limited capability for work

27.—(1) A claimant who is or has been a member of Her Majesty’s forces is to be treated as not having limited capability for work on any day which is recorded by the Secretary of State as a day of sickness absence from duty.

(2) A claimant is to be treated as not having limited capability for work on any day on which the claimant attends a training course in respect of which the claimant is paid a training allowance or premium pursuant to arrangements made under section 1 or 3 of the Employment and Training Act.

(3) Paragraph (2) is not to apply—

- (a) for the purposes of any claim to an employment and support allowance for a period commencing after the claimant ceased attending the training course in question; or
- (b) where any training allowance or premium paid to the claimant is paid for the sole purpose of travelling or meal expenses incurred or to be incurred under the arrangements made under section 1 or 3 of the Employment and Training Act.

(4) A claimant is to be treated as not having limited capability for work where—

- (a) it has previously been determined, within the 6 months preceding the date of claim for employment and support allowance, on the basis of an assessment under Part 5 of the Universal Credit Regulations, that the claimant does not have limited capability for work; and
- (b) it appears to the Department that—
 - (i) the determination was not based on ignorance of, or mistake as to, a material fact, and

- (ii) there has been no relevant change of circumstances in relation to the claimant's physical or mental condition since the determination.

Claimants to be treated as not having limited capability for work at the end of the period covered by medical evidence

28.—(1) Where the Department is satisfied that it is appropriate in the circumstances of the case, a claimant may be treated as not having limited capability for work if—

- (a) the claimant has supplied medical evidence;
- (b) the period for which medical evidence was supplied has ended;
- (c) the Department has requested further medical evidence; and
- (d) the claimant has not, before whichever is the later of either the end of the period of 6 weeks beginning with the date of the Department's request or the end of 6 weeks beginning with the day after the end of the period for which medical evidence was supplied—
 - (i) supplied further medical evidence, or
 - (ii) otherwise made contact with the Department to indicate that they wish to have the question of limited capability for work determined.

(2) In this regulation “medical evidence” means evidence provided under regulation 2 or 5 of the Medical Evidence Regulations.

Additional circumstances where claimants are to be treated as having limited capability for work

29. For the purposes of paragraph 4(1)(d)(ii) of Schedule 1 to the Act, a claimant is to be treated as having limited capability for work on any day in respect of which that claimant is entitled to statutory sick pay.

PART 5

LIMITED CAPABILITY FOR WORK-RELATED ACTIVITY

Determination of limited capability for work-related activity

30.—(1) For the purposes of Part 1 of the Act, where, by reason of a claimant's physical or mental condition, at least one of the descriptors set out in Schedule 3 applies to the claimant, the claimant has limited capability for work-related activity and the limitation must be such that it is not reasonable to require that claimant to undertake such activity.

(2) A descriptor applies to a claimant if that descriptor applies to the claimant for the majority of the time or, as the case may be, on the majority of the occasions on which the claimant undertakes or attempts to undertake the activity described by that descriptor.

- (3) In determining whether a descriptor applies to a claimant, the claimant is to be assessed as if—
 - (a) the claimant were fitted with or wearing any prosthesis with which the claimant is normally fitted or normally wears; or, as the case may be
 - (b) wearing or using any aid or appliance which is normally, or could reasonably be expected to be, worn or used.
- (4) Where a determination has been made about whether a claimant—
 - (a) has limited capability for work-related activity;

(b) is to be treated as having limited capability for work-related activity; or
(c) is to be treated as not having limited capability for work-related activity,
the Department may, if paragraph (5) applies, determine afresh whether the claimant has or is to be treated as having limited capability for work-related activity.

(5) This paragraph applies where—

- (a) the Department wishes to determine whether there has been a relevant change of circumstances in relation to the claimant's physical or mental condition;
- (b) the Department wishes to determine whether the previous determination about limited capability for work-related activity or about treating the claimant as having or as not having limited capability for work-related activity, was made in ignorance of, or was based on a mistake as to, some material fact; or
- (c) at least 3 months have passed since the date of the previous determination about limited capability for work-related activity or about treating the claimant as having or as not having limited capability for work-related activity.

(6) In assessing the extent of a claimant's capability to perform any activity listed in Schedule 3, it is a condition that the claimant's incapability to perform the activity arises—

- (a) in respect of descriptors 1 to 8, 15(a), 15(b), 16(a) and 16(b)—
 - (i) from a specific bodily disease or disablement, or
 - (ii) as a direct result of treatment provided by a registered medical practitioner for a specific physical disease or disablement; or
- (b) in respect of descriptors 9 to 14, 15(c), 15(d), 16(c) and 16(d)—
 - (i) from a specific mental illness or disablement, or
 - (ii) as a direct result of treatment provided by a registered medical practitioner for a specific mental illness or disablement.

Certain claimants to be treated as having, or not having, limited capability for work-related activity

31.—(1) A claimant is to be treated as having limited capability for work-related activity if—

- (a) the claimant is terminally ill;
- (b) the claimant is—
 - (i) receiving treatment for cancer by way of chemotherapy or radiotherapy,
 - (ii) likely to receive such treatment within 6 months after the date of the determination of capability for work-related activity, or
 - (iii) recovering from such treatment,and the Department is satisfied that the claimant should be treated as having limited capability for work-related activity;
- (c) in the case of a woman, she is pregnant and there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work-related activity; or
- (d) the claimant is entitled to universal credit and it has previously been determined that the claimant has limited capability for work and work-related activity on the basis of an assessment under Part 5 of the Universal Credit Regulations.

(2) A claimant who does not have limited capability for work-related activity as determined in accordance with regulation 30(1) is to be treated as having limited capability for work-related activity if—

- (a) the claimant suffers from some specific disease or bodily or mental disablement; and
 - (b) by reason of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if the claimant were found not to have limited capability for work-related activity.
- (3) A claimant is to be treated as not having limited capability for work-related activity where—
- (a) it has previously been determined, within the 6 months preceding the date of claim for employment and support allowance, on the basis of an assessment under Part 5 of the Universal Credit Regulations, that the claimant does not have limited capability for work and work-related activity; and
 - (b) it appears to the Department that—
 - (i) the determination was not based on ignorance of, or mistake as to, a material fact, and
 - (ii) there has been no relevant change of circumstances in relation to the claimant's physical or mental condition.

Relevant linked cases – limited capability for work-related activity

- 32.** 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(3)(a); and
 - (b) in respect of the earlier period of limited capability for work referred to in regulation 7(3)(a)(i), they had been entitled to a support component under section 2(2) of the Act.

Information required for determining capability for work-related activity

33.—(1) Subject to paragraph (2), the information or evidence required to determine whether a claimant has limited capability for work-related activity is—

- (a) any information relating to the descriptors set out in Schedule 3 as may be requested in the form of a questionnaire; and
- (b) any such additional information as may be requested.

(2) Where the Department is satisfied that there is sufficient information to determine whether a claimant has limited capability for work-related activity without the information specified in paragraph (1)(a), that information must not be required for the purposes of making the determination.

Failure to provide information in relation to work-related activity

34.—(1) Where a claimant fails without good cause to comply with the request referred to in regulation 33(1)(a), the claimant is, subject to paragraph (2), to be treated as not having limited capability for work-related activity.

- (2) Paragraph (1) does not apply unless—
- (a) the claimant was sent a further request at least 3 weeks after the date of the first request; and
 - (b) at least 1 week has passed since the further request was sent.

Claimant may be called for a medical examination to determine whether the claimant has limited capability for work-related activity

35.—(1) Where it falls to be determined whether a claimant has limited capability for work-related activity, that claimant may be called by or on behalf of a health care professional approved by the Department to attend for a medical examination.

(2) Subject to paragraph (3), where a claimant fails without good cause to attend for or to submit to an examination mentioned in paragraph (1), the claimant is to be treated as not having limited capability for work-related activity.

(3) Paragraph (2) does not apply unless—

- (a) written notice of the date, time and place for the examination was sent to the claimant at least 7 days in advance; or
- (b) the claimant agreed to accept a shorter period of notice whether given in writing or otherwise.

Matters to be taken into account in determining good cause in relation to regulation 34 or 35

36. The matters to be taken into account in determining whether a claimant has good cause under regulation 34 (failure to provide information in relation to work-related activity) or 35 (failure to attend a medical examination to determine limited capability for work-related activity) include—

- (a) whether the claimant was outside Northern Ireland at the relevant time;
- (b) the claimant's state of health at the relevant time; and
- (c) the nature of any disability the claimant has.

PART 6

EFFECT OF WORK ON ENTITLEMENT TO AN EMPLOYMENT AND SUPPORT ALLOWANCE

A claimant who works to be treated as not entitled to an employment and support allowance

37.—(1) Subject to the following paragraphs, a claimant is to be treated as not entitled to an employment and support allowance in any week in which that claimant does work.

(2) Paragraph (1) does not apply to—

- (a) work as a councillor;
- (b) duties undertaken on either one full day or 2 half-days a week as a member of an appeal tribunal constituted under Chapter 1 of Part 2 of the 1998 Order;
- (c) domestic tasks carried out in the claimant's own home or the care of a relative;
- (d) duties undertaken in caring for another person who is accommodated with the claimant by virtue of arrangements made under any of the provisions referred to in paragraph (7) or where the claimant is in receipt of any payment specified in that paragraph;
- (e) any activity the claimant undertakes during an emergency to protect another person or to prevent serious damage to property or livestock; or
- (f) any of the categories of work set out in regulation 39(1) (exempt work).

(3) This regulation is subject to regulation 40 (effect of work on entitlement to an employment and support allowance where claimant is receiving certain treatment).

(4) A claimant who does work to which this regulation applies in a week which is—

- (a) the week in which the claimant first becomes entitled to a benefit, allowance or advantage on account of the claimant's limited capability for work in any period; or
- (b) the last week in any period in which the claimant has limited capability for work or is treated as having limited capability for work,

is to be treated as not entitled to an employment and support allowance by virtue of paragraph (1) only on the actual day or days in that week on which the claimant does that work.

(5) Regulation 86 (linking period) does not apply for the purposes of calculating the beginning or end of any period of limited capability for work under paragraph (4).

(6) The day or days in a week on which a night worker works, for the purposes of paragraph (4), are to be calculated by reference to regulation 24 (night workers).

(7) The payments and provisions mentioned in paragraph (2)(d) are—

(a) any payment made by—

(i) an authority to a claimant who is caring for a child by virtue of arrangements made under Article 27(2)(a) of the Children Order (provision of accommodation and maintenance by an authority for children whom it is looking after) or by a voluntary organisation under Article 75(1)(a) of that Order (provision of accommodation by voluntary organisations), or

(ii) a juvenile justice centre, within the meaning of Article 51 of the Criminal Justice (Children) (Northern Ireland) Order 1998⁽⁴⁸⁾, to a claimant who is caring for a child and whom that child is in the charge of under paragraph 4 of Schedule 2 to that Order;

(b) any payment made to the claimant or the claimant's partner for a person ("the person concerned"), who is not normally a member of the claimant's household but is temporarily in the claimant's care, by—

(i) an authority,

(ii) a voluntary organisation,

(iii) the person concerned pursuant to Article 36(7) of the Health and Personal Social Services Order⁽⁴⁹⁾, or

(iv) a juvenile justice centre within the meaning of Article 51(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998.

(8) In this regulation—

"week" means a week in respect of which a claimant is entitled to an employment and support allowance;

"work" means any work which a claimant does, whether or not that claimant undertakes it in expectation of payment;

"work as a councillor" includes any work which a claimant undertakes as a member of a district council or any body of which the claimant is a member by reason of being a councillor.

Claimants who are treated as not entitled to any allowance at all by reason of regulation 37(1) are to be treated as not having limited capability for work

38.—(1) Where a claimant is treated as not entitled to an employment and support allowance by reason of regulation 37(1), the claimant is to be treated as not having limited capability for work.

(2) Paragraph (1) applies even if—

(a) it has been determined that the claimant has or is to be treated as having, under any of regulations 16 (certain claimants to be treated as having limited capability for work),

⁽⁴⁸⁾ S.I. 1998/1504 (N.I. 9)

⁽⁴⁹⁾ Article 36 was substituted by Article 25 of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1)) and amended by paragraph 2(3) to (5) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992 (S.I. 1992/3204 (N.I. 20)) and section 1(1) and (2) of the Health and Personal Social Services Act (Northern Ireland) 2002 (c.9 (N.I.))

- 21 (hospital patients), 22 (claimants receiving certain treatment) and 25 (exceptional circumstances), limited capability for work; or
- (b) the claimant meets the conditions set out in regulation 26(2) for being treated as having limited capability for work until a determination is made in accordance with the limited capability for work assessment.

