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STATUTORY RULES OF NORTHERN IRELAND

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**2017 No. 51**

**SOCIAL SECURITY**

**The Employment and Support Allowance (Consequential  
Amendments and Transitional and Savings  
Provisions) Regulations (Northern Ireland) 2017**

<i>Made</i>	- - - -	<i>13th March 2017</i>
<i>Laid before Parliament</i>		<i>14th March 2017</i>
<i>Coming into operation</i>		<i>3rd April 2017</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by Articles 3, 9(4) and (5) and 22(1) of the Welfare Reform and Work (Northern Ireland) Order 2016 <sup>M1</sup>.

Those powers are exercisable by the Secretary of State by virtue of Article 4(1)(a) of the Welfare Reform (Northern Ireland) Order 2015 <sup>M2</sup>.

**Marginal Citations**

- M1** S.I. 2016/999 (N.I. 1). Article 3 is an interpretation provision and is cited for the meaning of “prescribed”
- M2** S.I. 2015/2006 (N.I. 1); Article 4(1)(a) was amended by Article 4(2)(a) of S.I. 2016/999 (N.I. 1)

**Citation and commencement**

1. These Regulations may be cited as the Employment and Support Allowance (Consequential Amendments and Transitional and Savings Provisions) Regulations (Northern Ireland) 2017 and come into operation on 3rd April 2017.

**Amendment of the Employment and Support Allowance Regulations (Northern Ireland) 2008**

2.—(1) The Employment and Support Allowance Regulations (Northern Ireland) 2008 <sup>M3</sup> are amended in accordance with paragraphs (2) to (5).

(2) In regulation 7 (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) <sup>M4</sup>—

- (a) in the heading omit “or the work-related activity component”;
- (b) in paragraph (1) for “sections 2(2)(a) and (3)(a) and 4(4)(a) and (5)(a)” substitute “ sections 2(2)(a) and 4(4)(a) ”; and
- (c) in paragraph (1B)—
  - (i) in sub-paragraph (a)(i) for “sections 2(2), 2(3), 4(4) or 4(5)” substitute “ sections 2(2) and 4(4) ”; and
  - (ii) in sub-paragraph (d)(i) for “sections 2(2), 2(3), 4(4) or 4(5)” substitute “ sections 2(2) or 4(4) ”.
- (3) In regulation 67(3) (prescribed amounts)—
  - (a) omit “work-related activity component and the”; and
  - (b) for “are” substitute “ is ”.
- (4) In Schedule 4 (amounts)—
  - (a) in Part 1 (prescribed amounts), in paragraph 1, in column (1)—
    - (i) in sub-paragraph 1(a) omit “or (3)” and “or (5)”;
    - (ii) in sub-paragraph 2(a) omit “or (5)”;
    - (iii) in sub-paragraph 3(c), (f) and (g) omit “or (5)”;
  - (b) in Part 3 (weekly amount of premiums specified in Part 2) in paragraph 11(1)—
    - (i) in paragraph (a)—
      - (aa) in columns “Premium” and “Amount” omit sub-paragraph (i);
      - (bb) in column “Premium” for sub-paragraph (iii) substitute—
        - “(iii) is not entitled to the support component.”;
    - (ii) in paragraph (b)—
      - (aa) in columns “Premium” and “Amount” omit sub-paragraph (i);
      - (bb) in column “Premium” for sub-paragraph (iii) substitute—
        - “(iii) is not entitled to the support component.”; and
  - (c) in Part 4 (the components)—
    - (i) in the heading, for “(THE COMPONENTS)” substitute “ (THE COMPONENT) ”; and
    - (ii) omit paragraph 12.
- (5) In Schedule 6 (housing costs) <sup>M5</sup>—
  - (a) in paragraph 1(3)(a)(ii) omit “including a work-related activity component under section 2(3) of the Act (amount of contributory allowance: work-related activity component)”;
  - (b) in paragraph 19(7)(d) for “which does not include an amount under section 4(2)(b) of the Act” substitute “ and they are still in the assessment phase in accordance with regulation 4 ”.

