STATUTORY RULES OF NORTHERN IRELAND

2012 No. 160

SOCIAL SECURITY

The Employment and Support Allowance (Amendment of Linking Rules) Regulations (Northern Ireland) 2012

Made - - - -	*4th April 2012*
Coming into operation	*1st May 2012*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 2(4), 4(6), 24(2)(b), 25(2) and 28(2) and paragraphs 1, 4 and 9 of Schedule 2 and paragraphs 1(1), and 7(1) and 8 of Schedule 4 to, the Welfare Reform Act (Northern Ireland) 2007(**1**).

Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance (Amendment of Linking Rules) Regulations (Northern Ireland) 2012 and shall come into operation on 1st May 2012.

Amendment of the Employment and Support Allowance Regulations

2.—(1) The Employment and Support Regulations (Northern Ireland) 2008(**2**) are amended in accordance with paragraphs (2) to (4).

(2) After regulation 5(2)(b)(**3**) (the assessment phase – previous claimants) insert—

"(c) (i) the claimant's current period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 145(1) or (2),

(ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work,

(iii) the previous period of limited capability for work was terminated by virtue of a determination that the claimant did not have limited capability for work,

(iv) the period for which the claimant was previously entitled was no more than 13 weeks, and

(**1**) 2007 c. 2 (N.I.)
(**2**) S.R. 2008 No. 280; relevant amending Regulations are S.R. 2008 No. 478 and S.R. 2010 No. 200
(**3**) Regulation 5 was amended by regulation 9(4) of S.R. 2010 No. 200

(v) a determination is made in relation to the current period of limited capability for work that the claimant has or is treated as having limited capability for work, other than under regulation 30; or

(d) (i) the claimant's current period of limited capability for work is to be treated as a condition of an earlier period of limited capability for work under regulation 145(1) or (2),

(ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work,

(iii) in relation to the previous award of an employment and support allowance, a determination was made that the claimant had limited capability for work or was treated as having limited capability for work, other than under regulation 30, and

(iv) the period for which the claimant was previously entitled was no more than 13 weeks.".

(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) for paragraph (1)(b)(**4**) substitute—

"(b) the case is a relevant linked case;"; and

(b) after paragraph (1) insert—

"(1A) For the purposes of paragraph (1)(b) a relevant linked case is a case mentioned in paragraph (1B) where a period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 145(1) or (2).

(1B) Paragraph (1A) applies to the following cases—

(a) case 1 is where—

(i) the claimant was entitled to an employment and support allowance (including entitlement to a component under sections 2(2), 2(3), 4(4) or 4(5) of the Act) in the earlier period of limited capability for work, and

(ii) the previous period for which the claimant was entitled to an employment and support allowance was terminated other than by virtue of a determination that the claimant did not have limited capability for work;

(b) case 2 is where—

(i) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work,

(ii) the previous period for which the claimant was entitled to an employment and support allowance was 13 weeks or longer,

(iii) the previous period for which the claimant was entitled to an employment and support allowance was terminated by virtue of a determination that the claimant did not have, or was treated as not having, limited capability for work, and

(iv) it is determined in relation to the current period of limited capability for work that the claimant has limited capability for work or is treated as having limited capability for work, other than under regulation 30;

(**4**) Sub-paragraph (b) was amended by regulation 9(6)(a) of S.R. 2010 No. 200