

2015 No. 138

SOCIAL SECURITY

**The Jobseeker's Allowance (Extended Period of Sickness)
(Amendment) Regulations (Northern Ireland) 2015**

Made - - - - - *6th March 2015*

Coming into operation - *30th March 2015*

Approved by resolution of the Assembly on 15th June 2015

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 167D and 171(3) to (5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a), Articles 8(4), 9(4) and 36(2) of the Jobseekers (Northern Ireland) Order 1995(b), Articles 10(1), 11(6) and 74(1) of the Social Security (Northern Ireland) Order 1998(c), and now vested in it(d), sections 24(2) and 25(2) of, and paragraph 1 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007(e).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Jobseeker's Allowance (Extended Period of Sickness) (Amendment) Regulations (Northern Ireland) 2015 and shall come into operation on 30th March 2015.

(2) The Interpretation Act (Northern Ireland) 1954(f) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Jobseeker's Allowance Regulations

2.—(1) The Jobseeker's Allowance Regulations (Northern Ireland) 1996(g) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 14(1) (circumstances in which a person is to be treated as available)—

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- (a) 1992 c. 7; Section 167D was inserted by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)), section 171(5) was amended by paragraph 36 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and Schedule 3 of the Jobseekers (Northern Ireland) Order (S.I. 1995/2705 (N.I. 15))
- (b) S.I. 1995/2705 (N.I. 15); Article 36(2) was amended by paragraph 55 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)
- (c) S.I. 1998/1506 (N.I. 10); Article 74(1) was amended by paragraph 17(2) of Schedule 4 to the Tax Credits Act 2002 (c. 21)
- (d) See Article 8(b) of S.R. 1999 No. 481
- (e) 2007 c. 2 (N.I.); paragraph 2 of Schedule 1 to the Jobseekers (Northern Ireland) Order 1995 provides that questions about whether a person has limited capability for work are to be determined for the purposes of that Order in accordance with Part 1 of the Welfare Reform Act (Northern Ireland) 2007
- (f) 1954 c. 33 (N.I.)
- (g) S.R. 1996 No. 198; relevant amending Regulations are S.R. 1996 No. 358, S.R. 2004 No. 308, S.R. 2008 No. 286, S.R. 2010 No. 347 and S.R. 2011 No. 135

- (a) in sub-paragraph (k)(a) after “regulation 55 (short periods of sickness)” insert “55ZA (extended period of sickness) or 55A (periods of sickness and persons receiving treatment outside Northern Ireland)”; and
- (b) omit sub-paragraph (kk)(b).

(3) In regulation 19(1) (circumstances in which a person is to be treated as actively seeking employment) after sub-paragraph (k)(c) insert—

“(kzk) in any week during which he is treated as capable of work or as not having limited capability for work under regulation 55ZA (extended period of sickness) unless it would be reasonable for him to take steps in that week to seek employment and he has not taken such steps;”.

(4) In regulation 55 (short periods of sickness)—

- (a) in paragraph (1)—
 - (i) for “(4)” substitute “(6)”, and
 - (ii) in sub-paragraph (c)(d) for “but for his disease or disablement, would satisfy” substitute “during the period of his disease or disablement, satisfies”;
- (b) in paragraph (3) for “Paragraphs (1) and (2) shall” substitute “Paragraph (1) does”;
- (c) in paragraph (4)(e) for “Paragraphs (1) to (3) shall” substitute “Paragraph (1) does”;
- (d) in paragraph (5)(f) for “The preceding provisions of this regulation shall” substitute “Paragraph (1) does”; and
- (e) after paragraph (5) add—
 - “(6) Paragraph (1) does not apply to any person—
 - (a) during any period where the person is treated as capable of work or as not having limited capability for work under regulation 55ZA (extended period of sickness); or
 - (b) where the first day in respect of which that person would, apart from this sub-paragraph, have been treated as capable of work or as not having limited capability for work under this regulation falls immediately after the last day on which the person is so treated under regulation 55ZA.”.

