
STATUTORY RULES OF NORTHERN IRELAND

2010 No. 312

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

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 and come into operation on 1st October 2010 except for regulations 24 and 25(3) which come into operation on 31st January 2011.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Welfare Reform Act (Northern Ireland) 2007;

“benefit week” has the same meaning as in the Employment and Support Regulations;

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(1);

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“contributory allowance” means an employment and support allowance to which a person is entitled by virtue of these Regulations which was based on an award of incapacity benefit or severe disablement allowance to which the person was entitled;

“conversion decision”, in relation to a notified person, has the meaning given in regulation 5(2);

“effective date”, in relation to a conversion decision, is to be construed in accordance with regulation 13;

“the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations (Northern Ireland) 2008(2);

“income-related allowance” means an employment and support allowance to which a person is entitled by virtue of these Regulations which was based on an award of income support to which the person was entitled;

“notified person” has the meaning given in regulation 4(2);

“pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995(3);

“relevant deduction”, in relation to a person, includes such of the following deductions as fall to be made in relation to the person—

- (a) any deduction made under any of the following provisions of the Claims and Payments Regulations—
 - (i) regulation 34ZA(4) (deductions of mortgage interest which shall be made from benefit and paid to qualifying lenders),
 - (ii) regulation 34ZB(5) (deductions of mortgage interest which may be made from benefit and paid to qualifying lenders in other cases), or
 - (iii) regulation 34A(6) (deductions which may be made from benefits and paid to third parties);
- (b) any deduction in respect of overpayment recovery or recovery of social fund loans made under any of the following provisions of the Administration Act—
 - (i) section 69(7) (overpayments – general),
 - (ii) section 72(8) (income support and other payments), or
 - (iii) section 74(9) (recovery of social fund awards).

(2) A requirement under these Regulations to give a notice (or to notify) is a requirement to give notice in writing; and for that purpose a message sent by electronic communication (within the meaning of section 4(1) of the Electronic Communications Act (Northern Ireland) 2001(10)) shall be treated as a notice given in writing.

(3) For the purposes of these Regulations, the conversion phase, in relation to any person entitled to an existing award or awards(11), is the period which—

- (a) begins in accordance with regulation 4(4); and
- (b) ends in accordance with regulation 5(6).

(4) In these Regulations any reference to Step 1, 2 or 3, in relation to any person, is to be construed in accordance with regulation 8.

(5) The Interpretation Act (Northern Ireland) 1954(12) shall apply to these Regulations as it applies to an Act of the Assembly.

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- (3) S.I. 1995/3213 (N.I. 22); paragraph 1 was amended by paragraph 28 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)), paragraph 8 of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.)) and paragraph 4 of Schedule 3 to the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.))
 - (4) Regulation 34ZA was inserted by regulation 2 of S.R. 1992 No. 271 and amended by regulation 12(1) of S.R. 2003 No. 191 and regulation 2(2) of S.R. 2010 No. 129
 - (5) Regulation 34ZB was inserted by regulation 12(2) of S.R. 2009 No. 191 and amended by regulation 2(2) of S.R. 2010 No. 129
 - (6) Regulation 34A was inserted by regulation 2(2) of S.R. 1988 No. 67 and amended by regulation 7(b) of S.R. 1988 No. 141, regulation 3(7) of S.R. 1988 No. 369, regulation 3 of S.R. 1992 No. 271, regulation 2(2) of S.R. 2001 No. 22 and regulation 2(9) of S.R. 2002 No. 297
 - (7) Section 69 was amended by Article 33(1) of, and paragraph 31 of Schedule 2 to, the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)), section 2(2) and (4) of the Social Security (Overpayments) Act 1996 (c. 51), paragraph 62(1) and (3) of Schedule 6 to the Social Security (Northern Ireland) Order 1998, paragraph 10 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002, paragraph 8 of Schedule 4 to the Tax Credits Act 2002, paragraph 110 of Schedule 24 to the Civil Partnership Act 2004 (c. 33), section 41(3) of, and paragraph 4(6) of Schedule 3 to, the Welfare Reform Act (Northern Ireland) 2007 and section 135(4) of the Health and Social Care Act 2008 (c. 14)
 - (8) Section 72 was amended by paragraph 11 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002, paragraph 4(8) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 and regulation 2 of S.R. 2008 No. 413
 - (9) Section 74 was amended by paragraph 186 of Schedule 9 to the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)), Article 33(2) of, and paragraph 34 of Schedule 2 to, the Jobseekers (Northern Ireland) Order 1995 and paragraph 113 of Schedule 24 to the Civil Partnership Act 2004
 - (10) 2001 c. 9 (N.I.); section 4(1) was amended by paragraph 170 of Schedule 17 to the Communications Act 2003 (c. 21)
 - (11) “Existing award” is defined in paragraph 11 of Schedule 4 to the Welfare Reform Act (Northern Ireland) 2007
 - (12) 1954 c. 33 (N.I.)

