Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Employment and Support Allowance Regulations (Northern Ireland) 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY RULES OF NORTHERN IRELAND

2016 No. 219

SOCIAL SECURITY

The Employment and Support Allowance Regulations (Northern Ireland) 2016

Made - - - - 3rd May 2016

Laid before Parliament 10th May 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 5(1A) and 165(4) to (6) of the Social Security Administration (Northern Ireland) Act 1992 [F1] and Article 21(1)(a) of the Social Security (Northern Ireland) Order 1998 [F2] and sections 2(1)(a) and (c) and (4)(a) and (c), 3(1)(c), (2)(b) and (d) and (3), 8(1) to (3), (4)(a) and (b), (5) and (6), 9(1) to (3) and (4)(a) and (b), 11A(5), 11B(2) and (3), 11D(2)(d), 11E(1), 11H(7) and (8), 11J(3), (4) and (8), 17(1), (2) and (3)(a) and (b), 18(1), (2) and (4), 20(2) to (7), 24(1), (2)(b) and (3) and 25(1) and (2) of, and paragraphs 1(3) and (4), 3(2), 4(1)(a) and (c), (3) and (4) of Schedule 1 and paragraphs 1 to 4A, 5, 6, 9 and 10 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007 [F3] and Article 5 and paragraphs 2(3) and 3 of Schedule 5 to the Welfare Reform (Northern Ireland) Order 2015 [F4].

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

F1 1992 c. 8; section 5(1A) was inserted by Article 104(3) of the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015 No. 2006 (N.I. 1))

F2 S.I. 1998/1506 (N.I. 10)

F3 2007 c. 2 (N.I.); section 2(1) was amended by paragraph 19 of Schedule 3 and paragraph 6(2) of Schedule 5 to the Welfare Reform (Northern Ireland) Order 2015, section 3(2)(d) was amended by paragraph 21(c) of Schedule 3 to the Welfare Reform (Northern Ireland) Order 2015, sections 11A to 11J were inserted by Article 63(2) of the Welfare Reform (Northern Ireland) Order 2015, section 18(4) was amended by paragraph 21(d) of Schedule 3 to the Welfare Reform (Northern Ireland) Order 2015, section 20(2) to (7) was amended by paragraph 21(e) of Schedule 3 to the Welfare Reform (Northern Ireland) Order 2015, paragraph 1(3) of Schedule 1 was substituted by section 12(4) of the Welfare Reform Act (Northern Ireland) 2010 (c. 13) and paragraph 1(4) was amended by section 12(5) of that Act, paragraph 3(2) of Schedule 1 was amended by paragraph 21(f) of Schedule 3 to the Welfare Reform (Northern Ireland) Order 2015, paragraph 4A of Schedule 2 was inserted by Article 60(6) of the Welfare Reform (Northern Ireland) Order 2015 and paragraph 6 was amended by paragraph 21(g) of Schedule 3 to the Welfare Reform (Northern Ireland) Order 2015. Section 24(1) is cited for the meaning it gives to "prescribed" and "regulations"

F4 S.I. 2015 No. 2006 (N.I. 1); Article 5 is cited for the meaning it gives to "the Contributions and Benefits Act" and "the Jobseekers Order"

PART 1

GENERAL

Citation, commencement and application

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

(2) These regulations come into operation immediately after the coming into operation of the Universal Credit Regulations [F5].

(3) They apply in relation to a particular case on any day on which Article 39(1)(b) of the Welfare Reform (Northern Ireland) Order 2015 (abolition of income-related employment and support allowance) is in operation and applies in relation to that case.

F5 S.R. 2016 No. 216

Interpretation

2. In these Regulations—

"the Act" means the Welfare Reform Act (Northern Ireland) 2007;

"advanced education" means education for the purposes of—

(a) a course in preparation for a degree, a diploma of higher education, a higher national diploma, a higher national diploma of the Business and Technology Education Council or the Scottish Qualifications Authority, or a teaching qualification; or

(b) any other course which is of a standard above ordinary national diploma, a diploma of the Business and Technology Education Council or a higher or advanced higher national certificate of the Scottish Qualifications Authority or a general certificate of education (advanced level);

"benefit week" means a period of 7 days ending on such day as the Department may direct, but for the purposes of calculating any payment of income "benefit week" means the period of 7 days ending on—

(a) the day before the first day of the first period of seven days which—

(i) ends on such day as the Department may direct, and

(ii) follows the date of claim for an employment and support allowance; or

(b) the last day on which an employment and support allowance is paid if it is in payment for less than a week;

"carer's allowance" means an allowance under section 70 of the Contributions and Benefits Act [F6];

"child" means a person under the age of 16;

"the Children Order" means the Children (Northern Ireland) Order 1995 [F7];

"the Claims and Payments Regulations 2016" means the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016 [F8];

"close relative" means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister or, if any of the preceding persons is one member of a couple, the other member of that couple;

"confinement" has the meaning given to it by section 167(1) of the Contributions and Benefits Act [F9];

"councillor" means a member of a district council;

"councillor's allowance" means such payments for or in connection with the work which a person undertakes as a councillor;

"couple" means—

(a) a man and woman who are married to each other and are members of the same household;

(b) a man and woman who are not married to each other but are living together as husband and wife;

(c) two people of the same sex who are civil partners of each other and are members of the same household; or

(d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners,

and for the purposes of paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners only if they would be regarded as living together as husband and wife were they instead two people of the opposite sex;

"the Decisions and Appeals Regulations 1999" means the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 [F10];

