

SCHEDULE 2

Modification of statutory provisions: after the conversion phase

PART 3

MODIFICATION OF THE EMPLOYMENT AND SUPPORT ALLOWANCE REGULATIONS

4. The Employment and Support Allowance Regulations are to be read as if—
- (a) any reference to a claimant were a reference to a person in relation to whom a conversion decision has been made under these Regulations;
 - (b) Part 2 (the assessment phase) does not apply, except for the purposes of applying regulation 147A of those Regulations;
 - (c) Part 3 (conditions of entitlement – contributory allowance) does not apply;
 - [^{F1}(d) regulation 30 (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made) is to be read as if, for paragraph (3), there was substituted—
 - “(3) Paragraph 2(b) does not apply where a claimant has made and is pursuing an appeal against a conversion decision that embodies a determination that the claimant does not have limited capability for work and that appeal has not yet been determined by an appeal tribunal.”.]
 - (e) in regulation 45 (exempt work) for the definition of “specified work” in paragraph (10), there were substituted—
 - ““specified work” means—
 - (a) work done in accordance with paragraph (4); or
 - (b) work done in accordance with regulation 17(4)(a) of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995(1).”;
 - (f) in regulation 67 (prescribed amounts)—
 - (i) in paragraph (1) after sub-paragraph (c) there were added—
 - “(d) the amount of any transitional addition to which the person is entitled under regulation 11 of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010.”;
 - (ii) in paragraph (2), for the words from “is the amount” to the end, there were substituted—
 - “are such of the following amounts as may apply in the person’s case—
 - (a) the amount determined in accordance with paragraph 1(1) of Schedule 4; and
 - (b) the amount of any transitional addition to which the person is entitled under regulation 10 of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010.”;
 - (g) in regulation 68(1) (polygamous marriages), after sub-paragraph (d) there were added—

(1) [S.R. 1995 No. 41](#); regulation 17 was substituted by regulation 2(4) of [S.R. 2006 No. 150](#) and paragraph (4) was amended by regulation 4 of [S.R. 2009 No. 318](#) and regulation 6(4)(b) of [S.R. 2010 No. 200](#)

Changes to legislation: *There are currently no known outstanding effects for the The Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010, PART 3. (See end of Document for details)*

- “(e) the amount of any transitional addition to which the person is entitled under regulation 11 of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010.”;
- (h) regulation 75 (payments treated as not being payments to which section 3 of the Act applies) were subject to the same modifications as are specified in paragraph 2(d) of Schedule 1;
- (i) for regulation 147A (claimants appealing a decision), in its application to a person who has made and is pursuing an appeal against a conversion decision which embodies a determination that the person does not have limited capability for work, there were substituted—

“Claimants appealing a decision

147A.—(1) This regulation applies where a person has made and is pursuing an appeal against a conversion decision which embodies a determination that the person does not have limited capability for work.

[^{F2}(1A) A person to whom this regulation applies who has made and is pursuing an appeal against a conversion decision in respect of an existing award of incapacity benefit or severe disablement allowance shall be treated as having satisfied the conditions in Part 1 of Schedule 1 to the Act (contributory allowance: conditions relating to national insurance).]

(2) Subject to paragraph (3), where this regulation applies, a determination of limited capability for work by the Department under regulation 19 shall 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 at that date 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 22 or 23 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 30, that the claimant is no longer to be so treated,

this regulation and regulation 30 apply 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 30;
- (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 [^{F3}with effect from the day specified in paragraph (5A).]

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010, PART 3. (See end of Document for details)

[^{F4}(5A) The day specified for the purposes of paragraph (5) is the first day of the benefit week following the date on which the Department either—

- (a) receives the notification from the clerk to the appeal tribunal that the appeal is dismissed, withdrawn or struck out, or
- (b) discontinues action on an appeal in the circumstances to which regulation 33(9) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (making of appeals and application) applies.]

(6) Where a claimant's appeal is successful, any entitlement to which this regulation applies shall terminate [^{F5}from the first day of the benefit week following the date on which the Department receives the appeal tribunal's notification of that decision] .”;

(j) in Schedule 5 (special cases) any reference to the amount—

- (i) applicable to a person under regulation 67(1)(a), or
- (ii) to which a person is entitled under regulation 67(1)(a),

included the amount of any transitional addition to which the person is entitled under regulation 67(1)(d) as added by the modification in sub-paragraph (f)(i).

Textual Amendments

- F1** Sch. 2 para. 4(d) substituted (30.3.2015) by The Employment and Support Allowance (Repeat Assessments and Pending Appeal Awards) (Amendment) Regulations (Northern Ireland) 2015 (S.R. 2015/185), regs. 1(1), **5**
- F2** Words in Sch. 2 para. 4(i) inserted (1.11.2010) by The Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/347), regs. 1(2), **2(14)(c)**
- F3** Words in Sch. 2 para. 4(i) substituted (31.10.2011) by The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2011 (S.R. 2011/357), regs. 1(1), **25(4)(a)(i)(bb)**
- F4** Words in Sch. 2 para. 4(i) inserted (31.10.2011) by The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2011 (S.R. 2011/357), regs. 1(1), **25(4)(a)(ii)**
- F5** Words in Sch. 2 para. 4(i) substituted (31.10.2011) by The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2011 (S.R. 2011/357), regs. 1(1), **25(4)(a)(iii)**

Commencement Information

- I1** Sch. 2 para. 4 in operation at 1.10.2010, see **reg. 1**

Changes to legislation:

There are currently no known outstanding effects for the The Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010, PART 3.