### Marginal Citations

**M3** S.R. [2008 No. 280](#); relevant amending Regulations are S.R. [2008 No. 478](#), S.R. [2012 No. 160](#) and S.R. [2016 No. 67](#) and 175

- M4** Regulation 7(1) was amended by regulation 12 of S.R. 2008 No. 478, **regulation 2(3)(a)** of S.R. 2012 No. 160, **regulation 6** of S.R. 2016 No. 67 and regulation 8(2) of S.R. 2016 No. 175. Regulation 7(1B) was inserted by regulation 2(3)(b) of S.R. 2012 No. 160.
- M5** Paragraph 1(3)(a) was substituted by regulation 8(4) of S.R. 2016 No. 175

### **Amendment of the Employment and Support Allowance Regulations (Northern Ireland) 2016**

3.—(1) The Employment and Support Allowance Regulations (Northern Ireland) 2016 <sup>M6</sup> are amended in accordance with paragraphs (2) to (4).

(2) In regulation 2 (interpretation) after the definition of “member of Her Majesty's forces” insert—

““member of the work-related activity group” means a claimant who has or is treated as having limited capability for work under either—

- (a) Part 5 of the Employment and Support Allowance Regulations (Northern Ireland) 2008 other than by virtue of regulation 30 of those regulations; or
- (b) Part 4 of these Regulations other than by virtue of regulation 26;”.

(3) In regulation 7 (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)

- (a) in the heading omit “or the work-related activity component”;
  - (b) in paragraph (1) omit “and (3)(a)”;
  - (c) in paragraph (3)(a)(i) omit “or 2(3)” and after “of the Act)” insert “ or they are a member of the work-related activity group ”; and
  - (d) in paragraph (3)(d)(i) omit “or (3)” and after “of the Act)” insert “ or they are a member of the work-related activity group ”.
- (4) In regulation 62 (prescribed amounts)—
- (a) in paragraph (1)(a) and (b) omit “or (3)”;
  - (b) for paragraph (2) substitute—  
“(2) Subject to regulation 63 the amount of the support component is £36.20.”.

#### **Marginal Citations**

**M6** S.R. 2016 No. 219

### **Consequential, transitional and savings provisions**

4.—(1) Schedule 1 contains amendments to secondary legislation as a consequence of the amendments made by these Regulations.

(2) Schedule 2 contains transitional and savings provisions.

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

Department for Work and Pensions

*Penny Mordaunt*  
Minister of State

## SCHEDULE 1

Regulation 4(1)

Employment and Support Allowance: amendments to secondary legislation consequential on removal of work-related activity component

**Amendment of the Income Support Regulations (Northern Ireland) 1987**

1.—(1) The Income Support (General) Regulations (Northern Ireland) 1987<sup>M7</sup> are amended in accordance with paragraphs (2) and (3).

(2) In regulation 2(1) (interpretation) after the definition of “the Macfarlane (Special Payments) (No. 2) Trust” insert—

““member of the support group” means a claimant who has or is treated as having limited capability for work-related activity under either—

- (a) Part 6 of the Employment and Support Allowance Regulations (Northern Ireland) 2008; or
- (b) Part 5 of the Employment and Support Allowance Regulations (Northern Ireland) 2016;

“member of the work-related activity group” means a claimant who has or is treated as having limited capability for work under either—

- (a) Part 5 of the Employment and Support Allowance Regulations (Northern Ireland) 2008 other than by virtue of regulation 30 of those regulations; or
- (b) Part 4 of the Employment and Support Allowance Regulations (Northern Ireland) 2016 other than by virtue of regulation 26 of those regulations;”.

(3) In Schedule 3 (housing costs)—

(a) in paragraph 1 (housing costs)—

(i) in sub-paragraph (3)(d)(i)—

(aa) omit “or (3)”, “or (5)” and “(components)”;

(bb) after “Welfare Reform Act” insert “ (component) or is a member of the work-related activity group ”;

(ii) in sub-paragraph (3)(d)(ii) omit “including an amount of a work-related activity component under section 2(3) of that Act (amount of contributory allowance: work-related activity component)”;

(b) in paragraph 18(7)(i) (non-dependant deductions) for the words from “which does not include” to the end substitute “ and is not a member of the work-related activity group or a member of the support group. ”.

