

SCHEDULE 2

Regulation 16(1)

Modification of statutory provisions: after the conversion phase

PART 1

MODIFICATION OF PART 1 OF THE ACT

1. Part 1 of the Act is 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) in section 1—
 - (i) for subsection (2), there were substituted—

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

 - (a) in accordance with Part 2 of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 (“the Existing Awards Regulations”), the effect of the conversion decision that was made in relation to the person was to convert the person’s existing award or awards into a single award of an employment and support allowance; and
 - (b) that conversion decision has come into effect.”, and
 - (ii) for subsection (7), there were substituted—

“(7) In this Part—

“contributory allowance” means an employment and support allowance to which a person is entitled by virtue of the Existing Awards Regulations which was based on an award of incapacity benefit or severe disablement allowance to which the person was entitled; and

“income-related allowance” means an employment and support allowance to which a person is entitled by virtue of the Existing Awards Regulations which was based on an award of income support to which the person was entitled.”;
 - (c) in section 2—
 - (i) in subsection (1)(a), after the words “such amount” there were inserted “, or the aggregate of such amounts”, and
 - (ii) except for the purposes of applying regulation 147A of the Employment and Support Allowance Regulations⁽¹⁾ (claimants appealing a decision) in subsections (2)(a) and (3)(a), references to the assessment phase were references to the conversion phase;
 - (d) in section 4(4)(a) and (5)(a), except for the purposes of applying regulation 147A of the Employment and Support Allowance Regulations as modified by paragraph 4(i) of this Schedule, references to the assessment phase were to the conversion phase.

PART 2

MODIFICATION OF OTHER ACT AND ORDER

The Social Security Contributions and Benefits (Northern Ireland) Act

2. Section 44B of the Contributions and Benefits Act⁽²⁾ (deemed earnings factors: 2010-11 onwards) is to be read as if, after subsection (5), there were inserted—

(1) Regulation 147A was inserted by regulation 9(15) of S.R. 2010 No. 200

(2) Section 44B was inserted by section 7(1) of the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.))

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

“(5A) In determining whether Condition C is satisfied in relation to any pensioner, the following entitlements of the pensioner to an earnings factor credit may be aggregated if the weeks to which they relate comprise a continuous period—

- (a) any entitlement arising by virtue of—
 - (i) section 44C(3)(c) below (eligibility for earnings factor enhancement in respect of a week in which severe disablement allowance was payable), or
 - (ii) section 44C(3)(d) below (eligibility for earnings factor enhancement in respect of a week in which long-term incapacity benefit was, or would have been, payable); and
- (b) where an award of severe disablement allowance or long-term incapacity benefit was converted into an award of an employment and support allowance by virtue of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010, any entitlement arising by virtue of regulation 5A(2)(ba) of the Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations (Northern Ireland) 2001⁽³⁾ (earnings factor credits eligibility for pensioners to whom employment and support allowance was payable).”.

The Social Security (Northern Ireland) Order

3. Schedule 3 to the Social Security (Northern Ireland) Order 1998⁽⁴⁾ (decisions against which an appeal lies) is to be read as if, after paragraph 8D, there were inserted—

“Conversion of certain existing awards into awards of an employment and support allowance

8E. A conversion decision within the meaning of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010.”.

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;
 - (d) in regulation 30(3) (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made), 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, for “a decision” there were substituted “a conversion decision”;
 - (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

⁽³⁾ S.R. 2001 No. 440; regulation 5A was inserted by regulation 4(5) of S.R. 2010 No. 56 and the reference to regulation 5A(2)(ba) is to the modification made by paragraph 6 of this Schedule

⁽⁴⁾ S.I. 1998/1506(N.I. 10); paragraph 8D was inserted by paragraph 12 of Schedule 1 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.))

- (b) work done in accordance with regulation 17(4)(a) of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995(5).”;
- (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—
 - “(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.

(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—

(5) [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](#)

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

- (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 from the first day of the benefit week following the date on which the Department was notified by the appeal tribunal that the appeal is dismissed, withdrawn or struck out.

(6) Where a claimant’s appeal is successful, any entitlement to which this regulation applies shall terminate on the first day of the benefit week following the date on which the Department was notified by the appeal tribunal 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).

PART 4

MODIFICATION OF OTHER SUBORDINATE LEGISLATION

The Social Security (Claims and Payments) Regulations

5. The Claims and Payments Regulations are to be read as if—

- (a) in regulation 2(1) after the definition of “employment officer”(6) there were inserted—

“the Existing Awards Regulations” means the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010;”;
- (b) in regulation 3 (claims not required for entitlement to benefit in certain cases) after paragraph (j)(7) there were added—
 - “(k) the beneficiary—
 - (i) has made and is pursuing an appeal against a conversion decision made by virtue of the Existing Awards Regulations which embodies a determination that the beneficiary does not have limited capability for work; or
 - (ii) was entitled to an employment and support allowance by virtue of the Existing Awards Regulations and has made and is pursuing an appeal

(6) The definition of “employment officer” was inserted by regulation 2(2)(a) of S.R. 2000 No. 365