Persons to whom these Regulations apply

3. These Regulations apply to any person who, on or after 1st October 2010, is entitled to an existing award or awards.

PART 2

CONVERSION DECISIONS

The notice commencing the conversion phase

4.—(1) Subject to paragraph (5), the Department may at any time issue a notice to any person who is entitled to an existing award.

(2) Any person to whom such a notice is issued is referred to in these Regulations as a notified person.

(3) The notice must inform the notified person—

- (a) that an existing award is to be converted into an award of an employment and support allowance if certain conditions are satisfied;
- (b) that, if those conditions are not satisfied, the existing award will not be converted and will terminate by virtue of these Regulations;
- (c) of the requirements that must be met in order to satisfy those conditions; and
- (d) of such other matters as the Department considers appropriate.

(4) The issue of the notice to a notified person begins the conversion phase in relation to that person, with effect from the date of issue.

(5) No notice may be issued to any person—

- (a) who reaches pensionable age at any time before 6th April 2014; or
- (b) at any time when payment of the existing award to the person is subject to adjustment under regulation 4 of the Social Security (Transitional Payments) Regulations (Northern Ireland) 2009(13) (adjustment of subsequent payments following an adjusting payment of benefit).

(6) Where a person is entitled to—

- (a) an existing award of incapacity benefit or severe disablement allowance; and
- (b) an existing award of income support,

the notice issued to the person under this regulation shall have effect in relation to both such awards.

Deciding whether an existing award qualifies for conversion

5.—(1) In relation to the existing award or awards to which a notified person (“P”) is entitled, the Department must, except where paragraph (8)(a) applies, make a conversion decision in accordance with these Regulations.

(2) A conversion decision is—

- (a) a decision that P’s existing award or awards qualify for conversion into an award of an employment and support allowance in accordance with regulation 7; or
- (b) a decision that P’s existing award or awards do not qualify for conversion into an award of an employment and support allowance.

(3) A notice of a conversion decision under paragraph (2)(a) must specify the amount of an employment and support allowance to which P is entitled on the effective date, subject to any relevant deductions.

(4) The amount referred to in paragraph (3) is to be determined in accordance with regulation 8.

(5) The Department must notify P of the Department's conversion decision.

(6) The conversion phase ends in relation to P—

(a) immediately before the effective date of the conversion decision notified to P; or

(b) if earlier, when P's entitlement to the award or awards to which the notice under regulation 4 relates otherwise ceases to be subject to conversion (because entitlement to the award has terminated or for some other reason).

(7) The effective date of any conversion decision is to be determined in accordance with regulation 13.

(8) In the event that P's entitlement to an existing award ceases to be subject to conversion (for example, because P's entitlement to an award of income support has ceased to fall within paragraph (c) of the definition of existing award in paragraph 11 of Schedule 4 to the Act)—

(a) before a conversion decision is made, the Department must notify P that the conversion phase has ended without a conversion decision being made; or

(b) after the making of a conversion decision but before its effective date, the Department must notify P that the conversion decision shall not come into effect.

(9) On the giving of a notice under paragraph (8)(b), the conversion decision to which it relates shall lapse with immediate effect.

Application of certain statutory provisions for purpose of making conversion decisions

6.—(1) The statutory provisions in paragraph (2) apply, subject to the modifications specified in Schedule 1, for the purposes of—

(a) enabling the Department to make in relation to any person a conversion decision under this Part; and

(b) providing for the revision of such decisions at any time before the effective date.

(2) The statutory provisions to which paragraph (1) refers are—

(a) Part 1 of the Act (employment and support allowance);

(b) Chapter II of Part II of the Social Security (Northern Ireland) Order 1998⁽¹⁴⁾ (social security decisions and appeals);

(c) regulation 32(1) and (1A) of the Claims and Payments Regulations⁽¹⁵⁾ (information to be given);

(d) the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999⁽¹⁶⁾; and

(e) the Employment and Support Allowance Regulations.

(3) In the application of the statutory provisions listed in paragraph (2)(b) and (d), the conversion decision is to be treated as if it were a decision as to a person's entitlement to an employment and support allowance which had been made on a claim.

⁽¹⁴⁾ S.I. 1998/1506 (N.I. 10)

⁽¹⁵⁾ Regulation 32(1) and (1A) was substituted by regulation 2 of S.R. 2003 No. 224

⁽¹⁶⁾ S.R. 1999 No. 162

Qualifying for conversion

7. For the purposes of regulation 5(2)(a), an existing award or awards to which a notified person is entitled qualify for conversion into an award of an employment and support allowance only if the person satisfies the basic conditions set out in section 1(3)(a) to (d) and (f) of the Act.

Amount of an employment and support allowance on conversion

8. For the purposes of regulation 5(3), the amount of an employment and support allowance to which a notified person is entitled shall be determined as follows.