Exempt work

- 39.**—(1) the categories of work referred to in regulation 37(2)(f) are—
- (a) work for which the total earnings in any week does not exceed £20;
- (b) work for which the total earnings in any week does not exceed 16 times the national living wage, subject to paragraph (4), and which—
- (i) is part of the claimant’s treatment programme and is done under medical supervision while the claimant is an in-patient, or is regularly attending as an out-patient, of a hospital or similar institution, or
- (ii) is supervised by a person employed by a public authority or by a voluntary organisation or community interest company engaged in the provision or procurement of work for persons who have disabilities;
- (c) work which is done for less than 16 hours a week, for which total earnings in any week does not exceed 16 times the national living wage, subject to paragraph (4), and which is done—
- (i) during a work period, provided that paragraph (7) applies, or
- (ii) by a claimant who has or is treated as having limited capability for work-related activity;
- (d) work done in the course of receiving assistance in pursuing self-employed earner’s employment whilst participating in a programme provided, or in other arrangements made, under section 1 of the Employment and Training Act(50);
- (e) work done where the claimant receives no payment of earnings and where the claimant is—
- (i) engaged by a charity or voluntary organisation, or
- (ii) a volunteer,
- and where the Department is satisfied in either of those cases that it is reasonable for the claimant to do the work free of charge;
- (f) work done in the course of participating in a work placement approved in writing by the Department for Employment and Learning (or a person providing services to that Department) before the placement starts.
- (2) The number of hours for which a claimant is engaged in work is to be determined—
- (a) where no recognisable cycle has been established in respect of a claimant’s work, by reference to the number of hours or, where those hours are likely to fluctuate, the average of the hours, which the claimant is expected to work in a week;
- (b) where the number of hours for which the claimant is engaged fluctuate, by reference to the average of hours worked over—

(50) Section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

- (i) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences),
- (ii) in any other case, the period of 5 weeks immediately before the date of claim or the date on which a superseding decision is made under Article 11 of the 1998 Order⁽⁵¹⁾ (decisions superseding earlier decisions), or such other length of time as may, in the particular case, enable the claimant's average hours of work to be determined more accurately.

(3) For the purposes of determining the number of hours for which a claimant is engaged in work, that number is to include any time allowed to that claimant by the claimant's employer for a meal or for refreshment, but only where that claimant is, or expects to be, paid earnings in respect of that time.

(4) Where the amount determined by the calculation in paragraph (1)(b) or (c) would, but for this paragraph, include an amount of—

- (a) less than 50p, that amount is to be rounded up to the nearest 50p; or
- (b) less than £1 but more than 50p, that amount is to be rounded up to the nearest £1.

(5) Part 10 applies for the purposes of calculating any income which consists of earnings under this regulation.

(6) In this regulation—

“relevant benefit” means—

- (a) an employment and support allowance; or
- (b) credits under regulations made under section 22(5) of the Contributions and Benefits Act⁽⁵²⁾,

in respect of which the question of the claimant's limited capability for work arises under the Act;

“volunteer” means a person who is engaged in voluntary work otherwise than for a relative, where the only payment received or due to be paid to the person by virtue of being so engaged is in respect of any expenses reasonably incurred by the person in connection with that work;

“work period” means a period which begins on the first day on which any work referred to in paragraph (1)(c) is undertaken and continues for a period of 52 weeks, whether or not any further work referred to in paragraph (1)(c) is undertaken during that period;

“work placement” means practical work experience with an employer, which is neither paid nor undertaken in expectation of payment.

(7) This paragraph applies where—

- (a) the claimant has not previously done any work under paragraph (1)(c);
- (b) since the beginning of the last work period, the claimant has ceased to be entitled to a relevant benefit for a continuous period exceeding 12 weeks; or
- (c) not less than 52 weeks have elapsed since the last work period.

⁽⁵¹⁾ Article 11 was amended by paragraph 17 of Schedule 6 and Schedule 9 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)

⁽⁵²⁾ Section 22(5) was amended by paragraph 5 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995, paragraph 3(3) (b) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 (c.2) and paragraph 2 of Schedule 3, and Schedule 12, to the Welfare Reform (Northern Ireland) Order 2015

Effect of work on entitlement to an employment and support allowance where claimant is receiving certain treatment

40. Where a claimant who is entitled to an employment and support allowance and is treated as having limited capability for work by virtue of regulation 22 works on any day during a week when the claimant is receiving certain treatment mentioned in regulation 22 or recovering from that treatment, that work is to have no effect on the claimant's entitlement to the employment and support allowance.

PART 7

CLAIMANT RESPONSIBILITIES

Interpretation

41.—(1) In this Part—

“responsible carer”, in relation to a child, means—

- (a) a person who is the only person responsible for the child; or
- (b) a person who is a member of a couple where—
 - (i) both members of the couple are responsible for the child, and
 - (ii) the person has been nominated by the couple jointly as responsible for the child;

“responsible foster parent”, in relation to a child, means—

- (a) a person who is the only foster parent in relation to the child; or
- (b) a person who is a member of a couple where—
 - (i) both members of the couple are foster parents in relation to the child, and
 - (ii) the person has been nominated by the couple jointly as the responsible foster parent.

(2) The nomination of a responsible carer or responsible foster parent for the purposes of paragraph (1) may be changed—

- (a) once in a 12 month period, beginning with the date of the previous nomination; or
- (b) on any occasion where the Department considers that there has been a change of circumstances which is relevant to the nomination.

(3) Only one person may be nominated as a responsible carer or a responsible foster parent.

(4) The nomination applies to all of the children for whom the claimant is responsible.

Application of regulations where there is dual entitlement

42.—(1) This regulation applies where a person is entitled to universal credit and an employment and support allowance.

(2) The work-related requirements under sections 11B to 11I of the Act⁽⁵³⁾ and regulations 46 to 49 of these Regulations do not apply to such a person.

(3) Reductions relating to the award of an employment and support allowance under section 11J of the Act⁽⁵⁴⁾ (sanctions) and regulations 50 to 60 of these Regulations do not apply to such a person.

⁽⁵³⁾ Sections 11B to 11I were inserted by Article 63 of the Welfare Reform (Northern Ireland) Order 2015

⁽⁵⁴⁾ Section 11J was inserted by Article 63 of the Welfare Reform (Northern Ireland) Order 2015

Sanction ceases to apply to employment and support allowance

43.—(1) This regulation applies where—

- (a) a person is entitled to an employment and support allowance;
- (b) there is a reduction relating to the award of the employment and support allowance under section 11J of the Act;
- (c) the person becomes entitled to universal credit; and
- (d) the person remains entitled to an employment and support allowance.

(2) Any reduction relating to the award of the employment and support allowance is to cease being applied to the award of the employment and support allowance.

Claimant commitment – date and method of acceptance

44.—(1) For the purposes of section 1(3)(aa) of the Act(55), a claimant who has accepted a claimant commitment within such period after making a claim for an employment and support allowance as the Department specifies is to be treated as having accepted that claimant commitment on the first day of the period in respect of which the claim is made.

(2) In a case where an award of an employment and support allowance may be made without a claim, a claimant who accepts a claimant commitment within such period as the Department specifies is to be treated as having accepted a claimant commitment on the day that would be the first day of the first benefit week in relation to the award.

(3) The Department may extend the period within which a claimant is required to accept a claimant commitment or an updated claimant commitment where the claimant requests an extension and the Department considers that the request is reasonable.

(4) A claimant must accept a claimant commitment by one of the following methods, as specified by the Department—

- (a) electronically;
- (b) by telephone; or
- (c) in writing.

Claimant commitment – exceptions

45. A claimant may be entitled to an employment and support allowance without having accepted a claimant commitment if the Department considers that—

- (a) the claimant cannot accept a claimant commitment because they lack capacity to do so; or
- (b) there are exceptional circumstances in which it would be unreasonable to expect the person to accept a claimant commitment.

Purposes of a work-focused interview

46. The purposes of a work-focused interview are any or all of the following—

- (a) assessing the claimant’s prospects for remaining in or obtaining work;
- (b) assisting or encouraging the claimant to remain in or obtain work;
- (c) identifying activities that the claimant may undertake that will make remaining in or obtaining work more likely;

(55) Section 1(3)(aa) was inserted by Article 60(2) of the Welfare Reform (Northern Ireland) Order 2015

- (d) identifying training, educational or rehabilitation opportunities for the claimant which may make it more likely that the claimant will remain in or obtain work or be able to do so;
- (e) identifying current or future work opportunities for the claimant that are relevant to the claimant's needs and abilities.

Claimants subject to no work-related requirements

47.—(1) A claimant falls within section 11D of the Act (persons subject to no work-related requirements) if they are a claimant who—

- (a) has caring responsibilities for one or more severely disabled persons for at least 35 hours a week but does not meet the conditions of entitlement to a carer's allowance;
- (b) is the responsible foster parent of a child under the age of one;
- (c) is an adopter and it is 52 weeks or less since—
 - (i) the date on which the child was placed with the claimant, or
 - (ii) if the claimant requested that the 52 weeks should run from a date within 14 days before the child was expected to be placed, that date;
- (d) has been enrolled on, been accepted for or is undertaking, a full-time course of study or training which is not a course of advanced education and—
 - (i) is under the age of 21, or is 21 and reached that age whilst undertaking the course, and
 - (ii) is without parental support;
- (e) is entitled to an employment and support allowance which is payable at a nil rate;
- (f) is pregnant and it is 11 weeks or less before her expected week of confinement; or
- (g) was pregnant and it is 15 weeks or less since the date of her confinement.

(2) Subject to paragraph (3), for the purposes of section 11D of the Act, a person has regular and substantial caring responsibilities for a severely disabled person if the person—

- (a) satisfies the conditions for entitlement to a carer's allowance; or
- (b) would satisfy those conditions but for the fact that their earnings have exceeded the limit prescribed for the purposes of that allowance.

(3) A person does not have regular and substantial caring responsibilities for a severely disabled person if the person derives earnings from those caring responsibilities.

(4) Paragraph (2) applies whether or not the person has made a claim for a carer's allowance.

(5) In this regulation—

“adopter” means a person who has been matched with a child for adoption and who is, or is intended to be, the responsible carer for the child, but excluding a person who is a foster parent or close relative of the child;

“matched with a child for adoption” means an adoption agency has decided that the person would be a suitable adoptive parent for the child;

“severely disabled” has the meaning in section 70 of the Contributions and Benefits Act⁽⁵⁶⁾;

“without parental support” means the person is not being looked after by an authority and—

- (a) has no parent (in this definition, “parent” includes any person acting in the place of a parent);

⁽⁵⁶⁾ Section 70 was amended by regulation 2(3)(c) of [S.R. 1994 No. 370](#), regulation 2(2) and 3(2) of [S.R. 2002 No.321](#), regulation 2(3) of [S.R. 2011 No. 356](#) and Article 2(2) of [S.I. 2013 No. 3233](#)

- (b) cannot live with their parents because the person is estranged from them or there is a serious risk—
 - (i) to the person’s physical or mental health, or
 - (ii) that the person would suffer significant harm if the person lived with them; or
- (c) is living away from their parents, and neither parent is able to support the person financially because that parent—
 - (i) has a physical or mental impairment,
 - (ii) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court, or
 - (iii) is prohibited from entering or re-entering Northern Ireland.

Claimants subject to work-focused interview requirement only

48.—(1) For the purposes of section 11E(1)(a) of the Act (persons subject to work-focused interview requirement only) the prescribed age is 5.

(2) A claimant falls within section 11E of the Act if—

- (a) the claimant is the responsible foster parent in relation to a child aged at least one;
- (b) the claimant is the responsible foster parent in relation to a qualifying young person and the Department is satisfied that the qualifying young person has care needs which would make it unreasonable to require the claimant to comply with a work preparation requirement;
- (c) the claimant is a foster parent, but not the responsible foster parent, in relation to a child or qualifying young person and the Department is satisfied that the child or qualifying young person has care needs which would make it unreasonable to require the claimant to comply with a work preparation requirement;
- (d) the claimant is a foster parent who—
 - (i) does not have a child or qualifying young person placed with them, but intends to, and
 - (ii) fell within sub-paragraph (a) within the past 8 weeks; or
- (e) the claimant has become a friend or family carer in relation to a child within the past 12 months and is also the responsible carer in relation to that child.

(3) In paragraph (2)(e), “friend or family carer” means a person who is responsible for a child, but is not the child’s parent or step-parent, and has undertaken the care of the child in the following circumstances—

- (a) the child has no parent or has parents who are unable to care for the child; or
- (b) it is likely that the child would otherwise be looked after by an authority because of concerns in relation to the child’s welfare.

Victims of domestic violence

49.—(1) Where a claimant has recently been a victim of domestic violence and the circumstances set out in paragraph (3) apply—

- (a) a requirement imposed on that claimant under sections 11 to 11G of the Act⁽⁵⁷⁾ ceases to have effect for a period of 13 consecutive weeks starting on the date of the notification referred to in paragraph (3)(a); and

(57) Sections 11 to 11G were inserted by Article 63(2) of the Welfare Reform (Northern Ireland) Order 2015

- (b) the Department must not impose any other such requirement on that claimant during that period.
- (2) A person has recently been a victim of domestic violence if a period of 6 months has not expired since the violence was inflicted or threatened.
- (3) The circumstances are that—
 - (a) the claimant notifies the Department, in such manner as the Department specifies, that domestic violence has been inflicted on or threatened against the claimant by a person specified in paragraph (4) during the period of 6 months ending on the date of the notification;
 - (b) this regulation has not applied to the claimant for a period of 12 months before the date of the notification;
 - (c) on the date of the notification the claimant is not living at the same address as the person who inflicted or threatened the domestic violence; and
 - (d) as soon as possible, and no later than 1 month, after the date of the notification the claimant provides evidence from a person acting in an official capacity which demonstrates that—
 - (i) the claimant’s circumstances are consistent with those of a person who has had domestic violence inflicted on or threatened against them during the period of 6 months ending on the date of the notification, and
 - (ii) the claimant has made contact with the person acting in an official capacity in relation to such an incident, which occurred during that period.
- (4) A person is specified in this paragraph if the person is—
 - (a) where the claimant is, or was, a member of a couple , the other member of the couple;
 - (b) the claimant’s grandparent, grandchild, parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, step-brother, brother-in-law, sister, step-sister or sister-in-law; or
 - (c) where any of the persons listed in sub-paragraph (b) is a member of a couple, the other member of that couple.
- (5) In this regulation—
 - “coercive behaviour” means an act of assault, humiliation or intimidation or other abuse that is used to harm, punish or frighten the victim;
 - “controlling behaviour” means an act designed to make a person subordinate or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance or escape or regulating their everyday behaviour;
 - “domestic violence” means any incident, or pattern of incidents, of controlling behaviour, coercive behaviour, violence or abuse, including but not limited to—
 - (a) psychological abuse;
 - (b) physical abuse;
 - (c) sexual abuse;
 - (d) emotional abuse;
 - (e) financial abuse,regardless of the gender or sexuality of the victim;
 - “person acting in an official capacity” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform

and Health Care Professions Act 2002(58), 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;

“registered social worker” means a person registered as a social worker in a register maintained by—

- (a) the Health and Care Professions Council;
- (b) the Care Council for Wales;
- (c) the Scottish Social Services Council; or
- (d) the Northern Ireland Social Care Council.

