STATUTORY RULES OF NORTHERN IRELAND

2016 No. 219

The Employment and Support Allowance Regulations (Northern Ireland) 2016

PART 2

THE ASSESSMENT PHASE

The assessment phase – previous claimants

6.—(1) Where the circumstances in paragraph (3) apply in relation to a claimant the assessment phase—

(a) begins on the first day of the period for which the claimant was previously entitled to an employment and support allowance; and

(b) subject to paragraphs (4), (5) and (6), ends on the day when the sum of the period for which the claimant was previously entitled to an employment and support allowance and the period for which the claimant is currently entitled to such an allowance is 13 weeks.

(2) 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 (Northern Ireland) 1996 or regulation 46 of the Jobseeker's Allowance Regulations,

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

(3) The circumstances are that—

(a) (i) the claimant's current period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 86,

(ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work,

(iii) the assessment phase had not ended in the previous period for which the claimant was entitled to an employment and support allowance, and

(iv) the period for which the claimant was previously entitled was no more than 13 weeks;

(b) (i) the claimant's current period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 86,

(ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work,

(iii) the previous period of limited capability for work was terminated by virtue of a determination that the claimant did not have limited capability for work,

(iv) the period for which the claimant was previously entitled was no more than 13 weeks, and

(v) a determination is made in relation to the current period of limited capability for work that the claimant has or is treated as having limited capability for work, other than under regulation 26; or

(c) (i) the claimants' current period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 86,

(ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work,

(iii) in relation to the previous award of an employment and support allowance, a determination was made that the claimant had limited capability for work or was treated as having limited capability for work, other than under regulation 26, and

(iv) the period for which the claimant was previously entitled was no more than 13 weeks.

(4) Where paragraph (5) applies, the assessment phase is to end when it is determined whether the claimant has limited capability for work.

(5) This paragraph applies where, on the day referred to in paragraph (1)(b)—

(a) the claimant has not been assessed in accordance with a limited capability for work assessment; and

(b) the claimant has not been treated as having limited capability for work in accordance with regulation 16, 21, 22 or 25.

(6) Where a person has made and is pursuing an appeal against a decision of the Department that embodies a determination that the claimant does not have limited capability for work—

(a) paragraphs (4) and (5) do not apply; and

(b) paragraph (1) does not apply to any period of limited capability for work to which regulation 87(2) applies until a determination of limited capability for work has been made following the determination of the appeal by the appeal tribunal.