

**2016 No. 175**

**HOUSING**

**RATES**

**SOCIAL SECURITY**

**The Employment and Support Allowance (Duration of  
Contributory Allowance) (Consequential Amendments)  
Regulations (Northern Ireland) 2016**

<i>Made</i> - - - -	<i>17th March 2016</i>
<i>Laid before Parliament</i>	<i>22nd March 2016</i>
<i>Coming into operation</i> -	<i>28th November 2016</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 22(5), 121(1), 122(1)(a) and (d), 123(1)(d), 131(1), 133(1) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a), Articles 6(5) and 36(2) of the Jobseekers (Northern Ireland) Order 1995(b), Articles 2(2), 10(1)(a) and 74(1) and (3) of the Social Security (Northern Ireland) Order 1998(c), and sections 2(3)(b), 17(1) and 19(1) to (3) of the State Pension Credit Act (Northern Ireland) 2002(d) and sections 2(4)(a), 4(2)(a), 6(a), 24(1), 25(2) and 28(2) of, and paragraph 2 of Schedule 2 and paragraphs 1(1) and 7(1) and 2(f) of Schedule 4 to, the Welfare Reform Act (Northern Ireland) 2007(e).

These powers are exercisable by virtue of Article 4(1)(b) of the Welfare Reform (Northern Ireland) Order 2015(f).

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- (a) 1992 c. 7; section 22(5) was amended by paragraph 5 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)) and paragraph 3(3)(b) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 (c.2 (N.I.)). Sections 121(1) and 133(1) are cited for the meaning they give to 'prescribed'. Section 123(1)(d) was substituted by paragraph 13(4) of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995. Section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21).
- (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.R. 1999 No. 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). Article 2(2) is cited for the meaning given to 'prescribed'. These powers were vested in the Department for Social Development by Article 8(b) of S.R. 1999 No. 481.
- (d) 2002 c. 14 (N.I.). Section 17(1) cited for the meaning of 'prescribed'.
- (e) 2007 c. 2 (N.I.); Section 24(1) cited for the meaning given to 'prescribed'; paragraph 7(2)(f) of Schedule 4 was inserted by Article 57(4) of the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1))
- (f) S.I. 2015/2006 (N.I. 1)

## **Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Duration of Contributory Allowance) (Consequential Amendments) Regulations (Northern Ireland) 2016 and shall come into operation on 28th November 2016.

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

## **Amendment of the Social Security (Credits) Regulations**

2. After regulation 8B(2)(a)(iv) of the Social Security (Credits) Regulations (Northern Ireland) 1975(b) (credits for incapacity for work or limited capability for work) insert—

“(iva) would have been a day of limited capability for work for the purposes of Part 1 of the Welfare Reform Act where the person concerned would have been entitled to an employment and support allowance but for the application of section 1A of that Act (duration of contributory allowance)(c); or”.

## **Amendment of the Income Support Regulations**

3.—(1) The Income Support (General) Regulations (Northern Ireland) 1987(d) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 13(3)(b)(iv)(e) (circumstances in which persons in relevant education are to be entitled to income support) after “support component” insert “or who would be entitled to an employment and support allowance including a work-related activity component but for the application of section 1A of the Welfare Reform Act (duration of contributory allowance)”.

(3) For paragraph 1(3)(d) of Schedule 3(f) (housing costs) substitute—

“(d) who—

- (i) is in receipt of an employment and support allowance which includes an amount under section 2(2) or (3) or 4(4) or (5) of the Welfare Reform Act (components), or
- (ii) would be entitled to an employment and support allowance including an amount of a work-related activity component under section 2(3) of that Act (amount of contributory allowance: work-related activity component), but for the application of section 1A of that Act (duration of contributory allowance).”.

## **Amendment of the Jobseeker’s Allowance Regulations**

4. For paragraph 1(3)(e) of Schedule 2 to the Jobseeker’s Allowance Regulations (Northern Ireland) 1996(g) (housing costs) substitute—

“(e) who—

- (i) is in receipt of an employment and support allowance which includes an amount under section 2(2) or (3) or 4(4) or (5) of the Welfare Reform Act (components), or

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(a) 1954 c. 33 (N.I.).

(b) S.R. 1975 No. 113. Regulation 8B was inserted by regulation 2(6) of S.R. 1996 No. 430 and paragraph 2(a) was substituted by regulation (2)(2)(a) of S.R. 2010 No. 109.

(c) Section 1A was inserted by Article 57(1) of the Welfare Reform (Northern Ireland) Order 2015.