PART 8

SANCTIONS

Interpretation

50. For the purposes of this Part—

“JSA sanctionable failure” means a failure by a claimant which is sanctionable under Article 8K of the Jobseekers Order(59);

“low-level sanction” means a reduction of an employment and support allowance in accordance with section 11J of the Act for a sanctionable failure by the claimant to comply with—

- (a) a work-focused interview requirement imposed under section 11F(2) of the Act (persons subject to work preparation and work-focused interview requirement);
- (b) a work preparation requirement imposed under section 11F(2) of the Act; or
- (c) a requirement under section 11G of the Act (connected requirements);

“lowest-level sanction” means a reduction of an employment and support allowance in accordance with section 11J of the Act for a sanctionable failure by the claimant to comply with a requirement imposed under section 11E(2) of the Act (persons subject to work-focused interview requirement only);

“reduction period” means the number of days for which a reduction in the amount of an award of an employment and support allowance is to have effect;

“sanctionable failure” means a failure which is sanctionable under section 11J of the Act;

“total outstanding reduction period” means the total number of days for which no reduction has yet been applied for all of the claimant’s low-level sanctions, lowest level sanctions and reductions to which regulation 61 applies;

“UC sanctionable failure” means a failure by a claimant which is sanctionable under Article 31 or 32 of the Welfare Reform (Northern Ireland) Order 2015.

General principles for calculating reduction periods

51.—(1) Subject to paragraphs (3) and (4), the reduction period is to be determined in relation to each sanctionable failure in accordance with regulations 52 and 53.

(58) 2002 c. 17 Section 25(3) was amended by paragraph 17 of Schedule 10 to the Health and Social Care Act 2008 (c. 14) and paragraph 56 of Schedule 15 to the Health and Social Care Act 2012 (c. 7) and S.I. 2010/231

(59) Article 8K was inserted by Article 55(4) of the Welfare Reform (Northern Ireland) Order 2015

(2) Reduction periods are to run consecutively.

(3) Where the reduction period calculated in relation to a sanctionable failure in accordance with regulation 52 or 53 would result in the total outstanding reduction period exceeding 546 days, the number of days in the reduction period in relation to that failure is to be adjusted so that 546 days is not exceeded.

(4) In determining the reduction period in relation to a sanctionable failure, a previous sanctionable failure, UC sanctionable failure or JSA sanctionable failure is to be disregarded if it—

- (a) occurred in the 13 days immediately preceding the failure in question; and
- (b) gave rise to a reduction under these Regulations, the Universal Credit Regulations or the Jobseeker's Allowance Regulations(60).

Low-level sanction

52. The reduction period for a low-level sanction is the total of—

- (a) the number of days beginning with the date of the sanctionable failure and ending with—
 - (i) the day before the date on which the claimant meets a compliance condition specified by the Department,
 - (ii) the day before the date on which the claimant falls within section 11D of the Act,
 - (iii) the day before the date on which the claimant is no longer required to take a particular action specified as a work preparation requirement by the Department under section 11C(1) or 11F(2) of the Act, or
 - (iv) the day on which the award of an employment and support allowance is terminated,whichever is soonest; and

- (b) whichever of the following number of days is applicable in the claimant's case—
 - (i) 7 days, if sub-paragraphs (ii) and (iii) do not apply,
 - (ii) 14 days, if in the 364 days preceding the failure in question there was another sanctionable failure giving rise to a low-level sanction for which a 7 day reduction period applies,
 - (iii) 14 days, if in the 364 days preceding the failure in question there was a UC sanctionable failure giving rise to a low-level sanction under regulation 101 of the Universal Credit Regulations for which a 7 day reduction period applies,
 - (iv) 14 days, if in the 364 days preceding the failure in question there was a JSA sanctionable failure giving rise to a low-level sanction under regulation 22 of the Jobseeker's Allowance Regulations for which a 7 day reduction period applies,
 - (v) 28 days, if in the 364 days preceding the failure in question there was another sanctionable failure giving rise to a low-level sanction for which a 14 day or 28 day reduction period applies,
 - (vi) 28 days, if in the 364 days preceding the failure in question there was a UC sanctionable failure giving rise to a low-level sanction under regulation 101 of the Universal Credit Regulations for which a 14 day or 28 day reduction period applies, or
 - (vii) 28 days, if in the 364 days preceding the failure in question there was a JSA sanctionable failure giving rise to a low-level sanction under regulation 22 of the Jobseeker's Allowance Regulations for which a 14 day or 28 day reduction period applies.

Lowest-level sanction

53. The reduction period for a lowest-level sanction is the number of days beginning with the date of the sanctionable failure and ending with—

- (a) the day before the date on which the claimant meets a compliance condition specified by the Department;
- (b) the day before the date on which the claimant falls within section 11D of the Act; or
- (c) the day on which the claimant's award of an employment and support allowance is terminated,

whichever is soonest.

Start of the reduction

54. A reduction period determined in relation to a sanctionable failure takes effect from—

- (a) where the claimant has not been paid an employment and support allowance for the benefit week in which the Department determines that the amount of the award of the employment and support allowance is to be reduced under section 11J of the Act, the first day of that benefit week;
- (b) where the claimant has been paid an employment and support allowance for the benefit week referred to in paragraph (a), the first day of the first benefit week for which the claimant has not been paid an employment and support allowance; or
- (c) where the amount of the award of the employment and support allowance for the benefit week referred to in paragraph (a) or (b) is already subject to a reduction because of a previous sanctionable failure, the first day in respect of which the amount of the award is no longer subject to that reduction.

Reduction period to continue where an award of an employment and support allowance terminates

55.—(1) Where an award of an employment and support allowance terminates while there is an outstanding reduction period—

- (a) the period continues to run as if a daily reduction were being applied; and
- (b) if the claimant becomes entitled to a new award of an employment and support allowance before the period expires, that new award is subject to a reduction for the remainder of the total outstanding reduction period.

(2) Paragraph (3) applies where—

- (a) an award of an employment and support allowance terminates before the Department determines that the amount of the award is to be reduced under section 11J of the Act in relation to a sanctionable failure; and
- (b) that determination is made after the claimant becomes entitled to a new award of an employment and support allowance.

(3) Where this paragraph applies—

- (a) the reduction period in relation to the sanctionable failure referred to in paragraph (2) is to be treated as having taken effect on the day before the previous award terminated;
- (b) that reduction period is treated as having continued to run as if a daily reduction were being applied; and

- (c) if the new award referred to in paragraph (2)(b) begins before that reduction period expires, that new award is subject to a reduction for the remainder of the total outstanding reduction period.

Suspension of a reduction where a fraud sanction applies

56.—(1) A reduction in the amount of an award of an employment and support allowance in accordance with section 11J of the Act is to be suspended for any period during which section 5B or 6 of the Social Security Fraud Act (Northern Ireland) 2001⁽⁶¹⁾ applies to the award.

(2) The reduction ceases to have effect on the day on which that period begins and has effect again on the day after that period ends.

Termination of a reduction

57.—(1) A reduction in the amount of an award of an employment and support allowance under section 11J of the Act is to be terminated where, since the date of the most recent sanctionable failure which gave rise to such a reduction, the claimant has been in paid work—

- (a) for a period of at least 26 weeks; or
- (b) for more than one period where the total of those periods amounts to at least 26 weeks.

(2) The termination of the reduction has effect—

- (a) where the date on which paragraph (1) is satisfied falls within a period of entitlement to an employment and support allowance, from the beginning of the benefit week in which that date falls; or
- (b) where that date falls outside a period of entitlement to an employment and support allowance, from the beginning of the first benefit week in relation to any subsequent award of an employment and support allowance.

(3) The claimant is in paid work for the purposes of paragraph (1) where their weekly earnings are at least equal to 16 multiplied by the amount that a person of the same age as the claimant would be paid at the hourly rate applicable under regulation 4 or regulation 4A(1)(a) to (c) of the National Minimum Wage Regulations 2015⁽⁶²⁾.

Amount of reduction for each benefit week

58. Where it has been determined that an award of an employment and support allowance is to be reduced in accordance with section 11J of the Act, the amount of the reduction for each benefit week in respect of which a reduction has effect is to be calculated as follows.

Step 1

Take the number of days—

- (a) in the benefit week; or
- (b) if lower, in the total outstanding reduction period,

and deduct any days in that benefit week or total outstanding reduction period for which the reduction is suspended in accordance with regulation 56.

⁽⁶¹⁾ 2001 c.17. Section 5B was inserted by section 19(1) of the Welfare Reform Act (Northern Ireland) 2010. Section 6 was amended by paragraph 33 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14), section 49 of, and paragraph 23 of Schedule 3 to, the Welfare Reform Act (Northern Ireland) 2007, paragraph 11 of Schedule 2, paragraph 2 of Schedule 4 and Schedule 7 to the Welfare Reform Act (Northern Ireland) 2010, Articles 115(8)(a), 117 and 118 of, and paragraph 47 of Schedule 2, paragraph 13 of Schedule 3 and Schedule 12 to, the Welfare Reform (Northern Ireland) Order 2015

⁽⁶²⁾ S.I. 2015/621, relevant amending instruments are S.I. 2015/1724 and 2016/68.

Step 2

Multiply the number of days produced by step 1 by the daily reduction rate.

Step 3

Deduct the amount produced by step 2 from the amount of the award of employment and support allowance for the benefit week.

Daily reduction rate

59.—(1) The daily reduction rate for the purposes of regulation 58 is, unless regulation 60 applies, the amount prescribed for the claimant under regulation 62(1) or, where applicable, regulation 63(2), multiplied by 52 and divided by 365.

(2) The amount of the daily reduction rate is to be rounded down to the nearest 10p.

Lower daily reduction rate

60.—(1) The daily reduction rate is 40 per cent. of the rate applicable under regulation 59(1) if, at the end of the benefit week, the claimant falls within—

- (a) section 11E of the Act;
- (b) section 11D(2)(c) of the Act; or
- (c) regulation 47(1)(b), (c), (f) or (g).

(2) The daily reduction rate is nil if, at the end of the benefit week, the claimant falls within section 11D(2)(a) of the Act.

Sanctions where universal credit ends and the person is entitled to an employment and support allowance

61.—(1) This regulation applies where—

- (a) a person ceases to be entitled to universal credit;
- (b) there is a reduction relating to the person's award of universal credit under Article 31 or 32 of the Welfare Reform (Northern Ireland) Order 2015; and
- (c) the person is entitled to an employment and support allowance.

(2) Any reduction relating to the award of the universal credit is to be applied to the award of the employment and support allowance.

(3) The period for which the reduction relating to the award of an employment and support allowance is to have effect is the number of days which apply to the person under regulation 99, 100, 101 or 102 of the Universal Credit Regulations minus any such days which—

- (a) have already resulted in a reduction in the amount of universal credit; or
- (b) fall after the date on which the person ceases to be entitled to universal credit and before the date on which the person becomes entitled to an employment and support allowance.

(4) The daily reduction rate for the reduction relating to the award of an employment and support allowance is—

- (a) the amount referred to in regulation 60(1) where, on the date the claimant becomes entitled to an employment and support allowance, the claimant falls within—
 - (i) section 11E of the Act,
 - (ii) section 11D(2)(c) of the Act, or

- (iii) regulation 47(1)(b), (c), (f) or (g);
- (b) zero where the claimant falls within section 11D(2)(a) of the Act; or
- (c) the amount referred to in regulation 59(1) in all other cases.

(5) The amount of the reduction of the claimant's award of an employment and support allowance is the number of days arrived at under paragraph (3) multiplied by the daily reduction rate referred to in paragraph (4).

PART 9

AMOUNTS OF ALLOWANCE

Prescribed amounts

62.—(1) Subject to regulation 63 (special cases) the amount prescribed for the purposes of the calculation of the amount of a claimant's employment and support allowance under section 2(1)(a) of the Act is—

- (a) where the claimant satisfies the conditions set out in section 2(2) or (3) of the Act, £73.10; or
 - (b) where the claimant does not satisfy the conditions set out in section 2(2) or (3) of the Act—
 - (i) where the claimant is aged not less than 25, £73.10, or
 - (ii) where the claimant is aged less than 25, £57.90.
- (2) Subject to regulation 63, the amount of—
- (a) the work-related activity component is £29.05; and
 - (b) the support component is £36.20.