**Marginal Citations**

**M7** S.R. 1987 No. 459; relevant amending Regulations are S.R. 1991 No. 204, S.R. 1995 No. 301, S.R. 2008 No. 286, S.R. 2013 No. 67 and S.R. 2016 No. 175

**Amendment of the Social Fund (Cold Weather Payments) (General) Regulations (Northern Ireland) 1988**

2.—(1) The Social Fund (Cold Weather Payments) (General) Regulations (Northern Ireland) 1988<sup>M8</sup> are amended in accordance with paragraphs (2) and (3).

(2) In regulation 1(2) (interpretation) after the definition of “mean daily temperature” insert—

““member of the support group” means a claimant who has or is treated as having limited capability for work-related activity under Part 6 of the Employment and Support Allowance Regulations (Northern Ireland) 2008;

“member of the work-related activity group” means a claimant who has or is treated as having limited capability for work under Part 5 of the Employment and Support Allowance Regulations (Northern Ireland) 2008 other than by virtue of regulation 30 of those regulations;”.

- (3) In regulation 1A(3)(e) (prescribed description of persons)—
  - (a) for “, P’s applicable amount includes” substitute “ and ”;
  - (b) in head (i) before “one or more” insert “ P’s applicable amount includes ”; and
  - (c) for head (ii) substitute—
    - “(ii) P is a member of the work-related activity group or is a member of the support group;”.

**Marginal Citations**

**M8** S.R. [1988 No. 368](#); relevant amending Regulation is S.R. [2010 No. 344](#)

**Amendment of the Jobseeker's Allowance Regulations (Northern Ireland) 1996**

3.—(1) The Jobseeker's Allowance Regulations (Northern Ireland) 1996 <sup>M9</sup> are amended in accordance with paragraphs (2) and (3).

(2) In regulation 1(2)(interpretation) after the definition of “maternity leave” insert—

““member of the work-related activity group” means a claimant who has or is treated as having limited capability for work under either—

- (a) Part 5 of the Employment and Support Allowance Regulations (Northern Ireland) 2008 other than by virtue of regulation 30 of those regulations; or
- (b) Part 4 of the Employment and Support Allowance Regulations (Northern Ireland) 2016 other than by virtue of regulation 26 of those regulations;”.

(3) In Schedule 2 (housing costs)—

- (a) in paragraph 1(3)(e) (housing costs)—
  - (i) in sub-paragraph (i)—
    - (aa) omit “or (3)” and “or (5)”;
    - (bb) for “(components)” substitute “ (component) ”;
  - (ii) in sub-paragraph (ii) omit “including an amount of a work-related activity component under section 2(3) of that Act (amount of contributory allowance: work-related activity component)”;
- (b) in paragraph 17(7)(i)—
  - (i) omit “or (5)” and “(components)”;
  - (ii) after “Welfare Reform Act” insert “ (component) and is not a member of the work-related activity group ”.

**Marginal Citations**

**M9** S.R. [1996 No. 198](#); relevant amending Regulations are; S.R. 2008 Nos. 286 and 413, S.R. [2013 No. 67](#) and S.R. [2016 No. 175](#)

*Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance (Consequential Amendments and Transitional and Savings Provisions) Regulations (Northern Ireland) 2017. (See end of Document for details)*

### **Amendment of the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001**

4. In regulation 7(2)(j)(iv)(bb) of the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001 <sup>M10</sup> (decisions superseding earlier decisions) omit “or the work-related activity component”.

#### **Marginal Citations**

**M10** S.R. 2001 No. 213; regulation 7(2)(j) was added by regulation 2(3)(b) of S.R. 2008 No. 378

### **Amendment of the State Pension Credit Regulations (Northern Ireland) 2003**

5.—(1) The State Pension Credit Regulations (Northern Ireland) 2003 <sup>M11</sup> are amended in accordance with paragraphs (2) and (3).

(2) In regulation 1(2) (interpretation) after the definition of “the Macfarlane (Special Payments) (No. 2) Trust” insert—

““member of the work-related activity group” means a claimant who has or is treated as having limited capability for work under either—

- (a) Part 5 of the Employment and Support Allowance Regulations (Northern Ireland) 2008 other than by virtue of regulation 30 of those regulations; or
- (b) Part 4 of the Employment and Support Allowance Regulations (Northern Ireland) 2016 other than by virtue of regulation 26 of those regulations;”.