Step 1

Determine in accordance with Part 1 of the Act and the Employment and Support Allowance Regulations the amount, if any, of an employment and support allowance to which the notified person would be entitled if, on a claim made by that person—

- (a) it had been determined that the person was entitled to an award of an employment and support allowance; and
- (b) the assessment phase had ended.

Step 2

Determine in accordance with regulations 9 to 12—

- (a) whether the notified person is entitled to a transitional addition; and
- (b) if so, the amount of the transitional addition.

Step 3

Aggregate the amounts, if any, which result from Steps 1 and 2.

Determining entitlement to a transitional addition

9.—(1) In relation to any notified person whose existing award or awards qualify for conversion into an employment and support allowance—

- (a) the person's entitlement, if any, to a transitional addition; and
- (b) the amount of any such transitional addition,

are to be determined in accordance with regulation 10(2) or 11(2).

(2) The amount of transitional addition to which a notified person is entitled is subject to reduction in accordance with regulations 18 to 20.

(3) The entitlement of a notified person to any transitional addition terminates in accordance with regulation 21.

Transitional addition: incapacity benefit or severe disablement allowance

10.—(1) This regulation applies to any notified person who is entitled to an existing award of incapacity benefit or severe disablement allowance and for the purpose of this regulation it is irrelevant whether the person is also entitled to any existing award of income support.

(2) In any case falling within paragraph (1)—

- (a) the notified person shall be entitled to a transitional addition if Amount A exceeds Amount B; and
- (b) the amount of transitional addition to which the notified person is entitled under this paragraph shall be equal to the amount of any such excess.

- (3) Amount A is the amount of the weekly rate of the existing award applicable to the notified person.
- (4) To calculate Amount B—
- (a) take the amount prescribed under regulation 67(2) of the Employment and Support Allowance Regulations (prescribed amounts for the purpose of calculating a contributory allowance) which is applicable to the notified person; and
 - (b) add the amount of the applicable component determined in accordance with regulation 12(5).
- (5) In paragraph (3), the reference to the weekly rate of an existing award applicable to the notified person is to—
- (a) in the case of incapacity benefit, the weekly rate payable—
 - (i) under section 30B(2), (6) or (7) of the Contributions and Benefits Act(17) (incapacity benefit: rate),
 - (ii) under section 40(5) or 41(4) of the Contributions and Benefits Act(18) (long-term incapacity benefit for widows and for widowers),
 - (iii) by virtue of regulation 11(4) of the Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995(19) (transitional awards of short-term incapacity benefit), or
 - (iv) by virtue of regulation 17(1) of those Regulations (transitional awards of long-term incapacity benefit);
 - (b) in the case of severe disablement allowance, the weekly rate payable under sections 68(7) and 69(1) of the Contributions and Benefits Act(20).

Transitional addition: income support

11.—(1) This regulation applies to any notified person who is entitled to an existing award of income support and for the purpose of this regulation it is irrelevant whether the person is also entitled to any existing award of incapacity benefit or severe disablement allowance.

- (2) In any case falling within paragraph (1)—
- (a) the notified person shall be entitled to a transitional addition if Amount C exceeds Amount D; and
 - (b) the amount of transitional addition to which the notified person is entitled under this paragraph shall be equal to the amount of any such excess.
- (3) To calculate Amount C—
- (a) take the notified person's weekly applicable amount under regulation 17 or 18 of, and Schedule 2 to, the Income Support (General) Regulations (Northern Ireland) 1987(21) (applicable amounts);

(17) Section 30B was inserted by Article 4(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

(18) Sections 40 and 41 were substituted by paragraphs 8 and 9 respectively of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(19) S.R. 1995 No. 35; regulation 11(4) was amended by regulation 3(2)(a) of S.R. 1996 No. 601

(20) Sections 68 and 69 were repealed by Part IV of Schedule 10 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)). See Article 4 of S.R. 2000 No. 332 (C. 14) for savings provisions

(21) S.R. 1987 No. 459; regulation 17 was amended by regulation 2 of S.R. 1988 No. 193, regulation 4 of S.R. 1989 No. 395, regulation 9 of S.R. 1996 No. 199 and paragraph 4 of Schedule 1 to S.R. 2005 No. 458; regulation 18 was amended by regulation 5 of S.R. 1988 No. 274, regulation 5 of S.R. 1988 No. 318, regulation 5 of S.R. 1989 No. 249, regulation 10 of S.R. 1996 No. 199 and paragraph 4 of Part I of the Schedule to S.R. 2002 No. 132; Schedule 2 was amended by regulation 30 of S.R. 1988 No. 146, regulation 18 of S.R. 1988 No. 318, regulation 15 of S.R. 1988 No. 431, regulation 5 of S.R. 1989 No. 139, regulation 6 of S. R. 1989 No. 395, regulation 15 of S.R. 1990 No. 131, regulation 2 of S.R. 1990 No. 213, regulation 6 of S.R.

