STATUTORY RULES OF NORTHERN IRELAND

2015 No. 185

SOCIAL SECURITY

The Employment and Support Allowance (Repeat Assessments and Pending Appeal Awards) (Amendment) Regulations (Northern Ireland) 2015

Made - - - -	*26th March 2015*
Coming into operation	*30th March 2015*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 1(1), 165(1) and (4) of the Social Security Administration (Northern Ireland) Act 1992(**1**), and now vested in it(**2**), and sections 8(1), (5) and (6), 22, 25(2) and 29 of, and paragraph 1 of Schedule 2, and paragraphs 1, 7 and 8 of Schedule 4 to, the Welfare Reform Act (Northern Ireland) 2007(**3**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Repeat Assessments and Pending Appeal Awards) (Amendment) Regulations (Northern Ireland) 2015 and shall come into operation on 30th March 2015.

(2) The Interpretation Act (Northern Ireland) 1954(**4**) shall apply to these Regulations as it applies to an Act of the Assembly.

Application

2.—(1) These Regulations apply to a person who falls within paragraph (2).

(2) A person falls within this paragraph where that person—

(a) makes or is treated as making a claim for an employment and support allowance on or after 30 March 2015; or

(**1**) 1992 c. 8; section 165(1) was amended by paragraph 49(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and section 18(5) of the National Insurance Contributions Act 2014 (c. 7)
(**2**) *See* Article 8(b) of S.R. 1999 No. 481
(**3**) 2007 c. 2 (N.I.)
(**4**) 1954 c.33 (N.I.)

(b) makes and is pursuing an appeal against a decision of the Department that embodies a determination that the person does not have limited capability for work, and that decision was made in respect of a claim made, or treated as made, on or after 30 March 2015.

(3) For the purposes of paragraph (2) "employment and support allowance" means an allowance under Part 1 of the Welfare Reform Act (Northern Ireland) 2007.

Amendment of the Employment and Support Allowance Regulations

3.—(1) The Employment and Support Allowance Regulations (Northern Ireland) 2008(**5**) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 30 (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made)—

(a) for paragraph (2)(b)(**6**) substitute—

"(b) in relation to the claimant's entitlement to any benefit, allowance or advantage which is dependent on the claimant having limited capability for work, it has not been determined—

(i) in the last determination preceding the date of claim for an employment and support allowance, that the claimant does not have limited capability for work, or

(ii) within the 6 months preceding the date of claim for an employment and support allowance, that the claimant is to be treated as not having limited capability for work under regulation 22 or 23,

unless paragraph (4) applies.";

(b) for paragraph (3) substitute—

"(3) Paragraph (2)(b) does not apply where a claimant has made and is pursuing an appeal against a relevant decision of the Department, and that appeal has not yet been determined by an appeal tribunal."; and

(c) after paragraph (4)(**7**) add—

"(5) In this regulation a "relevant decision" means—

(a) a decision that embodies the first determination by the Department that the claimant does not have limited capability for work; or

(b) a decision that embodies the first determination by the Department that the claimant does not have limited capability for work since a previous determination by the Department or appellate authority that the claimant does have limited capability for work.

(6) In this regulation "appellate authority" means an appeal tribunal, a Commissioner (as defined in section 167 of the Social Security Administration (Northern Ireland) 1992), the Court of Appeal or the Supreme Court.".

(3) For regulation 147A(1)(**8**) (claimants appealing a decision) substitute—

"(1) This regulation applies where a claimant has made and is pursuing an appeal against a relevant decision of the Department as defined in regulation 30.".

(**5**) S.R. 2008 No. 280; relevant amending Regulations are S.R. 2010 No. 200 and S.R. 2013 No. 246
(**6**) Paragraph (2)(b) was amended by regulation 11(13)(a) of S.R. 2013 No. 246
(**7**) Paragraph (4) was added by regulation 11(13)(c) of S.R. 2013 No.246
(**8**) Regulation 147A(1) was inserted by regulation 9(15) of S.R. 2010 No. 200

Amendment of the Claims and Payments Regulations

4. Renumber regulation 3 of the Claims and Payments Regulations (Northern Ireland) 1987(**9**) (claims not required for entitlement to benefit in certain cases) as paragraph (1) of that regulation and in the renumbered paragraph (1)—

(a) for sub-paragraph (j)(**10**) substitute—

"(j) in the case of an employment and support allowance where—

(i) the beneficiary has made and is pursuing an appeal against a relevant decision of the Department, and

(ii) that appeal relates to a decision to terminate or not to award a benefit for which a claim was made."; and

(b) after paragraph (1) add—

"(2) In this regulation—

"appellate authority" means an appeal tribunal, a Commissioner, the Court of Appeal or the Supreme Court; and

"relevant decision" means—

(a) a decision that embodies the first determination by the Department that the claimant does not have limited capability for work; or

(b) a decision that embodies the first determination by the Department that the claimant does not have limited capability for work since a previous determination by the Department or appellate authority that the claimant does have limited capability for work.".

Amendment of the Employment and Support Allowance Existing Awards Regulations

5. For paragraph 4(d) of Schedule 2 to the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010(**11**) (modification of the Employment and Support Allowance Regulations) substitute—

"(d) regulation 30 (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made) is to be read as if, for paragraph (3), there was substituted—

"(3) Paragraph 2(b) does not apply where a claimant has made and is pursuing an appeal against a conversion decision that embodies a determination that the claimant does not have limited capability for work and that appeal has not yet been determined by an appeal tribunal.".".

Revocations

6. Regulation 3 of the Social Security (Miscellaneous Amendments No. 4) Regulations (Northern Ireland) 2010(**12**) and regulation 11(13)(a) of the Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2013(**13**) are revoked.

(**9**) S.R. 1987 No. 465; relevant amending Regulation is S.R. 2010 No. 200
(**10**) Sub-paragraph (j) was substituted by regulation 3 of S.R. 2010 No. 200
(**11**) S.R. 2010 No. 312
(**12**) S.R. 2010 No. 200
(**13**) S.R. 2013 No. 246