STATUTORY RULES OF NORTHERN IRELAND

2010 No. 347

HOUSING; RATES; SOCIAL SECURITY

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

Made - - - - 11th October 2010

Coming into operation in accordance with regulation 1

The Department for Social Development makes the following Regulations in exercise of the powers conferred by paragraphs 4(3) and 20(1)(b) of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**1**) and sections 25(2) and 28(2) of, and paragraphs 1, 4 and 9 of Schedule 2 and paragraphs 1(1), 7 and 8(1) of Schedule 4 to, the Welfare Reform Act (Northern Ireland) 2007(**2**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) (Amendment) Regulations (Northern Ireland) 2010.

(2) These Regulations shall come into operation on 1st November 2010 except for regulation 4 which shall come into operation on 31st January 2011.

(3) In these Regulations—

"the Employment and Support Allowance Regulations" means the Employment and Support Allowance Regulations (Northern Ireland) 2008(**3**); and

"the Existing Awards Regulations" means the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010(**4**).

(**1**) 2000 c. 4 (N.I.)
(**2**) 2007 c. 2 (N.I.)
(**3**) S.R. 2008 No. 280
(**4**) S.R. 2010 No. 312

Amendment of the Existing Awards Regulations

2.—(1) The Existing Awards Regulations are amended in accordance with the following provisions of this regulation.

(2) In regulation 3 (persons to whom these Regulations apply) for "These" substitute "Regulations 4 to 22 of these".

(3) In regulation 7 (qualifying for conversion)—

(a) the existing provision shall be numbered as paragraph (1);

(b) in that paragraph—

(i) for "For the purposes of regulation 5(2)(a)" substitute "Subject to paragraph (2), for the purposes of regulation 5(2)(a)",

(ii) after "notified person" insert "("P")",

(iii) after "employment and support allowance" insert "under these Regulations", and

(iv) for "the person" substitute "P"; and

(c) after that paragraph add—

"(2) Where P is entitled to an award of an employment and support allowance under the Act and it has been determined in respect of that entitlement that P—

(a) has limited capability for work; or

(b) is to be treated as having limited capability for work, other than by virtue of regulation 30 of the Employment and Support Allowance Regulations,

in relation to the conversion of P's existing award, P is to be taken as having satisfied the condition set out in section 1(3)(a) of the Act (limited capability for work).".

(4) In regulation 8 (amount of an employment and support allowance on conversion)—

(a) the existing provision shall be numbered as paragraph (1); and

(b) after that paragraph add—

"(2) In a case to which regulation 7(2) (cases where a person is already entitled to an award of an employment and support allowance) applies, a determination that the person has, or does not have, limited capability for work-related activity made in respect of the person's current entitlement to an award of an employment and support allowance is to be treated as having been made for the purposes of Step 1.".

(5) In regulation 10 (transitional addition: incapacity benefit or severe disablement allowance)—

(a) in paragraph (5)—

(i) for sub-paragraph (a) substitute—

"(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(**5**) (incapacity benefit: rate), subject to any deduction made in accordance with section 42(3) of the Pension Schemes (Northern Ireland) Act 1993(**6**),

(**5**) 1992 c. 7; 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))

(**6**) 1993 c. 49; section 42(3) was substituted by paragraph 54(4) of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(ii) under section 40(5) or 41(4) of the Contributions and Benefits Act(**7**) (long-term incapacity benefit for widows and for widowers),

(iii) under section 80, 81 or 86A of that Act(**8**) (incapacity benefit: beneficiary's dependent children; restrictions on increase – child not living with beneficiary, etc; and increase for adult dependants),

(iv) by virtue of regulation 11(4) of the Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995(**9**) (transitional awards of short-term incapacity benefit), or

(v) by virtue of regulation 17(1) or 17A of those Regulations(**10**) (transitional awards of long-term incapacity benefit or awards of incapacity benefit in cases where periods of interruption of employment and periods of incapacity for work link); or", and

(ii) in sub-paragraph (b) for "sections 68(7) and 69(1)" substitute "sections 68(7), 69(1) and 90(**11**)"; and

(b) after paragraph (5) add—

"(6) Subject to paragraph (7), in determining the weekly rate of incapacity benefit or severe disablement allowance for the purposes of paragraph (5) the following amounts shall be disregarded—

(a) any relevant deduction; and

(b) any other deduction relating to the existing award which is made by virtue of the Contributions and Benefits Act, the Administration Act, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994(**12**) or any other statutory provision which is amended by Schedule 3 to the Act or by virtue of regulations made under those statutory provisions.

(7) Where any of the statutory provisions referred to in paragraph (6)(b) provide for an additional amount of incapacity benefit or severe disablement allowance to be payable in prescribed circumstances (such as an increase for an adult dependant) but that additional amount is reduced or not payable in relation to P (such as where the dependant has earnings in excess of the standard amount of an increase), in determining the weekly rate of incapacity benefit or severe disablement allowance, only the reduced additional amount, if any, is to be taken into account.".

(6) In regulation 14 (conversion decision that existing award qualifies for conversion)—

(a) in paragraph (1) for "Paragraphs (2) and (3)" substitute "Subject to paragraph (2A), paragraphs (2) to (6)";

(b) after paragraph (2) insert—

"(2A) Where P—

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

(**8**) Sections 80 and 81 were repealed by Schedule 6 to the Tax Credits Act 2002 (c. 21). *See* Article 2 of S.R. 2003 No. 212 for savings provisions. Section 86A was inserted by Article 4(4) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

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

(**10**) Regulation 17A was inserted by regulation 3(3) of S.R. 1995 No. 149

(**11**) Severe disablement allowance was abolished by Article 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

(**12**) S.I. 1994/1898 (N.I. 12)

(a) has an existing award of income support;

(b) would, on the effective date of P's conversion decision, remain entitled to income support by virtue of another provision of the Income Support (General) Regulations (Northern Ireland) 1987(**13**), were P not a person to whom regulation 6(4)(a) or 13(2)(b) or (bb) of, or paragraph 7(a) or (b), 10, 12 or 13 of Schedule 1B to, those Regulations (prescribed category of persons for the purposes of entitlement on grounds of incapacity or disability) applied; and

(c) notifies the Department before the effective date of P's conversion decision that P wishes to remain entitled to income support on that date,

paragraph (2B) applies instead of paragraphs (2) and (4).

