

*These notes refer to the Welfare Reform Act (Northern Ireland)
2007 (c.2) which received Royal Assent on 27 June 2007*

Welfare Reform Act (Northern Ireland) 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 1: Employment and support allowance

Miscellaneous

Section 17: Income and capital: general

Section 17 enables the Department to set out in regulations how the income and capital of a claimant (and his partner) is to be calculated for the purpose of determining whether a claimant is entitled to an employment and support allowance and, if so, how much is to be payable. Regulations under this section will be based on the existing provisions for the purposes of income-related benefits.

Subsections (1) and (2) provide regulation-making powers to prescribe how income and capital will be assessed. It is intended that the regulations will provide that income may be averaged. In averaging income for fluctuating earnings, for example, the Department may take an average for a past period and a current period and apply it to a future period, as occurs in connection with income support.

Subsection (3) provides a power to make regulations prescribing that a person is to be treated as having, or not having, certain income or capital. It also enables regulations to provide for income to be treated as capital, or vice versa. In particular, regulations could make provision about how capital holdings would be taken into account in relation to an employment and support allowance. The intention is that a rate of return of £1 per week for every £250 will be applied to capital in excess of £6,000 and below the upper capital limit of £16,000. In the case of persons in residential care and nursing homes this range will be between £10,000 and £16,000. Capital below this amount will not be treated as giving rise to income which is to be taken into account in the assessment. Certain types of actual income from capital will be relevant to the assessment. These are expected to be limited to income from boarders and sub-tenants in the person's own home and income from certain trusts. There will be different provision as to disregarding different types of income which is expected to follow the existing provision for income support.

It is also intended that existing provisions for income support concerning unacceptable deprivation of income or capital will be applied to an employment and support allowance.

Section 18: Disqualification

Section 18 provides that in certain circumstances, similar to those in section 167E of the Contributions and Benefits Act, a person can be disqualified from receiving an employment and support allowance for a period of up to six weeks. This may be because a person is limited in his capability for work because of his own misconduct, because he remains a person who has limited capability for work through failure, without good cause, to follow medical advice, or because he fails, without good cause, to observe specified rules of behaviour. Regulations will specify the circumstances and the matters which are to be taken into account when making such a decision, including the considerations to be taken into account in deciding whether or not the person concerned had good cause for the failure.

Subsection (4) provides that unless regulations specify otherwise, a person shall be disqualified for receiving contributory employment and support allowance for any period where he is undergoing imprisonment or detention in legal custody, or is absent from Northern Ireland. This is similar to section 113(1) of the Contributions and Benefits Act which currently applies to incapacity benefit and will allow such a person to continue to be entitled to employment and support allowance whilst disqualified from payment. This is because once the period of disqualification has ended it is intended that awards will be resumed where it is appropriate to do so without the need to re-claim.

Section 19: Pilot schemes

Section 19 provides for pilot schemes having effect for a specified period not exceeding 24 months and *subsection (7)* provides that one pilot scheme can be replaced by another pilot scheme which is the same or similar.

Pilot schemes can apply to any regulations under the Administration Act which relate to the employment and support allowance as well as to any regulations under this Part of the Act, apart from regulations under:

Section 3 - deductions from contributory allowance;

Section 8 - limited capability for work; and

Section 9 - limited capability for work-related activity.

It is intended to roll out full conditionality linked to participation in work-related activity as resources allow. It is envisaged that in time pilot schemes may operate to explore different variations of the conditionality regime in order to understand what works best to help employment and support allowance claimants to return to work.

Subsection (3) provides that pilot schemes may only be put in place for the purpose of ascertaining whether their provisions will facilitate or encourage claimants to obtain or remain in work. *Subsection (5)* provides that a pilot scheme may apply to different geographical areas, types of claimant or persons selected to meet certain criteria.

Section 20: Relationship with statutory payments

Section 20 provides for the interaction of an employment and support allowance with statutory payments paid by employers, namely statutory sick pay, statutory maternity pay, statutory adoption pay and additional statutory paternity pay.

Subsection (1) provides that a person is not entitled to an employment and support allowance at the same time as statutory sick pay.

Subsection (2) provides that a contributory employment and support allowance is not payable at the same time as statutory maternity pay, except as regulations may provide.

Subsections (4) and (6) make similar provision in the case of statutory adoption pay and additional statutory paternity pay.

Subsections (3), (5) and (7) contain regulation-making powers to provide for the circumstances in which statutory maternity pay, statutory adoption pay and additional statutory paternity pay respectively may be paid at the same time as a contributory employment and support allowance.

Section 21: Deemed entitlement for other purposes

Where specified legislation leads to a loss of entitlement *section 21* enables regulations to be made so that a person can be treated as still entitled to employment and support allowance in order to retain his rights and obligations. This is similar to provisions which currently apply to incapacity benefit.

Section 23: Recovery of sums in respect of maintenance

Section 23 provides the Department with powers to make regulations so that payments can be recovered from a person who should be paying maintenance to his spouse or civil partner but is not doing so when the spouse or civil partner is receiving income-related employment and support allowance. These payments may be made to the Department. Similar provisions relate to income support (section 101 of the Administration Act) and income-based jobseeker's allowance (Article 25 of the Jobseekers Order).

Subsection (3) states that the regulations under *subsection (1)* may make provision about matters relevant to the determining of an application for such an order, the enforcement of such orders, and the rights of the Department in respect of such orders.