(5) After regulation 55 insert—

“Extended period of sickness

55ZA.—(1) This regulation applies to a person who—

- (a) has been awarded a jobseeker’s allowance;
- (b) proves to the satisfaction of the Department that he is unable to work on account of some specific disease or disablement;
- (c) either—
 - (i) declares that he has been unable to work, or expects to be unable to work, on account of that disease or disablement for more than 2 weeks but he does not expect to be unable to work on account of that disease or disablement for more than 13 weeks; or
 - (ii) is not a person to whom regulation 55(1) (short periods of sickness) applies by virtue of paragraph (3) of that regulation;

(a) Sub-paragraph (k) was amended by regulation 19(4)(a) of S.R. 2008 No. 286
 (b) Sub-paragraph (kk) was inserted by regulation 3(2)(a) of S.R. 2004 No. 308 and amended by regulation 19(4)(a) of S.R. 2008 No. 286
 (c) Sub-paragraph (k) was amended by regulation 19(5) of S.R. 2008 No. 286
 (d) Sub-paragraph (c) was amended by regulation 17(3) of S.R. 1996 No. 358 and regulation 19(9)(a)(i) of S.R. 2008 No. 286
 (e) Paragraph (4) was amended by regulation 4(2) of S.R. 2010 No. 347 and regulation 7(2) of S.R. 2011 No. 135
 (f) Paragraph (5) was added by regulation 3(5) of S.R. 2004 No. 308

- (d) during the period of his disease or disablement, satisfies the requirements for entitlement to a jobseeker's allowance other than those specified in Article 3(2)(a), (c) and (f) (availability for and actively seeking employment and capable of work or not having limited capability for work); and
 - (e) has not stated in writing that for the period of his disease or disablement he proposes to claim or has claimed an employment and support allowance.
- (2) The evidence which is required for the purposes of paragraph (1)(b) in a case where paragraph (1)(c)(i) applies is—
- (a) evidence of incapacity for work or limited capability for work in accordance with the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976(a) (which prescribe the form of a doctor's statement or other evidence in each case); and
 - (b) any such additional information as the Department may request.
- (3) The evidence which is required for the purposes of paragraph (1)(b) in a case where paragraph (1)(c)(ii) applies is a declaration made by the person in writing, in a form approved for the purposes by the Department, that the person has been unfit for work from a date or for a period specified in the declaration.
- (4) Subject to the following paragraphs, a person to whom this regulation applies is to be treated as capable of work or as not having limited capability for work for the continuous period beginning on and including the first day on which he is unable to work on account of the disease or disablement ("the first day") and ending on—
- (a) the last such day; or
 - (b) if that period would otherwise exceed 13 weeks, the day which is 13 weeks after the first day.
- (5) This regulation does not apply to a person on more than one occasion in any one period of 12 months starting on and including the first day applying for the purpose of paragraph (4).
- (6) Paragraphs (4) and (5) of regulation 55 apply for the purposes of this regulation as they apply for the purposes of paragraph (1) of regulation 55."

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations

3.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(b) are amended in accordance with paragraphs (2) and (3).

(2) After regulation 3(5H)(c) (revision of decisions) insert—

“(5I) A decision by the Department under Article 9 awarding an employment and support allowance may be revised at any time where—

- (a) it is made immediately following the last day of a period for which the claimant was treated as capable of work or as not having limited capability for work under regulation 55ZA of the Jobseeker's Allowance Regulations (extended period of sickness) and that period lasted 13 weeks; and
- (b) it is not a decision which embodies a determination that the claimant is treated as having limited capability for work under regulation 30 of the Employment and Support Allowance Regulations (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made).”.

(a) S.R. 1976 No. 175

(b) S.R. 1999 No. 162; relevant amending Regulations are S.R. 2008 No. 286, S.R. 2010 No. 200 and S.R. 2011 No. 357

(c) Regulation 3(5H) was inserted by regulation 12(b) of S.R. 2011 No. 357

(3) In regulation 7(37)(a) (date from which a decision superseded under Article 11 takes effect) for “the beginning of the 14th week of entitlement” substitute “the day after the last day of the relevant period as defined in regulation 4(4) of the Employment and Support Allowance Regulations”.

Amendment of the Employment and Support Allowance Regulations

4.—(1) The Employment and Support Allowance Regulations (Northern Ireland) 2008(b) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 4(c) (the end of the assessment phase)—

- (a) in paragraph (1) from “a period of 13 weeks” to the end substitute “the relevant period”;
- (b) in paragraph (3) for “the 13 week period referred to in paragraph (1)” substitute “the relevant period”; and
- (c) after paragraph (3) add—

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

- (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 (extended period of sickness).”.