(2B) Where paragraph (2A) applies, any entitlement of P to one or both of—

(a) an existing award of incapacity benefit or severe disablement allowance; or

(b) a disability premium by virtue of paragraph 12(1)(b) of Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987(**14**) (additional condition for the higher pensioner and disability premiums),

shall terminate immediately before the effective date of P's conversion decision."; and

(c) for paragraphs (3) and (4) substitute—

"(3) In a case to which regulation 7(2) applies (cases where a person is already entitled to an award of an employment and support allowance), any entitlement of P to an award of an employment and support allowance by virtue of the Act shall terminate immediately before the effective date of P's conversion decision.

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

(5) Where, immediately before the effective date of the conversion decision, P is entitled to be credited with any earnings under regulation 8B(2)(a) of the Social Security (Credits) Regulations (Northern Ireland) 1975(**15**) (credits for incapacity for work and limited capability for work), P shall not be entitled to be so credited under that regulation on or after that date.

(6) Where—

(a) paragraph (2) applies;

(b) P is a member of a joint-claim couple; and

(c) immediately before the effective date of that conversion decision that couple was entitled to a disability premium by virtue of paragraph 20H(1)(b) or (d) of Schedule 1 to the Jobseeker's Allowance Regulations (Northern Ireland)

(**13**) S.R. 1987 No. 459; regulation 6(4) was added by regulation 2(b)(iii) of S.R. 2000 No. 74 and sub-paragraph (a) was omitted subject to savings by regulation 4 of S.R. 2010 No. 6, 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

(**14**) Paragraph 12(1)(b) was substituted by regulation 2(12)(a)(ii) of S.R. 1995 No. 67 and amended by regulation 2(8) of S.R. 1995 No. 367, regulation 3(3)(a) of S.R. 2005 No. 580 and regulation 2(7)(d)(i) of S.R. 2007 No. 154

(**15**) S.R. 1975 No. 113; regulation 8B was inserted by regulation 2(6) of S.R. 1996 No. 430 and paragraph (2)(a) was substituted by regulation 2(2)(a) of S.R. 2010 No. 109

1996(**16**) (additional conditions for higher pensioner and disability premium: severe disablement allowance or incapacity benefit),

paragraph 20H(1)(ee) of that Schedule (limited capability for work) shall be treated as satisfied in relation to that couple on the effective date of that conversion decision.

(7) In this regulation—

(a) paragraphs (2) to (6) are subject to regulation 17 (changes of circumstances before the effective date); and

(b) "joint-claim couple" has the same meaning as in Article 3(4) of the Jobseekers Order(**17**).".

(7) In regulation 15 (conversion decision that existing award does not qualify for conversion)—

(a) in paragraph (1) for "Subject to paragraph (4), paragraphs (2) and (3) apply" substitute "Subject to paragraphs (2A) and (4), paragraphs (2), (3) and (6) apply";

(b) after paragraph (2) insert—

"(2A) Where P—

(a) has an existing award of income support; and

(b) would, on the effective date of P's conversion decision, remain entitled to income support by virtue of another provision of the Income Support (General) Regulations (Northern Ireland) 1987, were P not a person to whom regulation 6(4)(a) or 13(2)(b) or (bb) of, or paragraph 7(a) or (b), 10, 12 or 13 of Schedule 1B to, those Regulations (prescribed category of persons for the purposes of entitlement on grounds of incapacity or disability) applied,

P's existing award of income support shall only terminate under paragraph (2)(b) if P notifies the Department before the effective date of P's conversion decision that P does not wish to remain entitled to income support on that date.

(2B) Where paragraph (2A) applies, and P's existing award of income support does not terminate under paragraph (2)(b), any entitlement of P to a disability premium by virtue of paragraph 12(1)(b) of Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987 (additional condition for the higher pensioner and disability premiums), shall terminate immediately before the effective date of P's conversion decision.";

(c) in paragraph (3) for "that date" substitute "the effective date of P's conversion decision"; and

(d) for paragraph (6) substitute—

"(6) Where—

(a) paragraph (2) applies; and

(b) P is a member of a joint-claim couple,

any entitlement of that couple to a disability premium by virtue of paragraph 20H(1)(b) or (d) of Schedule 1 to the Jobseeker's Allowance Regulations (Northern Ireland) 1996 (additional conditions for higher pensioner and disability premium: severe disablement allowance or incapacity benefit) shall terminate immediately before the effective date of P's conversion decision.

(**16**) S.R 1996 No. 198; paragraph 20H was inserted by paragraph 53(4) of Schedule 2 to S.R. 2000 No. 350 and amended by paragraph 20(e) of Schedule 2 to S.R. 2003 No. 195, regulation 13(12)(a) of S.R. 2006 No. 359 and regulation 19(24)(e) of S.R. 2008 No. 286

(**17**) S.I. 1995/2705 (N.I. 15); the definition was inserted by paragraph 2(3) of Schedule 7 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and amended by paragraph 131 of Schedule 24 to the Civil Partnership Act 2004 (c. 33)