Special cases

63.—(1) The amount prescribed for the purposes of the calculation of the amount of a claimant's employment and support allowance under section 2(1)(a) of the Act in respect of a claimant who—

- (a) satisfies the condition in paragraph (3); or
- (b) has been a patient for a continuous period of more than 52 weeks,

is the amount applicable under regulation 62(1) and the amount of nil under regulation 62(2).

(2) The amount prescribed for those purposes in respect of a claimant who is a person in hardship, is the amount to which the claimant is entitled—

- (a) under regulation 62(1) reduced by 20 per cent.; and
 - (b) under regulation 62(2).
- (3) The condition mentioned in paragraph (1)(a) is that—
- (a) the claimant is being detained under Article 53 of the Mental Health Order(63) (removal to hospital of persons serving sentences of imprisonment etc.); and
 - (b) in any case where there is in relation to the claimant a release date within the meaning of Article 56(3) of that Order(64) (further provisions as to prisoners under sentence), the

(63) [S.I. 1986/595 \(N.I. 4\)](#); Article 53 was amended by paragraph 38 of Schedule 12 to the Justice (Northern Ireland) Act 2002 (c. 26)

(64) Article 56(3) was substituted by section 296(3) of the Criminal Justice Act 2003 (c. 44) and amended by paragraph 5(2) of Schedule 5 to the Criminal Justice (Northern Ireland) Order 2008 ([S.I. 2008 1216 \(N.I. 1\)](#))

claimant is being detained on or before the day which the Department of Justice certifies to be that release date.

(4) In this regulation—

“patient” means a person (other than a prisoner) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 2005⁽⁶⁵⁾;

“prisoner” means a person who—

- (a) is detained in custody pending trial or sentence on conviction or under a sentence imposed by a court; or
- (b) is on temporary release in accordance with the provisions of the Prison Act (Northern Ireland) 1953⁽⁶⁶⁾,

other than a person who is detained in hospital under the provisions of the Mental Health Order.

(5) For the purposes of this regulation—

- (a) except where sub-paragraph (b) applies, a person is a “person in hardship” if they satisfy regulation 94; and
- (b) where a person satisfies regulation 94 for more than 6 weeks, they are a person in hardship only for the first 6 weeks.

Permanent health insurance

64. For the purposes of sections 2(1)(c) and 3(3) of the Act (deductions from an employment and support allowance) “pension payment” is to include a permanent health insurance payment.

Financial Assistance Scheme

65.—(1) For the purposes of sections 2(1)(c) and 3(3) of the Act “pension payment” is to include a Financial Assistance Scheme payment.

(2) In this regulation “Financial Assistance Scheme payment” means a payment made under the Financial Assistance Scheme Regulations 2005⁽⁶⁷⁾.

Councillor’s allowance

66. For the purposes of section 3(1)(c) of the Act—

- (a) a councillor’s allowance is a payment of a prescribed description; and
- (b) the prescribed bodies carrying out public or local functions are district councils.

Deductions for pension payment and PPF payment

67.—(1) Where—

- (a) a claimant is entitled to an employment and support allowance in respect of any period of a week or part of a week;
- (b) there is—
 - (i) a pension payment,
 - (ii) a PPF periodic payment, or

⁽⁶⁵⁾ S.R. 2005 No. 580

⁽⁶⁶⁾ 1953 c. 18 (N.I.)

⁽⁶⁷⁾ S.I. 2005/1986

- (iii) both of the payments specified in heads (i) and(ii), payable to that person in respect of that period (or a period which forms part of that period or includes that period or part of it); and
 - (c) the amount of the payment, or payments when taken together, exceeds—
 - (i) if the period in question is a week, £85, or
 - (ii) if that period is not a week, such proportion of £85 as falls to be calculated in accordance with regulation 79(1) or (5) (calculation of weekly amount of income),the amount of that allowance is to be reduced by an amount equal to 50 per cent. of the excess.
- (2) For the purposes of regulations 67 to 72 “payment” means a payment or payments, as the case may be, referred to in paragraph (1)(b).

Payments treated as not being payments to which section 3 applies

68. The following payments are to be treated as not being payments to which section 3 of the Act applies—

- (a) any pension payment made to a claimant as a beneficiary on the death of a member of any pension scheme;
- (b) any PPF periodic payment made to a claimant as a beneficiary on the death of a person entitled to such a payment;
- (c) where a pension scheme is in deficit or has insufficient resources to meet the full pension payment, the extent of the shortfall;
- (d) any pension payment made under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003(**68**);
- (e) any guaranteed income payment (which means a payment made under Article 15(1)(a) or 29(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(**69**);
- (f) any permanent health insurance payment in respect of which the employee had contributed to the premium to the extent of more than 50 per cent..

Deductions for councillor’s allowance

69.—(1) Where the net amount of councillor’s allowance to which a claimant is entitled in respect of any week exceeds 16 multiplied by the national living wage, subject to paragraph (3), an amount equal to the excess is to be deducted from the amount of an employment and support allowance to which that claimant is entitled in respect of that week, and only the balance remaining (if any) is to be payable.

(2) In paragraph (1) “net amount”, in relation to any councillor’s allowance to which a claimant is entitled, means the aggregate amount of the councillor’s allowance or allowances, or remuneration to which that claimant is entitled for the week in question, reduced by the amount of any payment in respect of expenses wholly, exclusively and necessarily incurred by that claimant, in that week, in the performance of the duties of a councillor.

(3) Where the amount determined by the calculation in paragraph (1) would, but for this paragraph, include an amount of—

- (a) less than 50p, that amount is to be rounded up to the nearest 50p; or
- (b) less than £1 but more than 50p, that amount is to be rounded up to the nearest £1.

(68) 2003 c. 1. Section 639(2) was inserted by section 19 of the Finance Act 2005 (c.7)

(69) S.I. 2011/517

Date from which payments are to be taken into account

70. Where regulation 67(1) or 69(1) applies, a deduction must have effect, calculated where appropriate in accordance with regulation 79(1) or (5), from the first day of the benefit week in which the payment or councillor's allowance is paid to a claimant who is entitled to an employment and support allowance in that week.

Date from which a change in the rate of the payment takes effect

71. Where a payment or councillor's allowance is already being made to a claimant and the rate of that payment or allowance changes, the deduction at the new rate must take effect, calculated where appropriate in accordance with regulation 79(1) or (5), from the first day of the benefit week in which the new rate of the payment or councillor's allowance is paid.

Calculation of payment made other than weekly

72.—(1) Where the period in respect of which a payment or councillor's allowance is paid is otherwise than weekly, an amount calculated or estimated in accordance with regulation 79(1) or (5) is to be regarded as the weekly amount of that payment or allowance.

(2) In determining the weekly payment, where two or more payments are payable to a claimant, each payment is to be calculated separately in accordance with regulation 79(1) or (5) before aggregating the sum of those payments for the purposes of the reduction of an employment and support allowance in accordance with regulation 67.

Effect of statutory maternity pay on an employment and support allowance

73.—(1) This regulation applies where—

- (a) a woman is entitled to statutory maternity pay and, on the day immediately preceding the first day in the maternity period, she—
 - (i) is in a period of limited capability for work, and
 - (ii) satisfies the conditions of entitlement to an employment and support allowance in accordance with section 1(2)(a) of the Act; and
- (b) on any day during the maternity pay period—
 - (i) she is in a period of limited capability for work, and
 - (ii) that day is not a day where she is treated as not having limited capability for work.

(2) Where this regulation applies, notwithstanding section 20(2) of the Act, a woman who is entitled to statutory maternity pay is to be entitled to an employment and support allowance in respect of any day that falls within the maternity pay period.

(3) Where by virtue of paragraph (2) a woman is entitled to an employment and support allowance for any week (including part of a week), the total amount of employment and support allowance payable to her for that week is to be reduced by an amount equivalent to any statutory maternity pay to which she is entitled in accordance with Part 12 of the Contributions and Benefits Act for the same week (or equivalent part of a week where entitlement to an employment and support allowance is for part of a week), and only the balance, if any, of the employment and support allowance is to be payable to her.

Effect of statutory adoption pay on an employment and support allowance

74.—(1) This regulation applies where—

- (a) a claimant is entitled to statutory adoption pay and, on the day immediately preceding the first day in the adoption pay period, she—

- (i) is in a period of limited capability for work, and
 - (ii) satisfies the conditions of entitlement to an employment and support allowance in accordance with section 1(2)(a) of the Act; and
- (b) on any day during the adoption pay period—
- (i) that claimant is in a period of limited capability for work, and
 - (ii) that day is not a day where that claimant is treated as not having limited capability for work.

(2) Where this regulation applies, notwithstanding section 20(4) of the Act, a claimant who is entitled to statutory adoption pay is to be entitled to an employment and support allowance in respect of any day that falls within the adoption pay period.

(3) Where by virtue of paragraph (2) a claimant is entitled to an employment and support allowance for any week (including part of a week), the total amount of employment and support allowance payable to that claimant for that week is to be reduced by an amount equivalent to any statutory adoption pay to which that claimant is entitled in accordance with Part 12ZB of the Contributions and Benefits Act(70) for the same week (or equivalent part of a week where entitlement to an employment and support allowance is for part of a week), and only the balance, if any, of the employment and support allowance is to be payable to that claimant.

Effect of statutory shared parental pay on an employment and support allowance

75.—(1) This regulation applies where—

- (a) a claimant is entitled to statutory shared parental pay and, on the day immediately preceding the first day in the shared parental pay period the claimant—
 - (i) is in a period of limited capability for work, and
 - (ii) satisfies the conditions of entitlement to an employment and support allowance in accordance with section 1(2)(a) of the Act; and
- (b) on any day during the statutory shared parental pay period—
 - (i) that claimant is in a period of limited capability for work, and
 - (ii) that day is not a day where that claimant is treated as not having limited capability for work.

(2) Where this regulation applies, notwithstanding section 20(6) of the Act, a claimant who is entitled to statutory shared parental pay is to be entitled to an employment and support allowance in respect of any day that falls within the shared parental pay period.

(3) Where by virtue of paragraph (2) a person is entitled to an employment and support allowance for any week (including part of a week), the total amount of such benefit payable to that claimant for that week is to be reduced by an amount equivalent to any statutory shared parental pay to which that claimant is entitled in accordance with Part 12ZC of the Contributions and Benefits Act(71) for the same week (or equivalent part of a week where entitlement to an employment and support allowance is for part of a week), and only the balance, if any, of the employment and support allowance is to be payable to that claimant.

(4) In this regulation “statutory shared parental pay period” means the weeks in respect of which statutory shared parental pay is payable to a person under section 167ZZ2(2) of the Contributions and Benefits Act.

(70) Part 12ZB was inserted by Article 6 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)) and amended by paragraph 269(2) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), paragraph 103 of Schedule 24 to the Civil Partnership Act 2004 (c. 33) and Article 4 of, and paragraph 20 of Schedule 1 to, the Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947 (N.I. 16)) and paragraph 1(7) of Schedule 7 and Schedule 8 to S.R. 2006 No. 261

(71) Part 12ZC was inserted by section 5 of the Work and Families Act (Northern Ireland) 2015 (c.1. (N.I.))

PART 10

INCOME AND EARNINGS

Calculation of earnings derived from employed earner's employment and income other than earnings

76.—(1) Earnings derived from employment as an employed earner and income which does not consist of earnings are to be taken into account over a period determined in accordance with the following provisions of this regulation and at a weekly amount determined in accordance with regulation 79 (calculation of weekly amount of income).

(2) Subject to the following provisions of this regulation, the period over which a payment is to be taken into account is to be—

- (a) where the payment is monthly, a period equal to the number of weeks beginning with the date on which the payment is treated as paid and ending with the date immediately before the date on which the next monthly payment would have been treated as paid whether or not the next monthly payment is actually paid;
- (b) where the payment is in respect of a period which is not monthly, a period equal to the length of the period for which payment is made;
- (c) in any other case, a period equal to such number of weeks as is equal to the number obtained (see paragraph (9)) by applying the formula—

$$\frac{E}{J}$$

where—

E is the net earnings;

J is the amount of an employment and support allowance which would be payable had the payment not been made;

and that period is to begin on the date on which the payment is treated as paid under regulation 78 (date on which income is to be treated as paid).

(3) Where—

- (a) earnings are derived from the same source but are not of the same kind; and
- (b) but for this paragraph, the periods in respect of which those earnings would fall to be taken into account overlap, wholly or partly,

those earnings are to be taken into account over a period equal to the aggregate length of those periods, and that period is to begin with the earliest date on which any part of those earnings would be treated as paid under regulation 78.

(4) In a case to which paragraph (5) applies, earnings under regulation 80 (earnings of employed earners) are to be taken into account in the following order of priority—

- (a) earnings normally derived from the employment;
- (b) any payment to which paragraph (1)(b) or (c) of that regulation applies;
- (c) any payment to which paragraph (1)(j) of that regulation applies;
- (d) any payment to which paragraph (1)(d) of that regulation applies.

(5) Where earnings to which regulation 80(1)(b) to (d) applies are paid in respect of part of a day, those earnings are to be taken into account over a period equal to a day.

(6) Any earnings to which regulation 80(1)(j) applies which are paid in respect of, or on the termination of, part-time employment, are to be taken into account over a period of one week.

(7) For the purposes of this regulation the claimant's earnings are to be calculated in accordance with regulations 80 and 81.

(8) For the purposes of paragraph 10 of Schedule 2 to the Act (effect of work), the income which consists of earnings of a claimant is to be calculated on a weekly basis by determining the weekly amount of those earnings in accordance with regulations 77 to 84.