(3) In regulation 5 (the assessment phase-previous claimants) after paragraph (1)(d) insert—

“(1A) 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 (extended period of sickness),

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

(a) Regulation 7(37) was added by regulation 22(5)(h) of S.R. 2008 No. 286 and amended by regulation 7(4)(a) of S.R. 2010 No. 200

(b) S.R. 2008 No. 280; relevant amending Regulations are S.R. 2013 No. 246

(c) Regulation 4 was amended by regulation 11(3) of S.R. 2013 No. 246

(d) Paragraph (1) was amended by regulation 11(4)(a) of S.R. 2013 No. 246

Revocations

5. Regulation 17(3) of the Social Security and Child Support (Jobseeker's Allowance) (Amendment) Regulations (Northern Ireland) 1996^(a) and regulation 3(2)(a) of the Social Security (Income Support and Jobseeker's Allowance) (Amendment) Regulations (Northern Ireland) 2004^(b) are revoked.

Sealed with the Official Seal of the Department for Social Development on 6th March 2015

(L.S.)

Anne McCleary
A senior officer of the Department for Social Development

(a) S.R. 1996 No. 358
(b) S.R. 2004 No. 308

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Jobseeker's Allowance Regulations (Northern Ireland) 1996 ("the 1996 Regulations"), the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 and the Employment and Support Allowance Regulations (Northern Ireland) 2008 to enable claimants who have been awarded a jobseeker's allowance (JSA) to continue to be entitled to that benefit during an extended period of sickness.

To be entitled to JSA a claimant must normally be actively available and actively seeking work, capable of work or not have limited capability for work (see Article 3 of the Jobseekers (Northern Ireland) Order 1995).

Regulation 2(5) inserts new regulation 55ZA into the 1996 Regulations. It enables a claimant who is unable to work on account of a specific disease or disablement which is expected to last for more than 2 weeks but less than 13 weeks or who may no longer be treated as capable of work under regulation 55 (short periods of sickness), to be treated for a continuous period of no more than 13 weeks in a rolling 12 month period as capable of work or not having limited capability for work if they have notified the Department in writing that they do not intend to claim employment and support allowance (ESA). This is to be known as an extended period of sickness.

Regulation 2(2) amends regulation 14 (circumstances in which a person is to be treated as available) of the 1996 Regulations to enable a claimant who is treated as capable of work or not having limited capability for work under regulation 55ZA to be treated as available for work.

Regulation 2(3) amends regulation 19 (circumstances in which a person is to be treated as actively seeking employment) of the 1996 Regulations to enable such a claimant to be treated as actively seeking employment unless there are steps to seek employment in that week which it would be reasonable for them to take and they have not taken such steps.

Regulation 2(4)(a) to (d) amends regulation 55 (short periods of sickness) of the 1996 Regulations to correct a minor drafting errors. Regulation 2(4)(e) inserts a new paragraph (6), which has the effect of preventing both regulation 55 and 55A applying to a claimant at any one time. It also ensures that a claimant cannot be treated as capable of work or as not having limited capability for work for a continuous period under regulation 55 and then regulation 55A.

Regulation 3 amends the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 to ensure that decisions awarding components of ESA from week 14 of the ESA claim to be revised at any time where the claimant previously had an extended period of sickness lasting 13 weeks. It is also to ensure that the effective date of supersession of ESA decisions made on the basis that a claimant has limited capability for work or work-related activity or both, is the day after the last day of the relevant period as defined by the amendments made by regulation 4.

Regulation 4 amends the Employment and Support Allowance Regulations (Northern Ireland) 2008 to ensure that the 13 week assessment phase when a person is first entitled to ESA is reduced by the number of days previously spent on JSA in an extended period of sickness immediately prior to being entitled to ESA. The amendments also, for the purpose of determining the end of the assessment phase for previous ESA claimants, treat periods on the extended period of sickness as a period of entitlement to ESA.

Regulation 5 makes consequential revocations.

These Regulations make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992 (c. 8), are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.

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STATUTORY RULES OF NORTHERN IRELAND

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(Amendment) Regulations (Northern Ireland) 2015

£6.00

N6710 06/2015 456710T 19585

ISBN 978-0-337-99829-4



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