- (b) disregard any amount determined in accordance with regulation 17(1)(e) or 18(1)(f) of, and Schedule 3 to, those Regulations(22) (housing costs); and
- (c) disregard any amount included in the person's applicable amount—
 - (i) under regulation 17(1)(b), (c) or (d) of those Regulations(23) in respect of a child or young person who is a member of the notified person's family, or
 - (ii) under regulation 18(1)(b), (c), (d) or (e) of those Regulations in respect of a child or young person who is a member of the same household as the notified person,as those provisions have effect by virtue of regulations 1 and 6 of the Social Security (Working Tax Credit and Child Tax Credit Consequential Amendments) Regulations (Northern Ireland) 2003(24).
- (4) To calculate Amount D—
 - (a) take the amount prescribed under regulation 67(1) or 68(1) of the Employment and Support Allowance Regulations(25) (prescribed amounts for the purpose of calculating an income-related allowance) which is applicable to the notified person;
 - (b) disregard any amount determined in accordance with regulation 67(1)(c) or 68(1)(d) of those Regulations (housing costs); and
 - (c) add the amount of the applicable component determined in accordance with regulation 12(5).

Regulations 10 and 11: supplementary

12.—(1) This regulation has effect for the purposes of applying regulations 10 and 11 in relation to any notified person.

- (2) Subject to paragraphs (3) and (4)—
 - (a) Amounts A and C are to be calculated in respect of the benefit week which ends immediately before the effective date of the notified person's conversion decision; and

1990 No. 346, regulation 3(5) of S.R. 1990 No. 387, regulation 13 of S.R. 1991 No. 338, regulation 10(4) of S.R. 1992 No. 6, regulation 3 of S.R. 1993 No. 218, regulation 2(9) of S.R. 1994 No. 327, regulation 2(3) of S.R. 1994 No. 474, regulation 2(12) of S.R. 1995 No. 67, regulation 2(8) of S.R. 1995 No. 367, Schedule 2 to S.R. 1996 No. 199, regulation 2(6) of S.R. 1998 No. 2, regulation 8(3) of S.R. 1998 No. 324, regulation 4(2) of S.R. 2000 No. 74, regulation 2(c) of S.R. 2000 No. 367, regulation 3(4) of S.R. 2002 No. 80, regulation 2 of S.R. 2002 No. 322, paragraph 1 of the Schedule to S.R. 2002 No. 323, regulation 24(5) of S.R. 2003 No. 191, paragraph 20 of Schedule 1 to S.R. 2003 No. 195, regulation 2 of S.R. 2003 No. 413, regulation 2(3) of S.R. 2003 No. 417, regulation 4 of S.R. 2004 No. 213, regulation 3(3) of S.R. 2005 No. 580, regulation 5(6) (a) of S.R. 2006 No. 359, regulation 2(7) of S.R. 2007 No. 154, regulation 2(14) of S.R. 2008 No. 112, regulation 2(2) of S.R. 2010 No. 103 and Article 16(3) to (5) of, and Schedules 2 and 3 to, S.R. 2010 No. 118

(22) Schedule 3 was substituted by regulation 2 of S.R. 1995 No. 301 and amended by regulation 2(a) of S.R. 1995 No. 350, regulation 2(3) of S.R. 1995 No. 434, regulation 24 of S.R. 1996 No. 199, regulation 5(10) of S.R. 1996 No. 405, regulation 3 of S.R. 1997 No. 3, regulation 3 of S.R. 1997 No. 165, regulation 2 of S.R. 1997 No. 435, regulation 16 of S.R. 1997 No. 541, regulation 3(5) of S.R. 1998 No. 182, regulation 8(4) of S.R. 1998 No. 324, regulation 3 of S.R. 1999 No. 107, regulation 2(1) of S.R. 1999 No. 315, Article 7(2) and (11) of S.R. 1999 No. 472 (C. 36), regulation 3(5) of S.R. 2000 No. 241, regulation 3(3) of S.R. 2001 No. 29, regulation 6 of S.R. 2001 No. 78, regulation 12 of S.R. 2001 No. 151, regulation 2(1) of S.R. 2001 No. 406, regulation 5 of S.R. 2002 No. 128, regulation 24(6) of S.R. 2003 No. 191, regulation 3(4) of S.R. 2003 No. 261, regulation 4 of S.R. 2004 No. 394, regulation 2 of S.R. 2004 No. 461, regulation 2(7) of S.R. 2005 No. 424, paragraph 8 of Schedule 1 to S.R. 2005 No. 458, regulation 3(4) of S.R. 2005 No. 580, regulation 5(6)(b) and (7) of S.R. 2006 No. 359, paragraph 1(4) of Schedule 2 to S.R. 2006 No. 407, regulation 2 of S.R. 2006 No. 510, regulation 2(3) of S.R. 2007 No. 475, regulation 12(11) of S.R. 2008 No. 286, regulation 5(2) of S.R. 2008 No. 413, regulation 2(5)(e) and (8) of S.R. 2008 No. 428, regulation 2(2)(a) of S.R. 2008 No. 503, regulation 2(14) of S.R. 2009 No. 338, regulation 2(3)(e) and (7)(d) of S.R. 2010 No. 69 and Article 16(6) of, and Schedule 4 to, S.R. 2010 No. 118 and was modified by regulations 4 and 9 of S.R. 2008 No. 503