(d) S.R. 1987 No. 459; relevant amending Regulations are S.R. 1995 No. 301, S.R. 2012 No. 121, S.R. 2008 No. 286.

(e) Regulation 13(3)(b)(iv) was added by regulation 12(b) of S.R. 2012 No. 121.

(f) Schedule 3 was substituted by regulation 2 of, and Schedule 1 to, S.R. 1995 No. 301. Paragraph 1(3)(d) was added by regulation 12(11)(a)(i) of S.R. 2008 No. 286.

(g) S.R. 1996 No. 198. Paragraph 1(3)(e) of Schedule 2 was added by regulation 19(25)(a)(i)(bb) of S.R. 2008 No. 286.

- (ii) would be entitled to an employment and support allowance including an amount of a work-related activity component under section 2(3) of that Act (amount of contributory allowance: work-related activity component), but for the application of section 1A of that Act (duration of contributory allowance).”.

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

**5.** After regulation 3(5I) of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(a) (revision of decisions) insert—

“(5J) Where—

- (a) a decision to terminate a person’s entitlement to a contributory employment and support allowance is made because of section 1A of the Welfare Reform Act (duration of contributory allowance); and
- (b) it is subsequently determined, in relation to the period of entitlement before that decision, that the person had or is treated as having had limited capability for work-related activity,

the decision to terminate that entitlement may be revised.”.

#### **Amendment of the State Pension Credit Regulations**

**6.** In paragraph 1(2)(b)(iv) of Schedule 2 to the State Pension Credit Regulations (Northern Ireland) 2003(b) (housing costs) after “(components)” insert “or would be entitled to an employment and support allowance including an amount of a work-related activity component under section 2(3) of that Act (amount of contributory allowance: work-related activity component), but for the application of section 1A of that Act (duration of contributory allowance)”.

#### **Amendment of the Housing Benefit Regulations**

**7.—(1)** In Schedule 4 to the Housing Benefit Regulations (Northern Ireland) 2006(c) (applicable amounts) after “converted employment and support allowance” where it appears in the paragraphs mentioned in paragraph (2), insert “, or would be entitled but for the application of section 1A of the Welfare Reform Act (duration of contributory allowance)”.

(2) The paragraphs are—

- (a) 1A(b)(d) (personal allowances);
- (b) 21A(e) (the components); and
- (c) 27(1)(a)(f) (transitional addition).

#### **Amendment of the Employment and Support Allowance Regulations**

**8.—(1)** The Employment and Support Allowance Regulations (Northern Ireland) 2008(g) are amended in accordance with paragraphs (2) to (4).

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(a) S.R. 1999 No. 162; paragraph (5H) was inserted, with paragraph (5G), by regulation 12(b) of S.R. 2011 No. 357. Paragraph (5I) was inserted by regulation 3 of S.R. 2015/138.  
(b) S.R. 2003 No. 28; paragraph 1(2)(b)(iv) was added by regulation 30(8)(a)(i) of S.R. 2008 No. 286.  
(c) S.R. 2006 No. 405.  
(d) Paragraph 1A was substituted by paragraph 1(5)(a) of Schedule 4 to S.R. 2010 No. 312.  
(e) Paragraph 21A was inserted by paragraph 1(5)(b) of Schedule 4 to S.R. 2010 No. 312.  
(f) Paragraph 27(1)(a) was added by paragraph 1(5)(c) of Schedule 4 to S.R. 2010 No. 312.  
(g) S.R. 2008 No. 280; relevant amending Regulations are S.R. 2008 Nos.413 and 478; S.R. 2010 Nos. 200 and 312 and S.R. 2012 No. 160.

(2) After regulation 7(1)(c)(a) (circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work-related activity component arises does not apply) add—

“; or

(d) the claimant is entitled to an employment and support allowance by virtue of section 1B of the Act(b)(further entitlement after time-limiting).”.

(3) In regulation 144(c) (waiting days) after paragraph 2(d)(d) add—

“; or

(e) the claimant is entitled to an employment and support allowance by virtue of section 1B of the Act (further entitlement after time-limiting).”.