(9) For the purposes of the number obtained as mentioned in paragraph (2)(c), any fraction is to be treated as a corresponding fraction of a week.

Calculation of earnings of self-employed earners

77.—(1) Where a claimant's income consists of earnings from employment as a self-employed earner, the weekly amount of the claimant's earnings is to be determined by reference to the claimant's average weekly earnings from that employment—

- (a) over a period of one year; or
- (b) where the claimant has recently become engaged in that employment or there has been a change which is likely to affect the normal pattern of business, over such other period as may, in any particular case, enable the weekly amount of the claimant's earnings to be determined more accurately.

(2) For the purposes of this regulation the claimant's earnings are to be calculated in accordance with regulations 82 to 84.

Date on which income is treated as paid

78. A payment of income to which regulation 76 (calculation of earnings derived from employed earner's employment and income other than earnings) applies is to be treated as paid—

- (a) in the case of a payment which is due to be paid before the first benefit week pursuant to the claim, on the date on which it is due to be paid;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid or the first succeeding benefit week in which it is practicable to take it into account.

Calculation of weekly amount of income

79.—(1) For the purposes of regulation 76 (calculation of earnings derived from employed earner's employment and income other than earnings) and regulations 64 to 72 (deductions from employment and support allowance), subject to paragraphs (2) to (5), where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount is to be the amount of that payment;
- (b) exceeds a week, the weekly amount is to be determined—
 - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
 - (ii) in a case where that period is 3 months, by multiplying the amount of the payment by 4 and dividing the product by 52;
 - (iii) in a case where that period is a year and the payment is income, by dividing the amount of the payment by 52;
 - (iv) in any other case, by multiplying the amount of the payment by 7 and dividing the product by the number equal to the number of days in the period in respect of which it is made.

(2) Where a payment for a period not exceeding a week is treated under regulation 78(a) (date on which income is treated as paid) as paid before the first benefit week and a part is to be taken into

account for some days only in that week (the relevant days), the amount to be taken into account for the relevant days is to be calculated by multiplying the amount of the payment by the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.

(3) Where a payment is in respect of a period equal to or in excess of a week and a part thereof is to be taken into account for some days only in a benefit week (the relevant days), the amount to be taken into account for the relevant days is to be calculated by multiplying the amount of the payment by the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.

(4) Except in the case of a payment which it has not been practicable to treat under regulation 78(b) (date on which income is treated as paid) as paid on the first day of the benefit week in which it is due to be paid, where a payment of income from a particular source is or has been paid regularly and that payment falls to be taken into account in the same benefit week as a payment of the same kind and from the same source, the amount of that income to be taken into account in any one benefit week is not to exceed the weekly amount determined under paragraph (1)(a) or (b) of the payment which under regulation 78(b) is treated as paid first.

(5) Where the amount of the claimant's income fluctuates and has changed more than once, or a claimant's regular pattern of work is such that the claimant does not work every week, the foregoing paragraphs may be modified so that the weekly amount of the claimant's income is determined by reference to the claimant's average weekly income—

- (a) if there is a recognisable cycle of work, over the period of one complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences);
- (b) in any other case, over a period of 5 weeks or such other period as may, in the particular case, enable the claimant's average weekly income to be determined more accurately.

Earnings of employed earners

80.—(1) Subject to paragraphs (2) and (3), “earnings” means, in the case of employment as an employed earner, any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to a claimant on account of the termination of the claimant's employment by reason of redundancy;
- (c) any payment in lieu of notice;
- (d) any holiday pay except any payable more than 4 weeks after the termination or interruption of employment;
- (e) any payment by way of a retainer;
- (f) any payment made by the claimant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant's employer in respect of—
 - (i) travelling expenses incurred by the claimant between the claimant's home and place of employment,
 - (ii) expenses incurred by the claimant under arrangements made for the care of a member of the claimant's family owing to the claimant's absence from home;

- (g) any award of compensation made under Article 146(4) or 151(3)(a) of the Employment Rights Order(72) (the remedies: orders and compensation enforcement of order and compensation);
 - (h) any payment made or remuneration paid under Article 60, 66, 96, 100 or 102 of the Employment Rights Order (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to industrial tribunals);
 - (i) any such sum as is referred to in section 112(3) of the Contributions and Benefits Act(73) (certain sums to be earnings for social security purposes);
 - (j) where a payment of compensation is made in respect of employment which is part-time employment, the amount of the compensation;
 - (k) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person’s earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001(74);
 - (l) any payment made under the legislation of, or under any scheme operating in, the Republic of Ireland which is analogous to any income to which this paragraph relates.
- (2) “Earnings” are not to include—
- (a) subject to paragraph (3), any payment in kind;
 - (b) any remuneration paid by or on behalf of an employer to the claimant in respect of a period throughout which the claimant is on maternity leave, paternity leave, adoption leave (which means a period of absence from work on ordinary or additional adoption leave under Article 107A or 107B of the Employment Rights Order (75)), shared parental leave under Article 107E or 107G of that Order or is absent from work because the claimant is ill;
 - (c) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
 - (d) any occupational pension (which means any pension or other periodical payment under an occupational pension scheme but does not include any discretionary payment out of a fund established for relieving hardship in particular cases);
 - (e) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme(76);
 - (f) any payment in respect of expenses arising out of the claimant participating as a service user.
 - (g) any bounty paid at intervals of at least one year and derived from employment as—
 - (i) an auxiliary coastguard in respect of coast rescue activities;
 - (ii) a person engaged part-time in the manning or launching of a lifeboat;
 - (iii) a member of any territorial or reserve force prescribed in Part 1 of Schedule 6 to the Social Security (Contributions) Regulations 2001(77).
- (3) Paragraph (2)(a) is not to apply in respect of any non-cash voucher referred to in paragraph(1)(k).

(72) Article 146(4) was amended by Schedule 9 to the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)) and paragraph 2(6) of Schedule 5 to the Employment (Northern Ireland) Order 2003 (S.I. 2003/2902) (N.I. 15)) and Article 151(3) was amended by Article 32(2) of, and Schedule 9 to, the Employment Relations (Northern Ireland) Order 1999 and paragraph 2(6) of Schedule 5 to the Employment (Northern Ireland) Order 2003

(73) Section 112(3) was amended by Schedule 1 to the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919) (N.I. 16))

(74) S.I. 2001/1004

(75) Articles 107A and 107B were inserted by Article 3 of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)) and Articles 107E and 107G were inserted by section 2(2) of the Work and Families Act (Northern Ireland) 2015 (c. 1)

(76) See the Schedule to S.I. 1996/3182

(77) S.I. 2001/1004

(4) In this regulation—

“compensation” means any payment made in respect of, or on the termination of, employment in a case where a claimant has not received or received only part of a payment in lieu of notice due or which would have been due to the claimant had that claimant not waived the right to receive it, other than—

- (a) any payment specified in paragraph (1)(a) to (i) or (l);
- (b) any payment specified in paragraph (2)(a) to (f);
- (c) any redundancy payment within the meaning of Article 170(1) of the Employment Rights Order; and
- (d) any refund of contributions to which that person was entitled under an occupational pension scheme;

“paternity leave” means a period of absence from work on paternity leave by virtue of Article 112A or 112B(78) of the Employment Rights Order.

(5) The reference in paragraph (2)(f) to a person participating as a service user is to—

- (a) a person who is being consulted by or on behalf of—
 - (i) a body which has a statutory duty to provide services in the field of health, social care or social housing, or
 - (ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such services,

in the person’s capacity as a user, potential user, carer of a user or person otherwise affected by the provision of those services;
- (b) a person who is being consulted by or on behalf of—
 - (i) the Department in relation to any of the Department’s functions in the field of social security or child support or under section 1 of the Employment and Training Act(79) (general functions of the Department as to employment and training for employment), or
 - (ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such functions,

in their capacity as a person affected or potentially affected by the exercise of those functions or the carer of such a person; or
- (c) the carer of a person consulted under sub-paragraphs (a) or (b).

Calculation of net earnings of employed earners

81.—(1) For the purposes of regulation 76 (calculation of earnings derived from employed earner’s employment and income other than earnings) the earnings of a claimant derived from employment as an employed earner to be taken into account are the claimant’s net earnings.

(2) For the purposes of paragraph (1) net earnings are to be calculated by taking into account the gross earnings of the claimant from that employment less—

- (a) any amount deducted from those earnings by way of—
 - (i) income tax,

(78) Articles 112A and 112B were inserted by Article 4 of the Employment (Northern Ireland) Order 2002 (S.I. 2002 No. 2836 (N.I. 2))

(79) 1950 c. 29 (N.I.); section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

- (ii) primary Class 1 contributions under section 6(1)(a) of the Contributions and Benefits Act(80);
 - (b) one half of any sum paid by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.
- (3) Where the claimant is an employed earner in the Republic of Ireland the amounts to be deducted for income tax and primary Class 1 contributions under this regulation shall be such amounts as, in the opinion of the Department, would have been deducted had the claimant been employed in Northern Ireland.

Earnings of self-employed earners

82.—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross receipts of the employment and include any allowance paid under sections 2 and 3 of the Disabled Persons (Employment) Act(81), section 1 of the Employment and Training Act(82) or any equivalent allowance paid under Republic of Ireland legislation to the claimant for the purpose of assisting the claimant in carrying on the claimant’s business.

- (2) “Earnings” do not include—
 - (a) where a claimant is involved in providing board and lodging accommodation for which a charge is payable, any payment by way of such a charge;
 - (b) any award made by one of the Sports Councils named in section 23(2) of the National Lottery etc. Act 1993(83) out of sums allocated to it for distribution under that section.
- (3) In this regulation, “board and lodging” means—
 - (a) accommodation provided to a person or, if the person is a member of a family, to that person or any other member of that person’s family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of that person’s family) and are consumed in that accommodation or associated premises; or
 - (b) accommodation provided to a person in a hotel, guest house, lodging house or some similar establishment,

except accommodation provided by a close relative of the person or any other member of the person’s family, or other than on a commercial basis.

Calculation of net profit of self-employed earners

83.—(1) For the purposes of regulation 77 (calculation of earnings of self-employed earners), the earnings of a claimant to be taken into account are to be—

- (a) in the case of a self-employed earner who is engaged in employment on that self-employed earner’s own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners’ Benefits)

(80) Section 6 was substituted by paragraph 2 of Schedule 10 to the Welfare Reform and Pensions Act 1999 (c. 30) and amended by section 81(3) of the Child Support, Pensions and Social Security Act 2000 (c. 19)

(81) 1945 c. 6 (N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594) (N.I. 3))

(82) Section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

(83) 1993 c. 39. Section 23(2) was amended by Article 2 of S.I. 1996/3095, Article 2 of S.I. 1999/1563 and Article 2 of S.I. 2006/654

Regulations (Northern Ireland) 1975⁽⁸⁴⁾, that self-employed earner's share of the net profit derived from that employment less—

- (i) an amount in respect of income tax and of National Insurance contributions payable under the Contributions and Benefits Act calculated in accordance with regulation 84 (deduction of tax and contributions for self-employed earners); and
- (ii) one half of any contribution paid in the period that is relevant under regulation 77 (calculation of earnings of self-employed earners) in respect of a personal pension scheme.

(2) For the purposes of paragraph (1)(a) the net profit of the employment, except where paragraph (8) applies, is to be calculated by taking into account the earnings of the employment over the period determined under regulation 77 less—

- (a) subject to paragraphs (4) to (6), any expenses wholly and exclusively defrayed in that period for the purposes of that employment;
- (b) an amount in respect of—
 - (i) income tax, and
 - (ii) National Insurance contributions payable under the Contributions and Benefits Act, calculated in accordance with regulation 84; and
- (c) one half of any contribution paid in the period that is relevant under regulation 77 in respect of a personal pension scheme.

(3) For the purposes of paragraph (1)(b), the net profit of the employment is to be calculated by taking into account the earnings of the employment over the period determined under regulation 77 less, subject to paragraphs (4) to (6), any expenses wholly and exclusively defrayed in that period for the purpose of that employment.

(4) Subject to paragraph (5), a deduction is not to be made under paragraph (2)(a) or (3) in respect of—

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
- (d) any loss incurred before the beginning of the period determined under regulation 77;
- (e) the repayment of capital on any loan taken out for the purposes of the employment;
- (f) any expenses incurred in providing business entertainment.

(5) A deduction is to be made under paragraph (2)(a) or (3) in respect of the repayment of capital on any loan used for—

- (a) the replacement in the course of business of equipment or machinery;
- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair; and
- (c) the purchase of land under the Northern Ireland Land Act 1925⁽⁸⁵⁾.

(6) The Department must refuse to make a deduction in respect of any expenses under paragraph (2)(a) or (3) where it is not satisfied that the expense has been defrayed or, having regard to the nature of the expense and its amount, that it has been reasonably incurred.