(3) In Schedule 2 (housing costs)—

- (a) in paragraph 1(2)(b)(iv) (housing costs) for “or (3) or 4(4) or (5) of the Welfare Reform Act (components) 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)” substitute “ or 4(4) of the Welfare Reform Act (component) or is a member of the work-related activity group or they would have been a member of the work-related activity group ”; and—
- (b) in paragraph 14(7)(g) (persons residing with the claimant)—
  - (i) omit “or (5)”; and
  - (ii) for “(components)” substitute “ (component) or is not a member of the work-related activity group ”.

#### **Marginal Citations**

**M11** S.R. 2003 No. 28; relevant amending Regulations are S.R. 2008 Nos. 286 and 413, S.R. 2013 No. 67 and S.R. 2016 No. 175

### **Amendment of the Housing Benefit Regulations (Northern Ireland) 2006**

6.—(1) The Housing Benefit Regulations (Northern Ireland) 2006 <sup>M12</sup> are amended in accordance with paragraphs (2) to (8).

(2) In regulation 2(1)(interpretation) after the definition of “member of the armed forces away on operations” insert—

““member of the work-related activity group” means a claimant who has or is treated as having limited capability for work under either—

- (a) Part 5 of the Employment and Support Allowance Regulations (Northern Ireland) 2008 other than by virtue of regulation 30 of those regulations; or
- (b) Part 4 of the Employment and Support Allowance Regulations (Northern Ireland) 2016 other than by virtue of regulation 26 of those regulations;”.
- (3) In regulation 20 (applicable amounts) for paragraph (e) substitute—
  - “(e) the amount of the support component which may be applicable to him in accordance with Part V of Schedule 4 (the component);”.
- (4) In regulation 21 (polygamous marriages) for paragraph (f) substitute—
  - “(f) the amount of the support component which may be applicable to him in accordance with Part V of Schedule 4 (the component);”.
- (5) In regulation 25(11) (treatment of childcare charges)—
  - (a) in sub-paragraph (a) for “the work-related activity component” substitute “ the other member is a member of the work-related activity group ”; and
  - (b) in sub-paragraph (ba) for “the work-related activity component” substitute “ the other member would be a member of the work-related activity group ”.
- (6) In regulation 72(8)(a) (non-dependant deductions)—
  - (a) omit “and the work-related activity component”;
  - (b) at the end insert “ or where the non-dependant is not a member of the work-related activity group ”.
- (7) In Schedule 4 (applicable amounts)—
  - (a) in Part V (the components)—
    - (i) in the heading, for “components” substitute “ component ”;
    - (ii) in paragraph 21(1)—
      - (aa) for “one, but not both, of the components in paragraph 23 or” substitute “ the component in paragraph ”;
      - (bb) for paragraph (b) substitute—
        - “(b) the Department has determined that that the claimant or the claimant's partner has or is treated as having limited capability for work-related activity;”;
      - (cc) in paragraph (c)(ii) omit “the work-related activity component”;
    - (iii) in paragraph 22(1) and (2) omit “23 or”;
    - (iv) omit paragraph 23; and
  - (b) in Part VI (amount of components)—
    - (i) in the heading for “components” substitute “ component ”;
    - (ii) omit paragraph 25.
- (8) In Schedule 5 (sums to be disregarded in the calculation of earnings)—
  - (a) in paragraph 3(2)—
    - (i) omit “, work-related activity component”;
    - (ii) after “Schedule 4” insert “ or where the claimant or the claimant's partner is a member of the work-related activity group ”; and
  - (b) in paragraph 17(2)(b)(iv)—
    - (i) in paragraph (aa)—

**Changes to legislation:** There are currently no known outstanding effects for the *The Employment and Support Allowance (Consequential Amendments and Transitional and Savings Provisions) Regulations (Northern Ireland) 2017*. (See end of Document for details)

- (aa) omit “, the work-related activity component under paragraph 23;”;
  - (bb) after “of Schedule 4” insert “, or the claimant or the claimant's partner is a member of the work-related activity group ”;
- (ii) in paragraph (bb)—
- (aa) omit “, the work-related activity component”;
  - (bb) for the words from “and is engaged” to the end substitute “ or at least one of the couple is a member of the work-related activity group; or ”.

