

EXPLANATORY MEMORANDUM

THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS NO. 4) REGULATIONS (NORTHERN IRELAND) 2010

S.R. 2010 No. 200

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under sections 86A(1), 167A(2), 167D and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, sections 1(1) and 5(1)(l) and (s), 5(B)(3) and (5) and 165(1), (4) and (5) of the Social Security Administration (Northern Ireland) Act 1992, Articles 10(1), 11(3) and (6), 12(1), 17(2), 22(2) and 74(1) and (3) to (5) of the Social Security (Northern Ireland) Order 1998 and sections 2(4)(a), 4(2)(a) and (6)(a), 8(1) and (4) to (6), 11(2)(d) and (g), 12(2)(i), 17(3)(b), 24(1), (2)(b) and (3), 25(2) and 28(2) of, and paragraph 3(2) of Schedule 1 and paragraphs 1(a), 6, 8, 9(a) and 10 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 Since the introduction of Employment and Support Allowance, a number of omissions and desirable amendments have been identified and these are addressed in this Statutory Rule. In addition some of the proposals are intended to improve the current operation of regulations without substantially changing the design of Employment and Support Allowance.
- 2.2 The main purpose of these Regulations is to clarify the rules for paying Employment and Support Allowance where an appeal has been made. In summary, the main amendments in these Regulations—
 - allow main phase rates of Employment and Support Allowance to be paid when an appeal is successful or where there has been a deterioration or new medical condition during the pending appeal period;
 - bring the pending appeal award of benefit to an end if an appeal is unsuccessful; and
 - terminate claims where medical evidence has expired and there is no ongoing contact with the claimant to allow for a referral for a medical assessment.

3. Background

3.1 Employment and Support Allowance was introduced on 27 October 2008 and is paid to people who have limited capability for work because of illness or disability. It replaces Incapacity Benefit and Income Support paid to people who cannot work because of sickness or disability.

3.2 Since the introduction of Employment and Support Allowance, a number of issues in relation to appeals have come to light and these Regulations introduce amendments to address those issues.

3.3 Employment and Support Allowance has two phases, with different rates of benefit payable: the assessment phase rate and the higher, main phase, rates. Where an Employment and Support Allowance award is disallowed following a medical assessment and the claimant appeals, where that person continues to provide medical evidence of limited capability for work, Employment and Support Allowance will continue to be paid at the assessment rate, without the need for a further claim, pending the outcome of the appeal (the “pending appeal award”).

3.4 The intention of the pending appeal award is to provide some payment of benefit while an appeal tribunal considers whether or not the decision maker was correct to find that the claimant did not have limited capability for work. In itself this award is not intended to count as a period of limited capability for work in terms of qualifying for the higher main phase rates of benefit (the work-related activity component or the support component). It is the determination of limited capability for work which establishes continuing entitlement to benefit and if higher rates of benefit are payable after 13 weeks of entitlement.

3.5 Unsuccessful appeal

If the appeal is unsuccessful, the pending appeal award should stop. These Regulations amend the Employment and Support Allowance Regulations (Northern Ireland) 2008 so that when an appeal is unsuccessful the claimant is treated as not having limited capability for work and is therefore no longer entitled to Employment and Support Allowance under the pending appeal award.

3.6 Successful appeal

Where the appeal is successful there are uncertainties about the status of the pending appeal award. These Regulations amend the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 to allow for the revision of a pending appeal award when the appeal is decided. This allows for the pending appeal award to be revised where an appeal is successful to ensure that any work-related activity component or support component can be paid from the 14th week.

3.7 Deterioration or new medical condition during the pending appeal period

Potentially, claimants who are disallowed Employment and Support Allowance following medical assessment, and who report a worsening of their medical condition or a new condition before their appeal is heard, may have limited capability for work on the basis of the worsening of the medical condition or the new condition. However, the assessment phase continues pending the determination of the appeal and main phase components cannot be put into payment.

These Regulations amend the Employment and Support Allowance Regulations (Northern Ireland) 2008 to allow decisions on limited capability for work during the pending appeal award if there is evidence of a new medical condition or deterioration in the medical condition of the claimant. Limited capability can also be determined where there has been a change of circumstances – for example, as a result of the claimant starting or stopping work.

3.8 Basis of the pending appeal award

These Regulations amend the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 so that when a pending appeal award is brought to an end following an unsuccessful appeal it is not possible for a further pending appeal award to be made without a further work capability assessment.

3.9 Medical evidence expires and no contact with the claimant

Where medical evidence expires, payment of benefit can be suspended or the claim terminated. This only applies where benefit is in payment. It does not apply to credits awarded to protect a person's National Insurance record. These Regulations make an amendment so that where medical evidence expires, and there is no ongoing contact with the claimant to allow for a referral for a medical assessment, a person may be treated as not having limited capability for work. No decision can be made to end entitlement until 6 weeks after the expiry of medical evidence or the date of issue of the request for further medical evidence, whichever is later.

3.10 Minor technical amendments are also made to the Social Security Contributions and Benefits (Northern Ireland) Act 1992, the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987, the Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988, the Social Security (Incapacity Benefit – Increases for Dependants) Regulations (Northern Ireland) 1994, the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995, the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 and the Social Security (Claims and Information) Regulations (Northern Ireland) 2007.

4. Consultation

- 4.1 These Regulations make technical amendments to improve the operation of Employment and Support Allowance. The proposals for Employment and Support Allowance were set out in the Green Paper, *A new deal for welfare: Empowering people to work*, which was widely consulted on.

5. Equality Impact

- 5.1 The impact of Employment and Support Allowance on equality of opportunity among those groups listed in section 75 of the Northern Ireland Act 1998 was assessed as part of the equality screening of the Welfare Reform Act (Northern Ireland) 2007 and in relation to the Employment and Support Allowance Regulations (Northern Ireland) 2008. These Regulations make technical amendments and, as such, do not have any additional implication for equality of opportunity.

6. Regulatory Impact

- 6.1 These Regulations do not require a Regulatory Impact Assessment as they do not impose any new costs on business, charities or voluntary bodies.

7. Financial Implications

- 7.1 These Regulations do not have any significant financial implications.

8. Section 24 of the Northern Ireland Act 1998

- 8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the Rule—
- (a) is not incompatible with any of the Convention rights,
 - (b) is not incompatible with Community law,
 - (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and
 - (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1 Not applicable.

10. Parity or Replicatory Measure

- 10.1 The corresponding Great Britain Regulations are the Social Security (Miscellaneous Amendments) (No. 3) Regulations 2010 and in keeping with the long-standing policy of parity in social security, the Regulations

will come into operation on 28 June 2010, the same date as the corresponding Great Britain Regulations. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.