(7) A deduction—

⁽⁸⁴⁾ S.R. 1975 No. 108

⁽⁸⁵⁾ 1925 c. 34

- (a) is not to be made under paragraph (2)(a) or (3) in respect of any sum unless it has been expended for the purposes of the business;
 - (b) is to be made under paragraph (2)(a) or (3) in respect of—
 - (i) the excess of any Value Added Tax paid over Value Added Tax received in the period determined under regulation 77;
 - (ii) any income expended in the repair of an existing asset except to the extent that any sum is payable under an insurance policy for its repair;
 - (iii) any payment of interest on a loan taken out for the purposes of the employment.
- (8) Where a claimant is engaged in employment as a child minder the net profit of the employment is to be one third of the earnings of that employment, less—
- (a) an amount in respect of—
 - (i) income tax; and
 - (ii) National Insurance contributions payable under the Contributions and Benefits Act, calculated in accordance with regulation 84; and
 - (b) one half of any contribution paid in respect of a personal pension scheme.
- (9) Notwithstanding regulation 77 and the foregoing paragraphs, the Department may assess any item of a claimant's income or expenditure over a period other than that determined under regulation 77 as may, in the particular case, enable the weekly amount of that item of income or expenditure to be determined more accurately.
- (10) Where a claimant is engaged in employment as a self-employed earner and that claimant is also engaged in one or more other employments as a self-employed or employed earner, any loss incurred in any one of the claimant's employments is not to be offset against the claimant's earnings in any other of the claimant's employments.
- (11) Where the claimant is a self-employed earner in the Republic of Ireland the amounts to be deducted for income tax and National Insurance contributions under this regulation are to be such amounts as, in the opinion of the Department, would have been deducted had the claimant been employed in Northern Ireland.

Deduction of tax and contributions for self-employed earners

84.—(1) Subject to paragraph (2), the amount to be deducted in respect of income tax under regulation 83(1)(b)(i), (2)(b)(i) or (8)(a)(i) (calculation of net profit of self-employed earners) is to be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at the basic rate of tax less only the personal allowance to which the claimant is entitled under sections 35 and 38 to 40 of the Income Tax Act 2007⁽⁸⁶⁾ (personal allowances) as is appropriate to the claimant's circumstances.

(2) If the period determined under regulation 77 is less than a year, the earnings to which the basic rate of tax is to be applied and the amount of the personal allowance deductible under paragraph (1) is to be calculated on a pro rata basis.

(3) The amount to be deducted in respect of National Insurance contributions under regulation 83(1)(b)(i), (2)(b)(ii) or (8)(a)(ii) is to be the total of—

- (a) the amount of Class 2 contributions payable under section 11(2) or, as the case may be, (8) of the Contributions and Benefits Act⁽⁸⁷⁾ at the rate applicable at the date of claim

⁽⁸⁶⁾ 2007 c. 3. Section 35 was amended by section 4 of the Finance Act 2009 (c. 10) and sections 3 and 4 of the Finance Act 2012 (c. 14). Section 38 was amended by S.I. 2011/2926. Section 40 was amended by paragraph 55 of Schedule 9 to the Finance Act 2008 (c. 9)

⁽⁸⁷⁾ Section 11 was substituted by paragraph 12 of Schedule 1 to the National Insurance Contributions Act 2015 (c. 5)

except where the claimant's chargeable income is less than the amount specified in subsection (4) of that section (small profits threshold) for the tax year in which the date of claim falls; but if the assessment period is less than a year, the amount specified for that tax year is to be reduced pro rata; and

- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of that Act⁽⁸⁸⁾ (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date of claim on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits applicable for the tax year in which the date of claim falls; but if the assessment period is less than a year, those limits are to be reduced pro rata.

(4) In this regulation—

“assessment period” means the period mentioned in regulation 77 over which the weekly amount of the claimant's earnings is to be determined;

“basic rate” has the same meaning as in the Income Tax Act 2007 (see section 989 of that Act);

“chargeable income” means—

- (a) except where paragraph (b) applies, the earnings derived from the employment less any expenses deducted under regulation 83(2)(a) or (3), as the case may be;
- (b) in the case of employment as a child minder, one third of the earnings of that employment.

PART 11

SUPPLEMENTARY PROVISIONS

Waiting days

85.—(1) The number of days prescribed for the purposes of paragraph 2 of Schedule 2 to the Act (days during which a person is not entitled to an employment and support allowance at the beginning of a period of limited capability for work) is 7.

(2) Paragraph 2 of Schedule 2 to the Act does not apply where—

- (a) the claimant's entitlement to an employment and support allowance commences within 12 weeks of the claimant's entitlement to income support, incapacity benefit, severe disablement allowance, state pension credit, a jobseeker's allowance, a carer's allowance, statutory sick pay or a maternity allowance coming to an end;
- (b) the claimant is terminally ill and has—
 - (i) made a claim expressly on the ground of being terminally ill, or
 - (ii) made an application for supersession or revision in accordance with the Decisions and Appeals Regulations 1999 or the Decisions and Appeals Regulations 2016 which contains an express statement that the claimant is terminally ill;
- (c) the claimant has been discharged from being a member of Her Majesty's forces and 3 or more days immediately before that discharge were days of sickness absence from duty, which are recorded by the Secretary of State; or
- (d) the claimant is entitled to an employment and support allowance by virtue of section 1B of the Act (further entitlement after time-limiting).

⁽⁸⁸⁾ Section 15 was amended by section 13 of the Limited Liability Partnerships Act 2000 (c. 12), section 3(2) of the National Insurance Contributions Act 2002 (c. 19), paragraph 424 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5) and Article 4 of S.I. 2008/579

Linking period

86. Any period of limited capability for work which is separated from another such period by not more than 12 weeks is to be treated as a continuation of the earlier period.

Claimants appealing a decision

87.—(1) This regulation applies where a claimant has made and is pursuing an appeal against a relevant decision of the Department as defined in regulation 26.

(2) Subject to paragraph (3), where this regulation applies, a determination of limited capability for work by the Department under regulation 15 must not be made until the appeal is determined by the appeal tribunal.

(3) Paragraph (2) does not apply where either—

- (a) the claimant suffers from some specific disease or bodily or mental disablement from which the claimant was not suffering when entitlement began; or
- (b) a disease or bodily or mental disablement from which the claimant was suffering when entitlement began has significantly worsened.

(4) Where this regulation applies and the Department makes a determination—

- (a) in a case to which paragraph (3) applies (including where the determination is not the first such determination) that the claimant does not have or, by virtue of regulation 18 or 19, is to be treated as not having limited capability for work; or
- (b) subsequent to a determination that the claimant is to be treated as having limited capability for work by virtue of a provision of these Regulations other than regulation 26, that the claimant is no longer to be so treated,

this regulation and regulation 26 have effect as if that determination had not been made.

(5) Where this regulation applies and—

- (a) the claimant is entitled to an employment and support allowance by virtue of being treated as having limited capability for work in accordance with regulation 26;
- (b) neither of the circumstances in paragraph (3) applies, or, subsequent to the application of either of those circumstances, the claimant has been determined not to have limited capability for work; and
- (c) the claimant's appeal is dismissed, withdrawn or struck out,

the claimant is to be treated as not having limited capability for work with effect from the day specified in paragraph (6).

(6) The day specified for the purposes of paragraph (5) is the first day of the benefit week following the date on which the Department receives the appeal tribunal's notification that the appeal is dismissed, withdrawn or struck out.

(7) Where a claimant's appeal is successful, subject to paragraph (8), any finding of fact or other determination embodied in or necessary to the decision of the appeal tribunal or on which the appeal tribunal's decision is based is to be conclusive for the purposes of the decision of the Department, in relation to an award made in a case to which this regulation applies, as to whether the claimant has limited capability for work or limited capability for work-related activity.

(8) Paragraph (7) does not apply where, due to a change of circumstances after entitlement began, the Department is satisfied that it is no longer appropriate to rely on such finding or determination.

Absence from Northern Ireland

88.—(1) A claimant who is entitled to an employment and support allowance is to continue to be so entitled during a period of temporary absence from Northern Ireland only in accordance with regulations 89 to 92.

(2) A claimant who continues to be entitled to an employment and support allowance during a period of temporary absence is not disqualified for receiving that allowance during that period under section 18(4) of the Act(**89**).

Short absence

89. A claimant is to continue to be entitled to an employment and support allowance during the first 4 weeks of a temporary absence from Northern Ireland if—

- (a) the period of absence is unlikely to exceed 52 weeks; and
- (b) while absent from Northern Ireland, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance.

Absence to receive medical treatment

90.—(1) A claimant is to continue to be entitled to an employment and support allowance during the first 26 weeks of a temporary absence from Northern Ireland if—

- (a) the period of absence is unlikely to exceed 52 weeks;
- (b) while absent from Northern Ireland, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance;
- (c) the claimant is absent from Northern Ireland only—
 - (i) in connection with arrangements made for the treatment of the claimant for a disease or bodily or mental disablement directly related to the claimant’s limited capability for work which commenced before leaving Northern Ireland, or
 - (ii) because the claimant is accompanying a dependent child (which means any child or qualifying young person who is treated as the responsibility of the claimant or the claimant’s partner, where that child or young person is a member of the claimant’s household) in connection with arrangements made for the treatment of that child for a disease or bodily or mental disablement; and
- (d) those arrangements relate to treatment—
 - (i) outside Northern Ireland,
 - (ii) during the period whilst the claimant is temporarily absent from Northern Ireland, and
 - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.

(2) In this regulation, “appropriately qualified” means qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

Absence in order to receive health service treatment

91. A claimant is to continue to be entitled to an employment and support allowance during any period of temporary absence from Northern Ireland if—

(89) Section 18(4) was amended by paragraph 21(d) of Schedule 3 to the Welfare Reform (Northern Ireland) Order 2015

- (a) while absent from Northern Ireland, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance; and
- (b) that period of temporary absence is for the purpose of the claimant receiving treatment at a hospital or other institution outside Northern Ireland where the treatment is being provided—
 - (i) under Article 5, 7 or 8 of the Health and Personal Social Services Order(90) (provision of accommodation and medical services, etc.; prevention of illness, care and after-care; care of mothers and young children),
 - (ii) pursuant to arrangements made under Article 14A of that Order(91) (arrangements for provision of health services by other bodies or persons), or
 - (iii) pursuant to arrangements made under paragraph 13 of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991(92) (Health and Social Services trusts: specific powers).

Absence of member of family of member of Her Majesty’s forces

92.—(1) A claimant is to continue to be entitled to an employment and support allowance during any period of temporary absence from Northern Ireland if the claimant is a member of the family of a member of Her Majesty’s forces and temporarily absent from Northern Ireland by reason only of the fact that the claimant is living with that member.

(2) In this regulation “member of the family of a member of Her Majesty’s forces” means the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in law or step-mother of such a member.

PART 12 DISQUALIFICATION

Disqualification for misconduct etc.

- 93.**—(1) Subject to paragraph (3), paragraph (2) applies where a claimant—
- (a) has limited capability for work by reason of the claimant’s own misconduct, except in a case where the limited capability is due to a sexually transmitted disease;
 - (b) fails without good cause to attend for or submit to medical or other treatment (excluding vaccination, inoculation or surgery which the Department considers is major) recommended by a doctor with whom, or a hospital or similar institution with which, the claimant is undergoing medical treatment, which would be likely to remove the limitation on the claimant’s capability for work;
 - (c) fails without good cause to refrain from behaviour calculated to retard the claimant’s recovery to health; or
 - (d) is, without good cause, absent from the claimant’s place of residence without informing the Department where the claimant may be found.

(90) Article 5 was amended by Schedule 6 to the Health and Social Security (Northern Ireland) Order 1984 (S.I. 1984/1158 (N.I. 8)), Schedule 5 to the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) and paragraph 3 of Schedule 1 to the Primary Medical Services (Northern Ireland) Order 2004 (S.I. 2004/311 (N.I. 2)) and Article 7 was amended by section 121(1) of the Immigration and Asylum Act 1999 (c. 33) and section 46(6) of the Nationality, Immigration and Asylum Act 2002 (c. 41)

(91) Article 14A was inserted by paragraph 2(1) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992 (S.I. 1992/3204 (N.I. 20))

(92) S.I. 1991/194 (N.I. 1); paragraph 13 was amended by Schedule 1 to the Health and Personal Social Services (Northern Ireland) Order 1994 (S.I. 1994/429 (N.I. 2))

(2) A claimant referred to in paragraph (1) is to be disqualified for receiving an employment and support allowance for such period not exceeding 6 weeks as the Department may determine in accordance with Chapter 2 of Part II of the Social Security (Northern Ireland) Order 1998⁽⁹³⁾.

(3) Paragraph (2) does not apply where the claimant—

- (a) is disqualified for receiving an employment and support allowance by virtue of regulations made under section 5B or 6 of the Social Security Fraud Act (Northern Ireland) 2001⁽⁹⁴⁾ (loss of benefit for commission of benefit offences); or
- (b) is a person in hardship.

(4) In this regulation, “doctor” means a registered medical practitioner, or in the case of a medical practitioner practising outside the United Kingdom, a person registered or recognised as such in the country in which the person undertakes medical practice.

Meaning of “person in hardship”

94.—(1) A claimant is a “person in hardship” if the claimant—

- (a) has informed the Department of the circumstances on which the claimant relies to establish that fact; and
- (b) falls within paragraph (2), (3) or (5).

(2) A claimant falls within this paragraph if—

- (a) she is pregnant;
- (b) a member of the claimant’s family is pregnant;
- (c) the claimant is single and aged less than 18; or
- (d) the claimant is a member of a couple and both members are aged less than 18.

(3) Subject to paragraph (4), the claimant falls within this paragraph if the claimant or the claimant’s partner—

- (a) has been awarded an attendance allowance, armed forces independence payment, the care component or the daily living component;
- (b) has claimed attendance allowance, armed forces independence payment, disability living allowance or personal independence payment and the claim has not been determined;
- (c) devotes what the Department considers is a considerable portion of each week to caring for another person who—
 - (i) has been awarded an attendance allowance, armed forces independence payment, the care component or the daily living component; or
 - (ii) has claimed attendance allowance, armed forces independence payment, disability living allowance or personal independence payment and the claim has not been determined; or

(d) has attained the qualifying age for state pension credit, which has the meaning given in section 1(6) of the State Pension Credit Act (Northern Ireland) 2002⁽⁹⁵⁾.