"the Decisions and Appeals Regulations 2016" means the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations (Northern Ireland) 2016 [F11];

"descriptor" means, in relation to an activity specified in column (1) of Schedule 2, a descriptor in column (2) of that Schedule which describes a person's ability to perform that activity;

"the Disabled Persons (Employment) Act" means the Disabled Persons (Employment) Act (Northern Ireland) 1945 [F12];

"employed earner" means a person who is gainfully employed in Northern Ireland or the Republic of Ireland either under a contract of service or in an office (including elective office) with general earnings;

"employment" includes any trade, business, profession, office or vocation and "employed" has a corresponding meaning;

"the Employment and Training Act" means the Employment and Training Act (Northern Ireland) 1950 [F13];

"the Employment Rights Order" means the Employment Rights (Northern Ireland) Order 1996 [F14];

"family" means—

(a) a couple;

(b) a couple and a member of the same household for whom one of them is or both are responsible and who is a child or a young person;

(c) a person who is not a member of a couple and a member of the same household for whom that person is responsible and who is a child or a young person;

"first contribution condition" means the condition set out in paragraph 1(1) of Schedule 1 to the Act [F15];

"health care professional" means—

(a) a registered medical practitioner;

(b) a registered nurse; or

(c) an occupational therapist or physiotherapist registered with a regulatory body established by an Order of Council under section 60 of the Health Act 1999 [F16];

"the Health and Personal Social Services Order" means the Health and Personal Social Services (Northern Ireland) Order 1972 [F17];

"the Income Support Regulations" means the Income Support (General) Regulations (Northern Ireland) 1987 [F18];

"the Jobseeker's Allowance Regulations" means the Jobseeker's Allowance Regulations (Northern Ireland) 2016 [F19];

"limited capability for work assessment" means the assessment described in regulation 15(2) and Schedule 2;

"the Medical Evidence Regulations" means the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976 [F20];

"medical treatment" means medical, surgical or rehabilitative treatment (including any course or diet or other regimen), and references to a person receiving or submitting to medical treatment are to be construed accordingly;

"member of Her Majesty's forces" means a person, other than one mentioned in Part 2 of Schedule 1, who is—

(a) over 16 years of age; and

(b) a member of an establishment or organisation specified in Part 1 of that Schedule,

but does not include any such person while absent on desertion;

"the Mental Health Order" means the Mental Health (Northern Ireland) Order 1986 [F21];

"national living wage" means the national living wage rate specified in regulation 4 of the National Minimum Wage Regulations 2015 [F22] (national minimum wage rates);

"net earnings" means such earnings as are calculated in accordance with regulation 81;

"occupational pension scheme" has the meaning given by section 1 of the Pension Schemes (Northern Ireland) Act 1993 [F23];

"part-time employment" means, if the claimant were entitled to income support, employment in which the claimant is not to be treated as engaged in remunerative work under regulation 5 or 6(1) and (4) of the Income Support Regulations [F24] (persons treated, or not treated, as engaged in remunerative work);

"partner" means—

(a) where a claimant is a member of a couple, the other member of that couple; or

(b) where a claimant is a husband or wife by virtue of a polygamous marriage, the other party to the marriage or any spouse additional to either party to the marriage;

"payment" includes a part of a payment;

"pay period" means the period in respect of which a claimant is, or expects to be, normally paid by the claimant's employer, being a week, a fortnight, 4 weeks, a month or other shorter or longer period as the case may be;

"period of limited capability for work" means, except in regulation 3(2), a period throughout which a person has, or is treated as having, limited capability for work under these Regulations, and does not include a period which is outside the prescribed time for claiming as specified in regulation 27 of the (Claims and Payments) Regulations 2016;

"permanent health insurance payment" means any periodical payment arranged by an employer under an insurance policy providing benefits in connection with physical or mental illness or disability, in relation to a former employee on the termination of that person's employment;

"personal pension scheme" means—

(a) a personal pension scheme as defined by section 1 of the Pension Schemes (Northern Ireland) Act 1993 [F25];

(b) an annuity contract, trust scheme or substituted contract which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(f) of Schedule 36 to the Finance Act 2004 [F26];

(c) a personal pension scheme which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(g) of Schedule 36 to the Finance Act 2004;

"polygamous marriage" means any marriage entered into under a law which permits polygamy where—

(a) either party has for the time being any spouse additional to the other party; and

(b) the claimant, the other party to the marriage and the additional spouse are members of the same household;

"qualifying young person" has the meaning given by section 138(2) of the Contributions and Benefits Act [F27] (child and qualifying young person);

"relative" means a close relative, grandparent, grandchild, uncle, aunt, nephew or niece;

"second contribution condition" means the condition set out in paragraph 2(1) of Schedule 1 to the Act;

"self-employed earner" means a person who is gainfully employed in Northern Ireland or the Republic of Ireland otherwise than in employed earner's employment (whether or not he is also employed in such employment);

"state pension credit" means a state pension credit under the State Pension Credit Act (Northern Ireland) 2002 [F28];

"the Tax Credits Act" means the Tax Credits Act 2002 [F29];

"terminally ill", in relation to a claimant, means the claimant is suffering from a progressive disease and death in consequence of that disease can reasonably be expected within 6 months;

"training" means—

(a) training in pursuance of arrangements made under section 1 or 3 of the Employment and Training Act; or

(b) any training received on a course which a person attends for 16 hours or more a week, the primary purpose of which is the teaching of occupational or vocational skills;

"training allowance" means an allowance (whether by way of periodical grants or otherwise) payable—