(7) Paragraph (j) was substituted by regulation 3 of S.R. 2010 No. 200

against a later decision which embodies a determination that the beneficiary does not have limited capability for work;

- (l) in the case of an employment and support allowance where the beneficiary is entitled to an existing award which is subject to conversion under the Existing Awards Regulations.”;
- (c) in regulation 26C**(8)** (employment and support allowance) any reference to an employment and support allowance includes any transitional addition to which the beneficiary is entitled under the Existing Awards Regulations;
- (d) in regulation 32(1B)**(9)** (information to be given and changes to be notified)—
 - (i) the word “or” at the end of sub-paragraph (a) were omitted, and
 - (ii) after that sub-paragraph, there were inserted—
 - “(ab) the amount of any transitional addition to which the beneficiary is entitled under the Existing Awards Regulations; or”;
- (e) in Schedule 8A**(10)** (deductions from benefits and direct payment to third parties) in paragraph 1 (interpretation)—
 - (i) in sub-paragraph (1) in the definition of “applicable amount”**(11)**, after “Employment and Support Allowance Regulations;” there were inserted “in the case of an income-related employment and support allowance by virtue of the Existing Awards Regulations it means the aggregate of the amounts for the family as determined under regulation 67(1)(a), (b) and (d) or 68(1)(a) to (c) and (e) of the Employment and Support Allowance Regulations as modified by paragraph 4(f) and (g) of Schedule 2 to the Existing Awards Regulations and”;
 - (ii) in sub-paragraph (2)**(12)** after ““employment and support allowance” means”, there were inserted “(subject to sub-paragraph (3))”, and
 - (iii) after sub-paragraph (2) there were added—
 - “(3) In the application of sub-paragraph (2) to a beneficiary whose award of an employment and support allowance is by virtue of the Existing Awards Regulations, any reference to an employment and support allowance includes any transitional addition to which the beneficiary is entitled under those Regulations.
 - (4) Where a specified benefit awarded to a beneficiary is subject to conversion under the Existing Awards Regulations and—
 - (a) immediately before the effective date of the conversion decision made in relation to the beneficiary, any deduction is being made in accordance with this Schedule from sums payable to the beneficiary by way of the specified benefit; and
 - (b) with effect from that date, the award of specified benefit is converted into an award of an employment and support allowance under the Existing Awards Regulations,

any deduction falling within head (a) shall have effect as a deduction from the employment and support allowance to which the beneficiary is entitled.”;

(8) Regulation 26C was inserted by regulation 13(13) of [S.R. 2008 No. 286](#)

(9) Paragraph (1B) was inserted by regulation 2 of [S.R. 2003 No. 224](#) and substituted by regulation 2 of [S.R. 2003 No. 527](#)

(10) Schedule 8A was inserted by regulation 2(3) of [S.R. 1988 No. 67](#)

(11) The definition of “applicable amount” was amended by regulation 2(26)(a)(i) of [S.R. 1996 No. 354](#) and regulation 13(18)(a)(i) of [S.R. 2008 No. 286](#)

(12) Sub-paragraph (2) was added by regulation 7(a)(ii) of [S.R. 2008 No. 413](#)

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

(f) in Schedule 8C(13) (deductions from benefit in respect of child support maintenance and payment to persons with care)—

(i) in paragraph 1 (interpretation), the existing provision becomes sub-paragraph (1), and

(ii) after that sub-paragraph there were added—

“(2) In the application of this Schedule to a beneficiary whose award of an employment and support allowance is by virtue of the Existing Awards Regulations, any reference to an employment and support allowance includes any transitional addition to which the beneficiary is entitled under those Regulations.

(3) Where a specified benefit awarded to a beneficiary is subject to conversion under the Existing Awards Regulations and—

(a) immediately before the effective date of the conversion decision made in relation to the beneficiary, any deduction is being made in accordance with this Schedule from sums payable to the beneficiary by way of the specified benefit; and

(b) with effect from that date, the award of specified benefit is converted into an award of an employment and support allowance under the Existing Awards Regulations,

any deduction falling within head (a) shall have effect as a deduction from the employment and support allowance to which the beneficiary is entitled.”.

The Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations

6. Regulation 5A(2) of the Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations (Northern Ireland) 2001(14) (earnings factor credits eligibility for pensioners to whom employment and support allowance was payable) is to be read as if—

(a) the word “or” after sub-paragraph (b) were omitted; and

(b) after that sub-paragraph there were inserted—

“(ba) that allowance was an employment and support allowance to which the pensioner was entitled by virtue of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 and either—

(i) long-term incapacity benefit or severe disablement allowance was payable to the pensioner immediately before its conversion into an employment and support allowance in accordance with those Regulations; or

(ii) the condition in sub-paragraph (b) was satisfied; or”.

(13) Schedule 8C was inserted by regulation 2(3) of S.R. 2001 No. 22

(14) S.R. 2001 No. 440; regulation 5A was inserted by regulation 4(5) of S.R. 2010 No. 56