(4) For paragraph 1(3)(a) of Schedule 6 (housing costs) substitute—

“(a) (i) in respect of whom the main phase employment and support allowance is payable to the claimant or to a person living with the claimant; or

(ii) where they are the claimant or a person living with the claimant, in respect of whom there would be entitlement to an employment and support allowance including a work-related activity component under section 2(3) of the Act (amount of contributory allowance: work-related activity component), but for the application of section 1A of the Act (duration of contributory allowance);”

#### **Amendment of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations**

**9.**—(1) The Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010(e) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 7(qualifying for conversion)—

(a) in paragraph (1) for “paragraph (2)” substitute “paragraphs (2) and (3)”; and

(b) after paragraph (2) add—

“(3) Where P would be entitled to an award of an employment and support allowance under the Act but for the application of section 1A of that Act (duration of contributory allowance) and it had been determined in respect of the entitlement that had ceased that P—

(a) had limited capability for work; or

(b) was to be treated as having limited capability for work, other than by virtue of regulation 30 of the Employment and Support Allowance Regulations,

in relation to the conversion of P’s existing award, P is to be taken as having satisfied the condition set out in section 1(3)(a) of the Act (limited capability for work).”.

(3) In regulation 21 (termination of transitional addition)—

(a) in paragraph 1(b) after “(3)” insert “, (3A)”; and

(b) after paragraph (3) insert—

“(3A) Any termination of T’s entitlement to a transitional addition under regulation 10(2)(a) (transitional addition: incapacity benefit or severe disablement allowance) shall instead have effect as a suspension of that entitlement in Case 1A.”;

(c) after paragraph (5) insert—

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(a) Regulation 7 was amended by regulation 12 of S.R. 2008 No. 478; regulation 9(6)(a) of S.R. 2010 No. 200 and regulation 2(3) of S. R. 2012 No. 160.

(b) Section 1B was inserted by Article 58(1) of the Welfare Reform (Northern Ireland) Order 2015.

(c) Regulation 144 was amended by regulation 3(25) of S.R. 2008 No. 413 and regulation 25(3) of S.R. 2010 No. 312.

(d) Paragraph 2(d) was added by regulation 3(25)(c) of S.R. 2008 No. 413.

(e) S.R. 2010 No. 312; relevant amending Regulation is S.R. 2010 No. 347.

“(5A) Case 1A is where—

- (a) T was previously entitled to a contributory allowance;
- (b) entitlement to that previous allowance terminated by virtue of section 1A of the Act (duration of contributory allowance);
- (c) on a subsequent claim made by T for an employment and support allowance, a period of limited capability for work is treated under regulation 145(1) of the Employment and Support Allowance Regulations (linking rules) as a continuation of an earlier period of limited capability for work; and
- (d) it is determined in relation to the subsequent claim that T has, or is treated as having, limited capability for work-related activity.”; and

(d) in paragraph (7) after “Cases 1” insert “, 1A”.

(4) In Schedule 2 (modification of statutory provisions: after the conversion phase) after paragraph 1(b)(a) insert—

“(ba) (i) in relation to awards of an employment and support allowance to persons previously entitled to existing awards, the application of section 1A (duration of contributory allowance) is modified in accordance with paragraph (ii),

(ii) section 1A is to be read as if there were substituted—

“**1A.**—(1) The period for which a person is entitled to a contributory allowance shall not exceed, in the aggregate, the relevant maximum number of days in any period for which his entitlement is established by virtue of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010.

(2) In subsection (1) the “relevant maximum number of days” is—

- (a) 365 days, or
- (b) if the Department by order specifies a greater number of days, that number of days.

(3) The fact that a person’s entitlement to a contributory allowance has ceased as a result of subsection (1) does not prevent his being entitled to a further allowance if he satisfies the first and second conditions set out in Part 1 of Schedule 1.

(4) In calculating for the purposes of subsection (1) the length of the period for which a person is entitled to a contributory allowance, the following are not to be counted—

- (a) days in which the person is a member of the support group, and
- (b) days not falling within paragraph (a) in respect of which the person is entitled to the support component referred to in section 2(1)(b) (amount of contributory allowance).

(5) In calculating for the purposes of subsection (1) the length of the period for which a person is entitled to a contributory allowance, days occurring before the coming into operation of this section are to be counted (as well as those occurring afterwards).”.

Signed by authority of the Secretary of State for Work and Pensions

17th March 2016

*Priti Patel*  
Minister of State,  
Department for Work and Pensions

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(a) Paragraph 1(b) was amended by regulation 2(14)(a) of S.R. 2010 No. 347.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make a number of amendments to social security legislation consequential on sections 1A and 1B of the Welfare Reform Act (Northern Ireland) 2007 (“the Act”). Those sections are inserted by Articles 57 and 58 of the Welfare Reform (Northern Ireland) Order 2015, respectively. Section 1A provides for the time-limiting of an award of contributory employment and support allowance (“ESA”) to 365 days (except where the claimant is in the support group). Section 1B provides for further entitlement to contributory ESA where a claimant’s entitlement to contributory ESA has ended as a result of section 1A, they satisfy the basic conditions of entitlement to ESA (contained in section 1(3) of the Act) and they have (or are treated as having) limited capability for work-related activity (i.e. they are in the support group).