(23) Regulation 17(1)(b) and (c) and regulation 18(1)(c) and (d) were omitted by paragraphs 2(a) and 3(a) of Schedule 1 to S.R. 2003 No. 195 respectively subject to regulation 6(4) and (5) of those Regulations

(24) S.R. 2003 No. 195; regulation 1 was amended by regulation 2 of S.R. 2005 No. 393 and regulation 6 was amended by regulation 6 of S.R. 2003 No. 338 and regulation 9 of S.R. 2004 No. 143

(25) Regulations 67(1) and 68(1) were amended by regulation 3(4) of S.R. 2010 No. 6

- (b) Amounts B and D are to be calculated in respect of the benefit week the first day of which is the effective date of the notified person's conversion decision.

(3) Where—

- (a) by virtue of an order made under section 132 of the Administration Act (annual up-rating of benefits), there is an increase in—

- (i) the weekly rate which, in accordance with regulation 10(3), is to be used to calculate Amount A, or

- (ii) the applicable amount which, in accordance with regulation 11(3), is to be used to calculate Amount C; and

(b) that increase takes effect from any day in the benefit week referred to in paragraph (2)(b), the calculation of Amount A or C is to be made using the increased weekly rate or applicable amount, as the case may be.

(4) Where—

- (a) there is a change of circumstances in relation to a notified person which, but for this paragraph, would have resulted in an increase or decrease of the weekly rate or applicable amount referred to in paragraph (3)(a)(i) or (ii); and

- (b) that increase or decrease would have taken effect from any day in the benefit week referred to in paragraph (2)(b),

the calculation of Amount A or C is to be made using the weekly rate or applicable amount, as the case may be, which would have been payable in respect of the existing award if it had not been subject to conversion under these Regulations.

(5) The “applicable component”, in relation to the notified person, means—

- (a) the work-related activity component, if it has been determined in accordance with the statutory provisions applied by regulation 6 that the notified person does not have and is not to be treated as having limited capability for work-related activity; or

- (b) the support component, if it has been determined in accordance with those statutory provisions that the notified person has or is to be treated as having limited capability for work-related activity.

The effective date of a conversion decision

13.—(1) For the purposes of determining the date on which a conversion decision takes effect in relation to any notified person—

- (a) take the date on which the person is notified of the conversion decision; and

- (b) unless paragraph (2) applies, determine the first complete fortnightly period in respect of which the person's existing benefit is payable after that date,

and the effective date of the person's conversion decision is the first day of the benefit week immediately following the end of the fortnightly period referred to in sub-paragraph (b).

(2) Where existing benefit is payable to the notified person in respect of a period other than a fortnight—

- (a) determine the second complete benefit week in respect of which the person's existing benefit is payable after the date on which the person is notified of the conversion decision; and

- (b) the effective date of the person's conversion decision is the first day of the benefit week immediately following the end of that second complete benefit week.

(3) “Existing benefit”, in relation to a notified person, means the benefit in respect of the person’s existing award or awards.

Conversion decision that existing award qualifies for conversion

14.—(1) Paragraphs (2) and (3) apply in any case where the conversion decision is a decision that a notified person’s (“P”) existing award or awards qualify for conversion into an employment and support allowance.

(2) On the effective date of the conversion decision—

- (a) P’s existing award; or
- (b) both of P’s existing awards, as the case may be,

are by virtue of this paragraph converted into, and shall have effect on and after that date as, a single award of an employment and support allowance of such amount as is specified in the conversion decision.

(3) Where, immediately before the effective date of the conversion decision, any relevant deduction was made from an existing award or awards, an equivalent deduction shall be made from the employment and support allowance to which P is entitled by virtue of these Regulations.

(4) Paragraphs (2) and (3) are subject to regulation 17.

Conversion decision that existing award does not qualify for conversion

15.—(1) Subject to paragraph (4), paragraphs (2) and (3) apply in any case where the conversion decision is a decision that a notified person’s (“P”) existing award or awards do not qualify for conversion into an employment and support allowance.

(2) P’s entitlement to one or both of—

- (a) an existing award of incapacity benefit or severe disablement allowance; or
- (b) an existing award of income support, being an award made to a person incapable of work or disabled,

shall terminate by virtue of this paragraph immediately before the effective date of P’s conversion decision.

(3) Where, immediately before that date, P is entitled to be credited with any earnings under regulation 8B(2)(a) of the Social Security (Credits) Regulations (Northern Ireland) 1975⁽²⁶⁾ (credits for incapacity for work or limited capability for work), P shall not be entitled to be so credited under that regulation on or after that date.