#### **Marginal Citations**

**M12** S.R. 2006 No. 405; relevant amending Regulations are S.R. 2008 Nos. 179 and 378 and S.R. 2013 No. 67 and S.R. 2016 No. 326.

### **Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006**

7.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006<sup>M13</sup> are amended in accordance with paragraphs (2) to (5).

(2) In regulation 2(1)(interpretation) after the definition of “member of the armed forces away on operations” insert—

““member of the work-related activity group” means a claimant who has or is treated as having limited capability for work under either—

- (a) Part 5 of the Employment and Support Allowance Regulations (Northern Ireland) 2008 other than by virtue of regulation 30 of those Regulations; or
- (b) Part 4 of the Employment and Support Allowance Regulations (Northern Ireland) 2016 other than by virtue of regulation 26 of those Regulations;”.

(3) In regulation 29(11)(ba) (treatment of childcare charges)—

- (a) omit “or the work-related activity component”; and
- (b) after “limited capability for work” insert “ or the other member of the couple would be a member of the work-related activity group ”.

(4) In regulation 53(8) (non-dependant deductions)—

- (a) in sub-paragraph (a)—
  - (i) omit “and the work-related activity component”; and
  - (ii) at the end insert “ or where the non-dependant is not a member of the work-related activity group ”;
- (b) in sub-paragraph (b)—
  - (i) omit “and the work-related activity component”; and
  - (ii) at the end insert “ or where the non-dependant is not a member of the work-related activity group ”.

(5) In Schedule 5 (sums disregarded from claimant's earnings) in paragraph 5(1)(d)(ii) omit “or the work-related activity component”.



**Marginal Citations**

**M13** S.R. 2006 No. 406; relevant amending Regulations are S.R. 2008 No. 378, S.R. 2009 No. 92 and S.R. 2016 No. 326.

SCHEDULE 2

Regulation 4(2)

Employment and Support Allowance: transitional and savings provisions

**Transitional and savings provisions: General**

1.—(1) The amendments made by regulations 2 and 3 of, and paragraphs 1 to 7 of Schedule 1 to, these Regulations and by Article 9(1) to (3) of the Welfare Reform and Work (Northern Ireland) Order 2016 (which amend sections 2 and 4 of the Welfare Reform Act (Northern Ireland) 2007) do not apply where any of the circumstances in paragraphs 2 to 7 apply.

(2) In this Schedule—

“assessment phase” has the same meaning as in the Welfare Reform Act (Northern Ireland) 2007<sup>M14</sup>;

“<sup>F1</sup>claim” means a claim for an employment and support allowance<sup>F2</sup>made] in accordance with regulations 4ZC, 4F, 4G and 4H of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987<sup>M15</sup> or regulations 12 to 16 of the Universal Credit, Personal Independent Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016<sup>M16</sup>;

“employment and support allowance” means an allowance under Part 1 of the Welfare Reform Act (Northern Ireland) 2007;

“ESA Regulations 2008” means the Employment and Support Allowance Regulations (Northern Ireland) 2008<sup>M17</sup>; and

“ESA Regulations 2016” means the Employment and Support Allowance Regulations (Northern Ireland) 2016<sup>M18</sup>.

**F1** Word in Sch. 2 para. 1(2) substituted (31.7.2017) by [The Employment and Support Allowance \(Miscellaneous Amendments and Transitional and Savings Provision\) Regulations \(Northern Ireland\) 2017 \(S.R. 2017/148\)](#), regs. 1, **8(a)(i)**

**F2** Word in Sch. 2 para. 1(2) inserted (31.7.2017) by [The Employment and Support Allowance \(Miscellaneous Amendments and Transitional and Savings Provision\) Regulations \(Northern Ireland\) 2017 \(S.R. 2017/148\)](#), regs. 1, **8(a)(ii)**