Regulation 2 amends the Social Security (Credits) Regulations (Northern Ireland) 1975 to add a new ground by which entitlement to national insurance credits on the grounds of limited capability for work is established, so as to include where a person would have been entitled to an award of contributory ESA but for the application of section 1A of the Act.

Regulation 3(2) amends the definition of “chronically sick or mentally or physically disabled” in regulation 13 of the Income Support (General) Regulations (Northern Ireland) 1987 (“the Income Support Regulations”) so as to include a person who would be entitled to an award of contributory ESA but for the application of section 1A of the Act. (Under regulation 13 there is entitlement to income support for certain full-time students whose parents – or person acting in their place – are chronically sick or mentally or physically disabled).

Regulation 3(3) amends the definition of “disabled person” in Schedule 3 to the Income Support Regulations so as to include a person who would be entitled to an award of contributory ESA but for the application of section 1A of the Act. (Under Schedule 3, particular housing costs rules apply to loans taken out for accommodation which is more suitable for the needs of a disabled person). Similar changes are made in relation to jobseeker’s allowance, state pension credit and employment and support allowance by regulations 4, 6 and 8(4) of these Regulations respectively.

Regulation 5 amends the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 to insert a new paragraph (5J) into regulation 3 of those Regulations. Regulation 3(5J) enables the Department to revise a decision terminating a person’s entitlement to an award of contributory ESA under section 1A of the Act where it is subsequently determined, in relation to the period of entitlement before that decision, that the person had or is treated as having had limited capability for work-related activity.

Regulation 7 amends the Housing Benefit Regulations (Northern Ireland) 2006 so as to provide that in relation to the determination of the applicable amount for that benefit, entitlement to an award of contributory ESA that would have existed but for the effect of time-limiting is also taken into account.

Regulation 8 amends the Employment and Support Allowance Regulations (Northern Ireland) 2008 so that where a claimant becomes entitled to a further award of ESA by virtue of section 1B of the Act (i) they are entitled to the support component of an ESA award without the assessment phase having to end first (paragraph (2)) and (ii) they do not have to serve 3 ‘waiting days’ at the beginning of the period of limited capability for work (paragraph (3)).

Regulation 9 makes amendments to the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 (“the Reassessment Regulations”). Paragraph (2) amends regulation 7 of those Regulations to provide that an existing award (i.e. of incapacity benefit, severe disablement allowance or income support on the grounds of incapacity) qualifies for conversion into an award of ESA where (i) a person entitled to that existing award had also been entitled to an award of ESA not by virtue of the Reassessment Regulations (i.e. if the person had claimed ESA whilst appealing a negative outcome of a personal capability assessment) and (ii) that award of ESA had ended because of the application of section 1A of the Act. In such a case the person is treated as having satisfied the

condition of entitlement to ESA of having a limited capability for work so does not have to go through any further assessment for the purpose of conversion.

Paragraph (3) amends regulation 21 of the Reassessment Regulations by providing for a new case where the termination of a transitional addition (by virtue of the termination of an award of ESA because of the application of section 1A of the Act) has effect as a suspension instead. This means that re-entitlement to a transitional addition will only arise where (i) there has been a subsequent claim made by a person within the 12 week linking period starting with the ending of the previous period of limited capability for work and (ii) it is determined in relation to the subsequent claim that the person has or is treated as having limited capability for work-related activity.

Paragraph (4) modifies the application of section 1A of the Act in relation to awards of ESA made to persons previously entitled to existing awards. In such cases, a person in receipt of an existing award of incapacity benefit or severe disablement allowance does not have to satisfy the contribution conditions in order to qualify for a contributory allowance. Accordingly the maximum period of entitlement is to be determined by reference to days of entitlement arising under the Reassessment Regulations, rather than by virtue of satisfying the contribution conditions. Modified section 1A(3) provides that, in order to be entitled to a further contributory allowance after the 365 day period has elapsed, that person will have to satisfy the first and second conditions for contributory ESA as set out in paragraphs 1 and 2 of Schedule 1 to the Act.

An assessment of the impact of this instrument has been carried out. Copies of the impact assessment may be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D Caxton House, Tothill Street, London SW1 9NA. It is also available alongside this instrument and the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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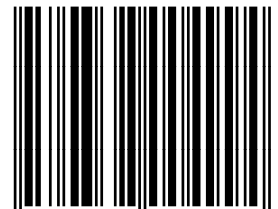
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