(4) Paragraph (5) applies where—

- (a) a conversion decision within the meaning of regulation 5(2)(b) (“the earlier conversion decision”) is made by virtue of either of the following provisions of the Employment and Support Allowance Regulations, as they apply by virtue of regulation 6—
 - (i) regulation 22(1) (failure to provide information in relation to limited capability for work), or
 - (ii) regulation 23(2) (failure to attend for a medical examination to determine whether the claimant has limited capability for work); and
- (b) after P is notified of the earlier conversion decision, the Department is satisfied, or where the conversion decision is appealed to the appeal tribunal, that tribunal determines, that P had good cause for failing to—

⁽²⁶⁾ S.R. 1975 No. 113; regulation 8B was inserted by regulation 2(6) of S.R. 1996 No. 430 and amended by regulation 2(2) of S.R. 2003 No. 151, regulation 7(6) of S.R. 2008 No. 286 and regulation 2(2) of S.R. 2010 No. 109

- (i) provide the information requested, or
 - (ii) attend for or submit to the medical examination for which P was called.
- (5) Where this paragraph applies—
- (a) the earlier conversion decision is treated as never having been made;
 - (b) any entitlement of P—
 - (i) to an existing award which was terminated by virtue of paragraph (2), or
 - (ii) to be credited with earnings which was terminated by virtue of paragraph (3),
 shall be reinstated with effect from the effective date of the earlier conversion decision;
 - (c) the Department must make a conversion decision (“the new conversion decision”) in accordance with regulation 5 in relation to the existing award or awards to which P is entitled;
 - (d) the notice issued under regulation 4 has effect in relation to that existing award or those existing awards; and
 - (e) with the exception of regulation 4, the remaining provisions of this Part, including this regulation, apply to the new conversion decision.
- (6) Paragraphs (2) and (3) are subject to regulation 17.

PART 3

AFTER THE CONVERSION PHASE

Application of other statutory provisions applying to employment and support allowance

16.—(1) The statutory provisions in paragraph (2) apply, subject to the modifications specified in Schedule 2, for the purposes of—

- (a) providing for the revision or supersession of any person’s conversion decision at any time on or after that decision’s effective date; and
 - (b) enabling any other matter to be determined in connection with any person’s entitlement or continuing entitlement to an award of an employment and support allowance by virtue of these Regulations.
- (2) The statutory provisions to which paragraph (1) refers are—
- (a) Part 1 of the Act (employment and support allowance);
 - (b) the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997⁽²⁷⁾;
 - (c) Chapter II of Part II of the Social Security (Northern Ireland) Order 1998⁽²⁸⁾ (social security decisions and appeals);
 - (d) any other statutory provision which is amended by Schedule 3 to the Act (consequential amendments relating to Part 1);
 - (e) the Employment and Support Allowance Regulations;
 - (f) this Part of these Regulations; and
 - (g) the Regulations listed in Schedule 3.

⁽²⁷⁾ S.I. 1997/1183 (N.I. 12)

⁽²⁸⁾ S.I. 1998/1506 (N.I. 10)

(3) In the application of those statutory provisions, the conversion decision is to be treated as if it were a decision as to a person's entitlement to an employment and support allowance which had been made on a claim.

Changes of circumstances before the effective date

17. Where, on or after the effective date of any person's conversion decision, the Department is notified of any change of circumstances or other relevant event which occurred before that date, the Department—

- (a) must treat any award converted by virtue of regulation 14(2) or terminated by virtue of regulation 15(2) as if it had not been converted or terminated;
- (b) must take account of the change of circumstances or other relevant event for the purposes of determining whether to revise or supersede a decision ("the earlier decision") relating to the award or awards in respect of which the conversion decision was made;
- (c) in an appropriate case, must revise or supersede the earlier decision;
- (d) if any earlier decision is revised or superseded, must determine whether to revise the conversion decision made in relation to P; and
- (e) in an appropriate case, must revise that conversion decision.

Reducing the transitional addition: general rule

18.—(1) The amount of any transitional addition to which a person is entitled by virtue of these Regulations shall be reduced, but not below nil, by a sum equal to the aggregate amount of all relevant increases which occur on or after the effective date in the amount payable to the person by way of an employment and support allowance.

(2) For the purposes of paragraph (1), a relevant increase is—

- (a) in relation to a person entitled to a contributory allowance, an increase in any amount applicable to the person under regulation 67(2)(a) or (3) of the Employment and Support Allowance Regulations⁽²⁹⁾; and
- (b) in relation to a person entitled to an income-related allowance, an increase in any amount applicable to the person under regulation 67(1)(a) or (b) or (3) or 68(1)(a), (b) or (c) of the Employment and Support Allowance Regulations,

which is not excluded by paragraph (3).

(3) In relation to any person, the excluded increases are—

- (a) any increase applicable to the benefit week the first day of which is the effective date of the person's conversion decision; and
- (b) any increase resulting from the reversal, on appeal or otherwise, of any decision made by the Department that a person who was previously entitled to the support component has become entitled to the work-related activity component.