**Marginal Citations**

**M14** 2007 c.2

**M15** S.R. 1987 No. 465; relevant amending Rules are S.R. 2006 No. 203 and S.R. 2008 No. 286; regulation 4ZC was inserted by Article 2(3) of S.R. 2006 No. 203; regulations 4F to H were inserted by regulation 13(5) of S.R. 2008 No. 286

**M16** S.R. 2016 No. 220

**M17** S.R. 2008 No. 280; relevant amending Regulation is S.R. 2016 No. 176

**M18** S.R. 2016 No. 219

*Changes to legislation:* There are currently no known outstanding effects for the The Employment and Support Allowance (Consequential Amendments and Transitional and Savings Provisions) Regulations (Northern Ireland) 2017. (See end of Document for details)

### **Claimants who have made a claim for employment and support allowance before 3rd April 2017**

2. The first circumstance is where the claimant has made or is treated as having made a claim for an employment and support allowance before 3rd April 2017 and that claim results in an award of employment and support allowance.

### **Claimants who have been found to have limited capability for work before 3rd April 2017**

3. The second circumstance is where the claimant's current period of limited capability for work began on or after 3rd April 2017 and is treated as a continuation of an earlier period of limited capability for work which began before 3rd April 2017 by virtue of—

- (a) regulation 145 of the ESA Regulations 2008; or
- (b) regulation 86 of the ESA Regulations 2016.

### **Claimants on Incapacity Benefits who have or will become notified persons**

4. The third circumstance is where the claimant [<sup>F3</sup>has been,] is or becomes a notified person within the meaning of regulation 4 of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 <sup>M19</sup> (the notice commencing the conversion phase) and a determination is effective as to whether that person—

- (a) has or is to be treated as having limited capability for work under Part 5 of the ESA Regulations 2008;
- (b) has or is to be treated as having limited capability for work under Part 5 of the ESA Regulations 2016;
- (c) has or is to be treated as having limited capability for work-related activity under Part 6 of the ESA Regulations 2008; or
- (d) has or is to be treated as having limited capability for work-related activity under Part 6 of the ESA Regulations 2016.

**F3** Words in Sch. 2 para. 4 inserted (31.7.2017) by The Employment and Support Allowance (Miscellaneous Amendments and Transitional and Savings Provision) Regulations (Northern Ireland) 2017 (S.R. 2017/148), regs. 1, **8(b)**

#### **Marginal Citations**

**M19** S.R. 2010 No. 312

### **Claimants where their award becomes payable before 3rd April 2017**

5. The fourth circumstance is where the claimant becomes entitled to an employment and support allowance before 3rd April 2017 by virtue of—

- (a) regulation 19(1) and paragraph 16 of Schedule 4 to the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 <sup>M20</sup>; or
- (b) regulation 27 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016 <sup>M21</sup>.

**Changes to legislation:** There are currently no known outstanding effects for the *The Employment and Support Allowance (Consequential Amendments and Transitional and Savings Provisions) Regulations (Northern Ireland) 2017*. (See end of Document for details)

#### Marginal Citations

**M20** Regulation 19(1) was substituted by regulation 3(7) of S.R. 1997 No. 156; paragraph 16 of Schedule 4 was added by regulation 13(17) of S.R. 2008 No. 286

**M21** S.R. 2016 No. 220

#### Claimants where their assessment phase begins before 3rd April 2017

6. The fifth circumstance is where the first day of the claimant's assessment phase began before 3rd April 2017 by virtue of—

- (a) regulation 5 of the ESA Regulations 2008; or
- (b) regulation 6 of the ESA Regulations 2016.

#### Claimants where they have been entitled to maternity allowance

7. The sixth circumstance is where—

- (a) a claimant was entitled to a maternity allowance under section 35 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>M22</sup> and the end of that award is within 12 weeks beginning with the date that a claim for an employment and support allowance is made; and
- (b) immediately prior to their entitlement to a maternity allowance beginning the claimant was previously entitled to an employment and support allowance before 3rd April 2017.