(4) A claimant to whom paragraph (3)(b) or (3)(c)(ii) applies is a person in hardship only for 26 weeks from the date of the claim unless the claimant is a person in hardship under another provision of this regulation.

⁽⁹³⁾ S.I. 1998/1506 (N.I. 10)

⁽⁹⁴⁾ 2001 c. 17 (N.I.); section 5B was inserted by section 19 of the Welfare reform Act (Northern Ireland) 2010 (c. 13 (N.I.)) and section 6 was amended by Schedule 6 to the Tax Credits Act 2002 (c. 21), paragraph 33 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)) and section 45(1) of the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.))

⁽⁹⁵⁾ 2002 (c. 14) (N.I.)

(5) The claimant falls within this paragraph where the Department is satisfied, having regard to all the circumstances and, in particular, the matters set out in paragraph (6), that unless an employment and support allowance is paid, the claimant, or a member of the claimant's family, will suffer hardship.

(6) The matters referred to in paragraph (5) are—

- (a) the resources which are likely to be available to the claimant and the claimant's family and the length of time for which they might be available; and
- (b) whether there is a substantial risk that essential items, including food, clothing and heating, will cease to be available to the claimant or a member of the claimant's family, or will be available at considerably reduced levels and the length of time for which this might be so.

(7) In this regulation—

“armed forces independence payment” means armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011⁽⁹⁶⁾.

“attendance allowance” means—

- (a) an attendance allowance under section 64 of the Contributions and Benefits Act⁽⁹⁷⁾;
- (b) an increase of disablement pension under section 104 or 105 of that Act (increases where constant attendance needed and for exceptionally severe disablement);
- (c) a payment by virtue of Article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983⁽⁹⁸⁾ or any analogous payment;
- (d) any payment based on the need for attendance which is paid as an addition to a war disablement pension (which means any retired pay or pension or allowance payable in respect of disablement under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003⁽⁹⁹⁾);

“care component” means the care component of disability living allowance at the highest or middle rate prescribed under section 72(3) of the Contributions and Benefits Act;

“daily living component” means the daily living component of personal independence payment at the standard or enhanced rate referred to in Article 83 of the Welfare Reform (Northern Ireland) Order 2015;

“disability living allowance” means a disability living allowance under section 71 of the Contributions and Benefits Act⁽¹⁰⁰⁾;

“personal independence payment” means an allowance under Part 5 of the Welfare Reform (Northern Ireland) Order 2015.

Treating a claimant as not having limited capability for work

95. The claimant is to be treated as not having limited capability for work if the claimant is disqualified for receiving an employment and support allowance during a period of imprisonment or detention in legal custody if that disqualification is for more than 6 weeks.

⁽⁹⁶⁾ S.I. 2011 No. 517

⁽⁹⁷⁾ Section 64 was amended by Article 63(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), paragraph 38 of Schedule 1 to the Pensions Act (Northern Ireland) 2008 (c. 1) and paragraph 4 of Schedule 9 to the Welfare Reform (Northern Ireland) Order 2015

⁽⁹⁸⁾ S.I. 1983/686; relevant amending instruments are S.I. 1984/1675 and S.I. 2001/420

⁽⁹⁹⁾ 2003 c.1. Section 639(2) was inserted by the Finance Act 2005 (c.7)

⁽¹⁰⁰⁾ Section 71 was amended by Article 64(1) of the Welfare Reform and Pensions Order (Northern Ireland) 1999

Exceptions from disqualification for imprisonment

96.—(1) Notwithstanding section 18(4)(b) of the Act⁽¹⁰¹⁾, a claimant is not disqualified for receiving an employment and support allowance for any period during which that claimant is undergoing imprisonment or detention in legal custody—

- (a) in connection with a charge brought or intended to be brought against the claimant in criminal proceedings;
- (b) pursuant to any sentence of a court in criminal proceedings; or
- (c) pursuant to any order for detention made by a court in criminal proceedings,

unless paragraph (2) applies.

(2) This paragraph applies where—

- (a) a penalty is imposed on the claimant at the conclusion of the proceedings referred to in paragraph (1); or
- (b) in the case of default of payment of a sum adjudged to be paid on conviction, a penalty is imposed in respect of such default.

(3) Notwithstanding section 18(4)(b) of the Act, a claimant “(C)” is not to be disqualified for receiving an employment and support allowance, for any period during which C is undergoing detention in legal custody after the conclusion of criminal proceedings if it is a period during which C is detained in a hospital or similar institution in Northern Ireland as a person suffering from mental disorder unless—

- (a) C is detained under Article 53 of the Mental Health Order (removal to hospital of persons serving sentences of imprisonment etc.); and
- (b) in any case where there is in relation to C a release date within the meaning of Article 56(3) of that Order (further provisions as to prisoners under sentence), C is being detained on or before the day which the Secretary of State certifies to be that release date.

(4) In this regulation—

- (a) “court” means any court in the United Kingdom, the Channel Islands or the Isle of Man or in any place to which the Colonial Prisoners Removal Act 1884⁽¹⁰²⁾ applies or any naval court-martial, army court-martial or air force court-martial within the meaning of the Courts-Martial (Appeals) Act 1968⁽¹⁰³⁾ or the Courts-Martial Appeal Court;
- (b) “hospital or similar institution” means any place (not being a prison, a young offenders centre, a juvenile justice centre or secure accommodation in a children’s home and not being at or in any such place) in which persons suffering from mental disorder are or may be received for care or treatment;
- (c) “penalty” means a sentence of imprisonment or detention under Article 45(1) or (2) of the Criminal Justice (Children) (Northern Ireland) Order 1998⁽¹⁰⁴⁾;
- (d) in relation to a person who is liable to be detained in Northern Ireland as a result of any order made under the Colonial Prisoners Removal Act 1884, references to a prison must be construed as including references to a prison within the meaning of that Act;
- (e) criminal proceedings against any person must be deemed to be concluded upon that person being found insane in those proceedings so that the person cannot be tried or that person’s trial cannot proceed.

⁽¹⁰¹⁾Section 18(4) was amended by paragraph 21(d) of Schedule 3 to the Welfare Reform (Northern Ireland) Order 2015

⁽¹⁰²⁾1884 c. 31

⁽¹⁰³⁾1968 c. 20

⁽¹⁰⁴⁾S.I. 1998/1504 (N.I. 24); Article 45 was amended by paragraph 19 of Schedule 11 to the Justice (Northern Ireland) Act 2002 (c. 26)

(5) Where a claimant outside Northern Ireland is undergoing imprisonment or detention in legal custody and, in similar circumstances in Northern Ireland, the claimant would, by virtue of this regulation, not have been disqualified for receiving an employment and support allowance, the claimant is not disqualified for receiving that allowance by reason only of the imprisonment or detention.

Suspension of payment of an employment and support allowance during imprisonment

97.—(1) Subject to the following provisions of this regulation, the payment of an employment and support allowance to any claimant—

- (a) which is excepted from the operation of section 18(4)(b) of the Act by virtue of the provisions of regulation 96(1), (3) or (5); or
- (b) which is payable otherwise than in respect of a period during which the claimant is undergoing imprisonment or detention in legal custody,

is suspended while that claimant is undergoing imprisonment or detention in legal custody.

(2) An employment and support allowance is not to be suspended while the claimant is liable to be detained in a hospital or similar institution, as defined in regulation 96(4), during a period for which in the claimant's case, the allowance is or would be excepted from the operation of section 18(4)(b) of the Act by virtue of regulation 96(3).

(3) Where, by virtue of this regulation, payment of an employment and support allowance is suspended for any period, the period of suspension is not to be taken into account in calculating any period under regulation 50 of the Claims and Payments Regulations 2016 (extinguishment of right to payment if payment is not obtained within the prescribed period).

PART 13

PERIODS OF LESS THAN A WEEK

Entitlement for less than a week – amount of an employment and support allowance payable

98.—(1) This regulation applies where the claimant is entitled to an employment and support allowance for a part-week and this regulation is subject to the following provisions of this Part.

(2) The amount payable by way of an employment and support allowance in respect of a part-week is to be calculated by applying the formula—

$$\frac{(N \times X)}{7}$$

where—

X is the amount calculated in accordance with section 2(1) of the Act;

N is the number of days in the part-week.

(3) In this Part—

“part-week” means an entitlement to an employment and support allowance in respect of any period of less than a week; and

“relevant week” means the period of 7 days determined in accordance with regulation 99.

Relevant week

99.—(1) Where a part-week—

- (a) is the whole period for which an employment and support allowance is payable, or occurs at the beginning of an award, the relevant week is the period of 7 days ending on the last day of that part-week; or
- (b) occurs at the end of an award, the relevant week is the period of 7 days beginning on the first day of the part-week.

(2) Where a claimant has an award of an employment and support allowance and that claimant's benefit week changes, for the purpose of calculating the amounts of an employment and support allowance payable for the part-week beginning on the day after the last complete benefit week before the change and ending immediately before the change, the relevant week is the period of 7 days beginning on the day after the last complete benefit week.

Modification in the calculation of income

100. For the purposes of regulation 98 (entitlement for less than a week – amount of an employment and support allowance payable), a claimant's income is to be calculated in accordance with regulations 76 to 84 subject to the following changes—

- (a) any income which is due to be paid in the relevant week is to be treated as paid on the first day of that week;
- (b) any widow's benefit, training allowance, widowed parent's allowance, bereavement allowance, carer's allowance and any increase in disablement pension payable in accordance with Part 1 of Schedule 7 to the Contributions and Benefits Act (unemployability supplement) which is payable in the relevant week but not in respect of any day in the part-week is to be disregarded;
- (c) where the part-week occurs at the end of the claim—
 - (i) any income, or
 - (ii) any change in the amount of income of the same kind,
 which is first payable within the relevant week but not on any day in the part-week is to be disregarded;
- (d) where only part of the weekly balance of income is taken into account in the relevant week, the balance is to be disregarded.

Reduction in certain cases

101.—(1) Where a disqualification is to be made in accordance with regulation 93 in respect of a part-week, the amount referred to in paragraph (2) is to be payable by way of an employment and support allowance in respect of that part-week.

(2) The amount mentioned in paragraph (1) is—

- (a) one seventh of the employment and support allowance which would have been paid for the part-week if—
 - (i) there was no disqualification under regulation 93; and
 - (ii) it was not a part-week; multiplied by
- (b) the number of days in the part-week in respect of which no disqualification is to be made in accordance with regulation 93.

Payment of an employment and support allowance for days of certain treatment

102.—(1) Where a claimant is entitled to an employment and support allowance as a result of being treated as having limited capability for work in accordance with regulation 22 (claimants receiving certain treatment), the amount payable is to be equal to one seventh of the amount of the

employment and support allowance which would be payable in respect of a week in accordance with section 2(1) of the Act multiplied by N.

(2) In paragraph (1), N is the number of days in that week on which the claimant was receiving treatment referred to in regulation 22 or recovering from that treatment, but does not include any day during which the claimant does work.

Signed by authority of the Secretary of State for Work and Pensions

3rd May 2016

Priti Patel
Minister of State,
Department for Work and Pensions

SCHEDULE 1

Her Majesty's forces

PART 1

PRESCRIBED ESTABLISHMENTS AND ORGANISATIONS

1. Any of the regular naval, military or air forces of the Crown.
2. Royal Fleet Reserve.
3. Royal Navy Reserve.
4. Royal Marines Reserve.
5. Army Reserve.
6. Territorial Army.
7. Royal Air Force Reserve.
8. Royal Auxiliary Air Force.
9. The Royal Irish Regiment, to the extent that its members are not members of any force falling within paragraph 1.

PART 2

ESTABLISHMENTS AND ORGANISATIONS OF WHICH HER MAJESTY'S FORCES DO NOT CONSIST

10. Her Majesty's forces are not to be taken to consist of any of the establishments or organisations specified in Part 1 of this Schedule by virtue only of the employment in such establishment or organisation of the following persons—

- (a) any person who is serving as a member of any naval force of Her Majesty's forces and who (not having been an insured person under the National Insurance Act (Northern Ireland) 1966⁽¹⁰⁵⁾ and not having been a contributor under the Social Security (Northern Ireland) Act 1975⁽¹⁰⁶⁾ or not being a contributor under the Contributions and Benefits Act) locally entered that force at an overseas base;
- (b) any person who is serving as a member of any military force of Her Majesty's forces and who entered that force, or was recruited for that force, outside the United Kingdom, and the depot of whose unit is situated outside the United Kingdom;
- (c) any person who is serving as a member of any air force of Her Majesty's forces and who entered that force, or was recruited for that force, outside the United Kingdom, and is liable under the terms of engagement to serve only in a specified part of the world outside the United Kingdom.

⁽¹⁰⁵⁾1966 c. 6 (N.I.)