Reducing the transitional addition: increases for dependent children

19.—(1) Paragraphs (2) and (3) apply to any person ("T") who—

- (a) on the day before the effective date of T's conversion decision, was entitled in connection with an existing award of incapacity benefit or severe disablement allowance to an increase under—

(29) The reference to regulation 67(2)(a) of the Employment and Support Allowance Regulations (Northern Ireland) 2008 is to that regulation as modified by paragraph 4(f)(ii) of Schedule 2 to these Regulations

- (i) section 80 of the Contributions and Benefits Act⁽³⁰⁾ (beneficiary's dependent children), or
 - (ii) section 90 of the Contributions and Benefits Act⁽³¹⁾ (beneficiaries in receipt of severe disablement allowance) for a child dependant; and
- (b) on and after the effective date, is entitled by virtue of these Regulations to an employment and support allowance which includes an amount by way of transitional addition.
- (2) The amount of the transitional addition shall be reduced in accordance with paragraph (3) on the termination, on or after the effective date, of T's entitlement to child benefit in respect of the child or qualifying young person—
- (a) for whom; or
 - (b) for whose care by an adult dependant,

T was entitled to the increase referred to in paragraph (1)(a).

(3) The amount of the transitional addition shall be reduced, but not below nil, by a sum equal to the amount which, on the day before the effective date, was the amount of the increase referred to in paragraph (1)(a) to which T was entitled.

Reducing the transitional addition: increases for adult dependants

- 20.**—(1) Paragraphs (2) and (3) apply to any person (“T”) who—
- (a) on the day before the effective date of T's conversion decision, was entitled in connection with an existing award of incapacity benefit or severe disablement allowance to an increase under—
 - (i) section 86A of the Contributions and Benefits Act⁽³²⁾ (incapacity benefit: increase for adult dependants), or
 - (ii) section 90 of the Contributions and Benefits Act (beneficiaries in receipt of severe disablement allowance) for an adult dependant; and
 - (b) on and after the effective date, is entitled by virtue of these Regulations to an employment and support allowance which includes an amount by way of a transitional addition.
- (2) The amount of the transitional addition shall be reduced in accordance with paragraph (3) on the occurrence, on or after the effective date, of any of the following events—
- (a) the death of the adult dependant in respect of whom T was entitled to the increase referred to in paragraph (1)(a);
 - (b) the permanent separation of T and that adult dependant;
 - (c) the termination of the entitlement of either T or that adult dependant to child benefit; or
 - (d) the award to that adult dependant of a personal benefit within the meaning of the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979⁽³³⁾ which is equal to or more than the amount which, on the day before the effective date, was the amount of the increase referred to in paragraph (1)(a) to which T was entitled.

⁽³⁰⁾ Increases in benefits in respect of children under section 80 were abolished by section 1(3)(e) of the Tax Credits Act 2002 (c. 21) and section 80 was repealed by Schedule 6 to that Act. See Article 2 of S.R. 2003 No. 212 for savings provisions

⁽³¹⁾ Severe disablement allowance was abolished by section 62 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and section 90 was amended by paragraph 25 of Schedule 8 to that Order. See Article 4 of S.R. 2000 No. 332 (C. 14) for savings provisions. Increases in benefits in respect of children under section 90 were abolished by section 1(3)(e) of the Tax Credits Act 2002 and section 90 was amended by Schedule 6 to that Act. See Article 2 of S.R. 2003 No. 212 for savings provisions

⁽³²⁾ Section 86A was inserted by Article 4(4) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

⁽³³⁾ S.R. 1979 No. 242

(3) The amount of the transitional addition shall be reduced, but not below nil, by a sum equal to the amount which, on the day before the effective date, was the amount of the increase referred to in paragraph (1)(a) to which T was entitled.

Termination of transitional addition

21.—(1) Any entitlement to a transitional addition which a person (“T”) may have by virtue of these Regulations terminates on whichever is the earliest of—

- (a) the reduction in accordance with regulations 18 to 20 of the amount of the transitional addition to nil;
- (b) subject to paragraphs (2) and (3), the termination in accordance with the statutory provisions applied by regulation 16 of T’s entitlement to an employment and support allowance; and
- (c) 5th April 2020.

(2) Nothing in paragraph (1)(b) prevents reinstatement of a person’s entitlement to a transitional addition following the reversal on appeal of any determination which results in the termination of the person’s entitlement to an employment and support allowance.

(3) Any termination of T’s entitlement to a transitional addition by virtue of paragraph (1)(b) shall instead have effect as a suspension of that entitlement in Case 1 or Case 2.

(4) Case 1 is where—

- (a) 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) or (2) of the Employment and Support Allowance Regulations (linking rules) as a continuation of an earlier period of limited capability for work; and
- (b) T’s entitlement to an employment and support allowance which is referred to in paragraph (1)(b) (“T’s old entitlement”) was in respect of that earlier period.

