

2016 No. 176

HOUSING

RATES

SOCIAL SECURITY

The Employment and Support Allowance (Amendment of Linking Rules) Regulations (Northern Ireland) 2016

Made - - - - - *17th March 2016*

Laid before Parliament *22nd March 2016*

Coming into operation in accordance with regulation 1(2)

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 122(1)(d) 131(1) and 133(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and Article 10(1)(a) and 39(2) of the Social Security (Northern Ireland) Order 1998(b), and sections 2(4), 4(2)(a) and (6), 24(1) and (2)(b) and 28(2) and paragraphs 1, 4 and 9 of Schedule 2 and paragraphs 1(1), and 7(1) and 8 of Schedule 4 to, the Welfare Reform Act (Northern Ireland) 2007(c).

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

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Amendment of Linking Rules) Regulations (Northern Ireland) 2016.

(2) These Regulations come into operation on 28th November 2016 immediately after the commencement of the Employment and Support Allowance (Duration of Contributory Allowance) (Consequential Amendments) Regulations (Northern Ireland) 2016(e.)

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

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- (a) 1992 c. 7. Section 133(1) cited for the meaning given to 'prescribed'.
(b) S.I. 1998/1506 (N.I. 10). Those powers are vested in the Department for Social Development by virtue of Article 8(b) of S.R. 1999 No. 481.
(c) 2007 c. 2 (N.I.). Section 24(1) cited for the meaning given to 'prescribed'.
(d) S.I. 2015/2006 (N.I. 1).
(e) S.R. 2016 No. XXX.
(f) 1954 c. 33 (N.I.).

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

2. In regulation 3(5F)(h) of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(a) (revision of decisions) omit “and (2)”.

Amendment of the Housing Benefit Regulations

3. In Schedule 4 to the Housing Benefit Regulations (Northern Ireland) 2006(b) (applicable amounts)—

- (a) in paragraph 28(1)(b) for “104” substitute “12”;
- (b) insert “and” at the end of paragraph 28(1)(c);
- (c) omit paragraph 28(1)(d); and
- (d) for paragraph 29(1)(c) substitute—

“(c) at the date on which the relevant person again becomes entitled to an employment and support allowance which is not income-related, regulation 145(1) of the Employment and Support Allowance Regulations applies to the relevant person; and”.

Amendment of the Employment and Support Allowance Regulations

4.—(1) The Employment and Support Allowance Regulations (Northern Ireland) 2008(c) are amended in accordance with paragraphs (2) to (7).

(2) In regulation 2(1) (interpretation) omit the definition of “work or training beneficiary”.

(3) In regulation 5(2)(d) (the assessment phase – previous claimants)—

- (a) in sub-paragraph (a)(i) omit “or (2)”;
- (b) omit sub-paragraph (b)(e); and
- (c) in sub-paragraphs (c)(i) and (d)(i)(f) omit “or (2)”.

(4) In regulation 7(1A)(g) (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) omit “or (2)”.

(5) In regulation 145 (linking rules) omit paragraphs (2) to (5).

(6) Omit regulations—

- (a) 148(h) (work or training beneficiaries);
- (b) 149(i) (linking rules – limited capability for work); and
- (c) 150(j) (linking rules – limited capability for work-related activity).

(7) After paragraph 1(3) of Schedule 6(k) (housing costs) insert—

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- (a) S.R. 1999 No. 162. Paragraph (5F) was inserted by regulation 7(2) of S.R. 2010 No. 200.
 - (b) S.R. 2006 No. 405. Paragraphs 28 and 29 of Schedule 4 were added along with paragraphs 27, 30 and 31, by paragraph 1(5)(c) of Schedule 4 to S.R. 2010 No. 312.
 - (c) S.R. 2008 No. 280; relevant amending Regulations are S.R. 2008 No. 478, S.R. 2010 Nos. 200 and 347, S.R. 2011 Nos. 135 and 357, S.R. 2012 No. 160 and S.R. 2016 No. XXX.
 - (d) Regulation 5(2) was amended by regulation 9(4) of S.R. 2010 No. 200 and regulation 2(2) of S.R. 2012 No. 160.
 - (e) Sub-paragraph (b) was amended by regulation 9(4)(b)(iv) and (v) of S.R. 2010 No. 200.
 - (f) Sub-paragraphs (c) and (d) were inserted by regulation 2(2) of S.R. 2012 No. 160.
 - (g) Regulation 7(1A) was inserted by regulation 2(3)(b) of S.R. 2012 No. 160.
 - (h) Regulation 148 was substituted in relation to certain cases by regulation 6(2) of S.R. 2010 No. 347 and amended by regulation 21(12) S.R. 2011 No. 357.
 - (i) Regulation 149 was substituted in relation to certain cases by regulation 6(3) of S.R. 2010 No. 347 and amended by regulation 14(8) of S.R. 2011 No. 135.
 - (j) Regulation 150 was substituted in relation to certain cases by regulation 6(5) of S.R. 2010 No. 347 and amended by regulation 14(9) of S.R. 2011 No. 135.
 - (k) Paragraph 1(3)(a) was substituted by regulation 8(4) of S.R. 2016 No. XXX.