⁽¹⁰⁶⁾1975 c. 15

SCHEDULE 2

Regulation 15(2) and (3)

Assessment of Whether a Claimant has Limited Capability for Work

PART 1

PHYSICAL DISABILITIES

<i>(1)</i> <i>Activity</i>		<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid is normally or could reasonably be worn or used.	(a)	Cannot, unaided by another person, either— (i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion, or (ii) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.	15
	(b)	Cannot, unaided by another person, mount or descend two steps even with the support of a handrail.	9
	(c)	Cannot, unaided by another person, either— (i) mobilise more than 100 metres on level ground without stopping in order to avoid significant discomfort or exhaustion, or (ii) repeatedly mobilise 100 metres within a reasonable timescale because of significant discomfort or exhaustion.	9
	(d)	Cannot, unaided by another person, either— (i) mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion, or (ii) repeatedly mobilise 200 metres within a reasonable timescale because of significant discomfort or exhaustion.	6

Status: This is the original version (as it was originally made).

<i>(1)</i> <i>Activity</i>		<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
	(e)	None of the above applies.	0
2. Standing and sitting.	(a)	Cannot move between one seated position and another seated position which are located next to one another without receiving physical assistance from another person.	15
	(b)	Cannot, for the majority of the time, remain at a work station— (i) standing unassisted by another person (even if free to move around), (ii) sitting (even in an adjustable chair), or (iii) a combination of (i) and (ii), for more than 30 minutes, before needing to move away in order to avoid significant discomfort or exhaustion.	9
	(c)	Cannot, for the majority of the time, remain at a work station— (i) standing unassisted by another person (even if free to move around), (ii) sitting (even in an adjustable chair), or (iii) a combination of (i) and (ii), for more than an hour before needing to move away in order to avoid significant discomfort or exhaustion.	6
	(d)	None of the above applies.	0
3. Reaching.	(a)	Cannot raise either arm as if to put something in the top pocket of a coat or jacket.	15
	(b)	Cannot raise either arm to top of head as if to put on a hat.	9
	(c)	Cannot raise either arm above head height as if to reach for something.	6
	(d)	None of the above applies.	0

<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
4. Picking up and moving or transferring by the use of the upper body and arms.	(a) Cannot pick up and move a 0.5 litre carton full of liquid.	15
	(b) Cannot pick up and move a one litre carton full of liquid.	9
	(c) Cannot transfer a light but bulky object such as an empty cardboard box.	6
	(d) None of the above applies.	0
5. Manual dexterity.	(a) Cannot press a button (such as a telephone keypad) with either hand or cannot turn the pages of a book with either hand.	15
	(b) Cannot pick up a £1 coin or equivalent with either hand.	15
	(c) Cannot use a pen or pencil to make a meaningful mark with either hand.	9
	(d) Cannot single-handedly use a suitable keyboard or mouse.	9
	(e) None of the above applies.	0
6. Making self understood through speaking, writing, typing or other means which are normally or could reasonably be used, unaided by another person.	(a) Cannot convey a simple message, such as the presence of a hazard.	15
	(b) Has significant difficulty conveying a simple message to strangers.	15
	(c) Has some difficulty conveying a simple message to strangers.	6
	(d) None of the above applies.	0
7. Understanding communication by—	(a) Cannot understand a simple message, such as the location of a fire escape, due to sensory impairment.	15
(i) verbal means (such as hearing or lip reading) alone,		
(ii) non-verbal means (such as reading 16 point print or Braille) alone, or		
(iii) a combination of (i) and (ii),		

Status: This is the original version (as it was originally made).

<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>	
using any aid that is normally or could reasonably be used, unaided by another person.	(b)	Has significant difficulty understanding a simple message from a stranger due to sensory impairment.	15
	(c)	Has some difficulty understanding a simple message from a stranger due to sensory impairment.	6
	(d)	None of the above applies.	0
	(a)	Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment.	15
8. Navigation and maintaining safety using a guide dog or other aid if either or both are normally used or could be reasonably used.	(b)	Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment.	15
	(c)	Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment.	9
	(d)	None of the above applies.	0
	(a)	At least once a month experiences— (i) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, or (ii) substantial leakage of the contents of a collecting device, sufficient to require cleaning and a change in clothing.	15
9. Absence or loss of control whilst conscious leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bed-wetting), despite the wearing or use of any aids or adaptations which are normally or could reasonably be worn or used.	(b)	The majority of the time is at risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, sufficient to require cleaning and a change in clothing, if not able to reach a toilet quickly.	6
	(c)	Neither of the above applies.	0
	(a)		

<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
10. Consciousness during waking moments.	(a) At least once a week, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	15
	(b) At least once a month, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	6
	(c) Neither of the above applies.	0

PART 2

MENTAL, COGNITIVE AND INTELLECTUAL FUNCTION ASSESSMENT

<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
11. Learning tasks.	(a) Cannot learn how to complete a simple task, such as setting an alarm clock.	15
	(b) Cannot learn anything beyond a simple task, such as setting an alarm clock.	9
	(c) Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine to clean clothes.	6
	(d) None of the above applies.	0
12. Awareness of everyday hazards (such as boiling water or sharp objects).	(a) Reduced awareness of everyday hazards leads to a significant risk of— (i) injury to self or others, or (ii) damage to property or possessions, such that the claimant requires supervision for the majority of the time to maintain safety.	15
	(b) Reduced awareness of everyday hazards leads to a significant risk of— (i) injury to self or others, or	9

Status: This is the original version (as it was originally made).

<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
	(ii) damage to property or possessions, such that the claimant frequently requires supervision to maintain safety.	
	(c) Reduced awareness of everyday hazards leads to a significant risk of— (i) injury to self or others, or (ii) damage to property or possessions, such that the claimant occasionally requires supervision to maintain safety.	6
	(d) None of the above applies.	0
13. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	(a) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.	15
	(b) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions for the majority of the time.	9
	(c) Frequently cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.	6
	(d) None of the above applies.	0
14. Coping with change.	(a) Cannot cope with any change to the extent that day to day life cannot be managed.	15
	(b) Cannot cope with minor planned change (such as a pre-arranged change to the routine time scheduled for a lunch break), to the extent that, overall, day to day life is made significantly more difficult.	9
	(c) Cannot cope with minor unplanned change (such as the timing of an appointment on the day it is due to occur), to the extent that, overall, day to day life is made significantly more difficult.	6

<i>(1)</i> <i>Activity</i>		<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>
	(d)	None of the above applies.	0
15. Getting about.	(a)	Cannot get to any place outside the claimant's home with which the claimant is familiar.	15
	(b)	Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person.	9
	(c)	Is unable to get to a specified place with which the claimant is unfamiliar, without being accompanied by another person.	6
	(d)	None of the above applies.	0
16. Coping with social engagement due to cognitive impairment or mental disorder.	(a)	Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the claimant.	15
	(b)	Engagement in social contact with someone unfamiliar to the claimant is always precluded due to difficulty relating to others or significant distress experienced by the claimant.	9
	(c)	Engagement in social contact with someone unfamiliar to the claimant is not possible for the majority of the time due to difficulty relating to others or significant distress experienced by the claimant.	6
	(d)	None of the above applies.	0
17. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.	(a)	Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
	(b)	Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
	(c)	Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	9
	(d)	None of the above applies.	0

Status: This is the original version (as it was originally made).

SCHEDULE 3

Regulation 30(1)

Assessment of whether a claimant has limited capability for work-related activity

<i>Column 1 Activity</i>	<i>Column 2 Descriptors</i>
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid is normally or could reasonably be worn or used.	Cannot either— (a) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (b) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.
2. Transferring from one seated position to another.	Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.
3. Reaching.	Cannot raise either arm as if to put something in the top pocket of a coat or jacket.
4. Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting, bending or kneeling and all other activities specified in this Schedule).	Cannot pick up and move a 0.5 litre carton full of liquid.
5. Manual dexterity.	Cannot press a button (such as a telephone keypad) with either hand or cannot turn the pages of a book with either hand.
6. Making self understood through speaking, writing, typing, or other means which are normally, or could reasonably be, used unaided by another person.	Cannot convey a simple message, such as the presence of a hazard.
7. Understanding communication by— (i) verbal means (such as hearing or lip reading) alone, (ii) non-verbal means (such as reading 16 point print or Braille) alone, or (iii) a combination of (i) and (ii), using any aid that is normally, or could reasonably, be used unaided by another person.	Cannot understand a simple message, such as the location of a fire escape, due to sensory impairment.
8. Absence or loss of control whilst conscious leading to extensive evacuation of the bowel and/or voiding of the bladder, other than enuresis (bed-wetting), despite the wearing or	At least once a week experiences—

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Descriptors</i>
use of any aids or adaptations which are normally or could reasonably be worn or used.	<p>(a) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or</p> <p>(b) substantial leakage of the contents of a collecting device sufficient to require the individual to clean themselves and change clothing.</p>
9. Learning tasks.	Cannot learn how to complete a simple task, such as setting an alarm clock, due to cognitive impairment or mental disorder.
10. Awareness of hazard.	<p>Reduced awareness of everyday hazards, due to cognitive impairment or mental disorder, leads to a significant risk of—</p> <p>(a) injury to self or others; or</p> <p>(b) damage to property or possessions, such that the claimant requires supervision for the majority of the time to maintain safety.</p>
11. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.
12. Coping with change.	Cannot cope with any change, due to cognitive impairment or mental disorder, to the extent that day to day life cannot be managed.
13. Coping with social engagement, due to cognitive impairment or mental disorder.	Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the claimant.
14. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.	Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.
15. Conveying food or drink to the mouth.	<p>(a) Cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else;</p> <p>(b) Cannot convey food or drink to the claimant's own mouth without repeatedly stopping or experiencing breathlessness or severe discomfort;</p> <p>(c) Cannot convey food or drink to the claimant's own mouth without receiving regular prompting given by someone else in the claimant's presence; or</p> <p>(d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink</p>

Status: This is the original version (as it was originally made).

<i>Column 1</i> <i>Activity</i>	<i>Column 2</i> <i>Descriptors</i>
	to the claimant’s own mouth without receiving— (i) physical assistance from someone else, or (ii) regular prompting given by someone else in the claimant’s presence.
16. Chewing or swallowing food or drink.	(a) Cannot chew or swallow food or drink; (b) Cannot chew or swallow food or drink without repeatedly stopping or experiencing breathlessness or severe discomfort; (c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant’s presence; or (d) Owing to a severe disorder of mood or behaviour, fails to— (i) chew or swallow food or drink, or (ii) chew or swallow food or drink without regular prompting given by someone else in the claimant’s presence.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for a social security benefit to be known as an employment and support allowance (“ESA”), which replaces the existing benefit of the same name. The new benefit is for people who have a health condition or disability which limits their capability to work. People will only be able to claim the new benefit where they have made sufficient National Insurance contributions. People will no longer be able to claim ESA where they have low or no other income but have not made sufficient National Insurance contributions. Many rules for the existing benefit are replicated in these Regulations for the new benefit.

Most claimants will be required to serve an assessment phase which will normally last for 13 weeks from the start of the claim (regulations 5 to 7). During this period claimants will receive a rate of benefit that depends on whether they are aged under or over 25years. Once the assessment phase is complete and subject to satisfying the assessment of “limited capability for work” (see Part 4) claimants will move on to the main phase of the benefit. Their entitlement will then consist of

the basic rate – a flat rate of benefit, regardless of age – and, on top of this, a work-related activity or support component. Some claimants will be entitled to the work-related activity component and will be required to engage in “conditionality” (Part 7). Failure to engage can lead to the imposition of a reduction in benefit (Part 8). Claimants who demonstrate “limited capability for work-related activity” (Part 5) will be entitled to the support component instead of the work-related activity component, in addition to the basic rate. These claimants will be those with the most severe health conditions and will not be subject to any conditionality requirements.

Part 2 provides detailed provisions on when the assessment phase will end.

Part 3 deals with conditions of entitlement.

Part 4 deals with the determination of whether or not a claimant has limited capability for work. The assessment used to determine this is set out in Schedule 2. It also provides for the circumstances in which a claimant is to be treated as having or not having limited capability for work.

Part 5 deals with the determination of whether or not a claimant has limited capability for work-related activity. The assessment used to determine this is set out in Schedule 3. It also provides for the circumstances in which a claimant is to be treated as having or not having limited capability for work-related activity.

Part 6 provides for the circumstances in which the work a claimant does affects the claimant’s entitlement.

Part 7 makes provision in relation to the claimant’s responsibilities. The claimant can be required to prepare for work and attend interviews in relation to work or work preparation. The provisions in Part 2 include details on which requirements apply to which claimants, how those requirements are met and circumstances in which they do not apply. Regulation 42 deals with the claimant’s responsibilities where they are entitled to Universal Credit as well as ESA. Regulations 44 and 45 contain provisions for accepting the claimant commitment which is usually a condition of entitlement.

Part 8 contains provisions relating to the reduction of benefit where a claimant fails to meet their responsibilities without good reason. This is known as a sanction. This includes the cases in which a sanction cannot be imposed, how long a sanction is to last and how much of the claimant’s employment and support allowance will be sanctioned. There are also provisions for transferring sanctions to and from Universal Credit, for example where a claimant with a sanction ceases to be entitled to Universal Credit and becomes entitled to ESA.

Part 9 specifies the amounts of ESA which are payable.

Part 10 deals with the calculation of a claimant’s income and earnings.

Part 11 provides for supplementary provisions. This includes providing that a claimant must wait a number of days at the start of a period of limited capability for work before becoming entitled to ESA (regulation 85) and rules which enable 2 periods of limited capability for work separated by not more than 12 weeks to be linked together (regulation 86).

Part 12 provides for the circumstances in which a claimant may be disqualified from receiving ESA and includes provision to deal with the situation where this would leave a person in hardship.

Part 13 contains details enabling the amount of ESA to be calculated where the claimant is entitled for a period of less than a week.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sector is foreseen.