(5) Case 2 is where—

- (a) T’s old entitlement was to an income-related allowance;
- (b) the reason for terminating that entitlement was that the condition set out in paragraph 6(1)(f) of Schedule 1 to the Act had ceased to be satisfied in T’s case (no entitlement to income-related allowance where other member of a couple engages in remunerative work); and
- (c) on a subsequent claim for an income-related allowance, T’s entitlement to such an allowance commences before the end of the 12 week period which begins with the date of termination of T’s old entitlement.

(6) In Cases 1 and 2, the amount of the transitional addition which becomes payable on commencement of T’s entitlement to an employment and support allowance is to be determined by reference to the amount of the transitional addition that was payable on the termination of T’s old entitlement, subject to any subsequent adjustment of that amount that would have been made under this Part.

PART 4

MISCELLANEOUS

Disapplication of certain statutory provisions following conversion decision

22. Where a conversion decision has been made in relation to any person, the following statutory provisions shall not apply to that person with effect from the conversion decision’s effective date—

- (a) sections 30A, 40 or 41 of the Contributions and Benefits Act⁽³⁴⁾ (incapacity benefit);
- (b) section 68 of the Contributions and Benefits Act (severe disablement allowance)⁽³⁵⁾;
- (c) regulation 13(2)(b) or (bb) of, or paragraph 7(a) or (b), 10, 12 or 13 of Schedule 1B to, the Income Support (General) Regulations (Northern Ireland) 1987⁽³⁶⁾ (prescribed category of persons for the purposes of entitlement on grounds of incapacity or disability);
- (d) the Income Support (Transitional) Regulations (Northern Ireland) 1987⁽³⁷⁾; and
- (e) the Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995⁽³⁸⁾.

Treatment of claims until coming into operation of regulation 24(a)

23. In regulation 2(2)(a) to (c) of the Employment and Support Allowance (Transitional Provisions) Regulations (Northern Ireland) 2008⁽³⁹⁾ (claim for an existing benefit), for “a claim” in each place where it occurs, substitute “a claim made in respect of a period commencing before 31st January 2011”.

Amendment of the Employment and Support Allowance (Transitional Provisions) Regulations

24. In regulation 2 of the Employment and Support Allowance (Transitional Provisions) Regulations (Northern Ireland) 2008 (claim for an existing benefit)—

- (a) in paragraph (2) omit sub-paragraphs (a), (b) and (c); and
- (b) in paragraph (3) omit “severe disablement allowance,”.

Amendment of the Employment and Support Allowance Regulations

25.—(1) The Employment and Support Allowance Regulations are amended in accordance with paragraphs (2) and (3).

(2) Omit regulation 31 (claimant who claims jobseeker’s allowance to be treated as not having limited capability for work).

(3) In regulation 144(2)(a)⁽⁴⁰⁾ (waiting days) after “income support,” insert “incapacity benefit, severe disablement allowance,”.

Amendment of legislation relating to housing benefit

26. Schedule 4, which makes amendments to legislation relating to housing benefit, has effect.

⁽³⁴⁾ Section 30A was inserted by Article 3(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994, amended by Article 61 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 and modified by regulation 2 of S.I. 2003/735 and paragraph 68 of Schedule 24 to the Civil Partnership Act 2004 (c. 33) and sections 40 and 41 were substituted by paragraphs 8 and 9 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

⁽³⁵⁾ Section 68 was repealed by Part IV of Schedule 10 to the Welfare Reform and Pensions (Northern Ireland) Order 1999. See Article 4 of S.R. 2000 No. 332 (C. 14) for savings provisions

⁽³⁶⁾ S.R. 1987 No. 459; regulation 13(2) was amended by regulation 6(2) of S.R. 1991 No. 338, regulation 2(3) of S.R. 2006 No. 128 and regulation 2(4)(a) of S.R. 2008 No. 112, Schedule 1B was inserted by regulation 22 of S.R. 1996 No. 199, paragraph 10 was amended by the Schedule to S.R. 2000 No. 241, paragraph 12 was substituted by regulation 2(7) of S.R. 2000 No. 242 and regulation 13(2)(b) and (bb) and paragraphs 7(a) and (b), 10, 12 and 13 of Schedule 1B were revoked subject to savings by regulation 2 of S.R. 2009 No. 418

⁽³⁷⁾ S.R. 1987 No. 460

⁽³⁸⁾ S.R. 1995 No. 35

⁽³⁹⁾ S.R. 2008 No. 283; regulation 2 was amended by regulation 2 of S.R. 2008 No. 429

⁽⁴⁰⁾ Regulation 144 was amended by regulation 3(25) of S.R. 2008 No. 413

Sealed with the Official Seal of the Department for Social Development on 10th September 2010

(L.S.)

Anne McCleary
A senior officer of the Department for Social
Development

The Department of Finance and Personnel consents to regulation 26 and Schedule 4.
Sealed with the Official Seal of the Department of Finance and Personnel on 10th September 2010

(L.S.)

Jack Layberry
A senior officer of the Department of Finance
and Personnel