“(3A) For the purposes of this Schedule a claimant is a “work or training beneficiary” on any day in a linking term where the claimant—

- (a) had limited capability for work—
 - (i) for more than 13 weeks in the most recent past period of limited capability for work, or
 - (ii) for 13 weeks or less in the most recent past period of limited capability for work where the claimant became entitled to an award of an employment and support allowance by virtue of a conversion decision which took effect from the commencement of the most recent past period of limited capability for work;
- (b) ceased to be entitled to an allowance or advantage at the end of that most recent past period of limited capability for work; and
- (c) became engaged in work or training within one month of so ceasing to be entitled.

(3B) A claimant is not a work or training beneficiary if—

- (a) the most recent past period of limited capability for work was ended by a determination that the claimant did not have limited capability for work; and
- (b) that determination was on the basis of a limited capability for work assessment.

(3C) In sub-paragraphs (3A) and (3B)—

“allowance or advantage” means any allowance or advantage under the Act or the Contributions and Benefits Act for which entitlement is dependent on limited capability for work;

“conversion decision” has the meaning given in regulation 5(2)(a) of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010(a);

“linking term” means a period of 104 weeks from the first day immediately following the last day in a period of limited capability for work;

“most recent past period of limited capability for work” means the period of limited capability for work which most recently precedes the period in respect of which the current claim is made, including any period of which that previous period is treated as a continuation by virtue of regulation 145(1) (linking rules); and

“work” means work other than work under regulation 45 (exempt work), for which payment is made or which is done in expectation of payment.”.

Amendment of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations(Northern Ireland) 2010

5. In regulation 21(5) of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010(b) (termination of transitional addition)—

- (a) in sub-paragraph (a) omit “or (2)”; and
- (b) in sub-paragraph (c)(c) omit “in a case to which regulation 145(1) of the Employment and Support Allowance Regulations applies (12 week linking rule).”.

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

Priti Patel
Minister of State,

Department for Work and Pensions

17th March 2016

(a) S.R. 2010 No. 312.

(b) Paragraph (5) was substituted by regulation 2(11)(c) of S.R. 2010 No. 347.

(c) Sub-paragraph (c) was substituted by regulation 3 of S.R. 2012 No. 160.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend a number of provisions relating to entitlement to employment and support allowance (“ESA”).

They make amendments which relate to, or are consequential upon, the revocation of the linking rule in regulation 145(2) (“the old linking rule”) of the Employment and Support Allowance Regulations (Northern Ireland) 2008 (“the Employment and Support Allowance Regulations”). That rule had provided that where a claimant was a work or training beneficiary, any period of limited capability for work which was separated from another such period by not more than 104 weeks was to be treated as a continuation of the earlier period.

Regulation 2 amends the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 by removing the reference to the old linking rule from regulation 3(5F). As amended, this provision enables the Department to revise a decision where (i) a person’s current period of limited capability for work is treated as a continuation of another such period under the linking rule in regulation 145(1) of the Employment and Support Allowance Regulations and (ii) regulation 7(1)(b) of the Employment and Support Allowance Regulations applies.

Regulation 3 amends Schedule 4 to the Housing Benefit Regulations (Northern Ireland) 2006 to make consequential amendments removing references to the old linking rule.

Regulation 4 amends the Employment and Support Allowance Regulations.

Paragraph (2) omits the definition of “work or training beneficiary” from regulation 2(1).

Paragraph (3) removes the references to and makes an amendment consequential upon the removal of the old linking rule, from regulation 5(2).

Paragraph (4) removes the reference to the old linking rule from regulation 7(1A).

Paragraph (5) revokes the old linking rule along with the associated linking rules in regulation 145(2) to (5).

Paragraph (6) revokes regulations 148, 149 and 150. Regulation 148 defines “work or training beneficiary” and regulations 149 and 150 provide for the treatment of work or training beneficiaries as having limited capability for work or limited capability for work-related activity respectively.

Paragraph (7) inserts a definition of “work or training beneficiary” into paragraph 1(3) of Schedule 6 as a definition of that term is still necessary for the purposes of that Schedule (which relates to housing costs).

Regulation 5 amends the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 to remove the reference to and make an amendment consequential upon the removal of the old linking rule from regulation 21(5). Regulation 21 provides for the circumstances in which a transitional addition is terminated. A transitional addition is based on the difference between specified elements of a person’s existing award (of incapacity benefit, severe disablement allowance or income support on disability grounds) and specified elements of the ESA for which a claimant is entitled following their reassessment.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sector is foreseen.

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