
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Employment and Support Allowance Regulations (Northern Ireland) 2008 (“the Employment and Support Allowance Regulations”) concerning the circumstances when a claimant is treated as having limited capability for work pending an assessment of limited capability for work and the payment of pending appeal awards in respect of second or consecutive claims. Consequential amendments are also made to related provisions within the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 (“the Claims and Payments Regulations”) and the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 (the Employment and Support Allowance Existing Awards Regulations”).

Regulation 1 contains general provisions.

Regulation 2 sets out to whom these Regulations apply. The amendments apply to a person who falls within paragraph (2) of that regulation. Paragraph (2) provides that a person falls within that paragraph where they make, or are treated as making, a claim after these Regulations come into operation, or have made and are pursuing an appeal against a decision that was made in respect of a claim made, or treated as made, after these Regulations come into operation.

Regulation 3 amends 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). First, it extends the period which prevents a claimant who is making a new claim for an employment and support allowance (“ESA”) from being treated as having limited capability for work pending a work capability assessment where their last work capability assessment outcome (if indeed there was one) was that they did not have limited capability for work (they have been found fit for work). Second, for claimants who have been treated as not having limited capability for work following a failure to return information or attend for or submit to a medical examination the current rules remain the same (they are prevented from being treated as having limited capability for work pending a work capability assessment where within 6 months preceding the date of claim they have been treated as not having limited capability for work for a failure to return information or attend for or submit to a medical examination). On a second or consecutive claim, a claimant would still be treated as having limited capability for work pending an assessment of limited capability for work where since the last determination, the claimant is suffering from a new condition or their pre-existing condition has significantly worsened.

Regulation 4 makes consequential amendments to regulation 3 of the Claims and Payments Regulations (claims not required for entitlement to benefit in certain cases). It amends the circumstances in which claims are not required for an award of ESA and limits that to circumstances where a claimant is pursuing an appeal against the first decision that embodies a determination that they do not have limited capability for work, or the first decision following a period of limited capability for work.

Regulation 5 amends the Employment and Support Allowance Existing Awards Regulations in so far as those Regulations make modifications to the Employment and Support Allowance Regulations. These amendments are necessary to ensure that the modifications set out in the Employment and Support Allowance Existing Awards Regulations continue to work effectively in light of the amendments which are being made to the Employment and Support Allowance Regulations by regulation 3.

Regulation 6 makes consequential revocations.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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, are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.