#### Marginal Citations

**M22** 1992 (c. 7); section 35 was amended by Article 4(a) of the Still-Birth (Definition) (Northern Ireland) Order 1992 (S.I. 1992/1310 (N.I. 10)), regulation 2(3) of S.R. 1994 No. 176, Article 50(1) and (2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999, paragraph 2 of Schedule 1 to the Social Security Act (Northern Ireland) 2002 (c. 10) and Article 6(1) to (3) of the Work and Families Act (Northern Ireland) 2015 (c. 1)

## EXPLANATORY NOTE

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

These Regulations make amendments to secondary legislation consequential on Article 9 of the Welfare Reform and Work (Northern Ireland) Order 2016 (S.I. 2016/999, “the 2016 Order”). Article 9 of the 2016 Order amends sections 2 and 4 of the Welfare Reform Act (Northern Ireland) 2007, which provide for an award of an employment and support allowance where the claimant is found to have limited capability for work to include an amount referred to as the work-related activity component as may be prescribed in regulations.

Regulation 1 provides for the citation and commencement of these Regulations. In particular, these Regulations will come into operation on 3rd April 2017 to coincide with the commencement of Article 9 of the 2016 Order.

**Changes to legislation:** *There are currently no known outstanding effects for the The Employment and Support Allowance (Consequential Amendments and Transitional and Savings Provisions) Regulations (Northern Ireland) 2017. (See end of Document for details)*

Regulation 2 amends provisions in the Employment and Support Allowance Regulations (Northern Ireland) 2008 (S.R. 2008 No. 280, “the ESA Regulations 2008”) that, amongst other things, provide for a basic rate of an employment and support allowance, and, on top of this, a work-related activity or support component. If a claimant is found to have limited capability for work they are entitled to the work-related activity component. References to the work-related activity component are omitted and other amendments consequential on the removal of that element are made. Regulation 3 makes similar amendments to the Employment and Support Allowance Regulations (Northern Ireland) 2016 (S.R. 2016 No. 219, “the ESA Regulations 2016”).

Regulation 4 introduces Schedule 1, which makes consequential amendments to other secondary legislation, and Schedule 2, which makes transitional and savings provisions.

Paragraphs 1 to 7 of Schedule 1 make amendments to secondary legislation to omit or substitute references to the work-related activity component.

Paragraphs 1 to 7 of Schedule 2 make savings and transitional provisions so that the amendments to the ESA Regulations 2008 in regulation 2, the amendments to the ESA Regulations 2016 in regulation 3, the amendments to other secondary legislation in paragraphs 1 to 7 of Schedule 1 and the amendments to Article 9(1) to (3) of the 2016 Order (which removes the work-related activity component from an award of employment and support allowance), do not apply in the following circumstances.

The circumstances are—

- (a) where the claim for employment and support allowance was made or treated as made before 3rd April 2017 and that claim results in an award;
- (b) where the claim was made on or after 3rd April 2017 but the claimant had previously been entitled to employment and support allowance and their period of limited capability for work started before 3rd April 2017;
- (c) where the claimant is or will become a notified person for the purposes of conversion from an incapacity benefit to employment and support allowance and is subsequently found to have limited capability for work or limited capability for work-related activity;
- (d) where the claim was made on or after the 3rd April 2017 but the claimant's employment and support allowance is payable before 3rd April 2017;
- (e) where the claim was made on or after 3rd April 2017 but the claimant's assessment phase is deemed to have started before 3rd April 2017; and
- (f) where a claimant (who was previously entitled to an employment and support allowance as part of a claim made before 3rd April 2017) having been in receipt of a maternity allowance (which because they were receiving contributory employment and support allowance terminated their award to an employment and support allowance) makes a new claim for an employment and support allowance within 12 weeks of the date that their maternity allowance ended.

The regulations contained in this instrument are either made by virtue of, or are consequential upon, Article 9 of the 2016 Order.

An assessment of the impact of removal of the work-related activity component from an award of Employment and Support Allowance was included in the impact assessment published alongside the 2016 Order ([http://www.legislation.gov.uk/ukia/2016/201/pdfs/ukia\\_20160201\\_en.pdf](http://www.legislation.gov.uk/ukia/2016/201/pdfs/ukia_20160201_en.pdf)).

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

**Changes to legislation:**

There are currently no known outstanding effects for the The Employment and Support Allowance (Consequential Amendments and Transitional and Savings Provisions) Regulations (Northern Ireland) 2017.