STATUTORY RULES OF NORTHERN IRELAND

2010 No. 312

HOUSING; RATES; SOCIAL SECURITY

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

Made - - - - 10th September 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 sections 122(1)(d), 131(1) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**), Article 74(3) of the Social Security (Northern Ireland) Order 1998(**2**), and now vested in it(**3**), paragraphs 4(3) and (5) and 20(1)(b) of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**4**) and sections 24(2) and (3), 25(2) and 28(2) of, and paragraph 2 of Schedule 2 and paragraphs 1(1), 3(b), 7 and 8 of Schedule 4 to, the Welfare Reform Act (Northern Ireland) 2007(**5**).

Regulation 26 and Schedule 4 are made with the consent of the Department of Finance and Personnel(**6**).

The Social Security Advisory Committee has agreed that proposals in respect of regulation 26 and Schedule 4 should not be referred to it(**7**).

(**1**) 1992 c. 7; section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)
(**2**) S.I. 1998/1506 (N.I. 10); Article 74(3) is applied to Schedule 7 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) by paragraph 20(3) of that Schedule
(**3**) *See* Article 8(b) of S.R. 1999 No. 481
(**4**) 2000 c. 4 (N.I.)
(**5**) 2007 c. 2 (N.I.)
(**6**) *See* section 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as inserted by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8)); *see also* Article 6(b) of S.R. 1999 No. 481
(**7**) *See* section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8)

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 and come into operation on 1st October 2010 except for regulations 24 and 25(3) which come into operation on 31st January 2011.

Interpretation

2.—(1) In these Regulations—

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

"benefit week" has the same meaning as in the Employment and Support Regulations;

"the Claims and Payments Regulations" means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**8**);

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

"contributory allowance" means an employment and support allowance to which a person is entitled by virtue of these Regulations which was based on an award of incapacity benefit or severe disablement allowance to which the person was entitled;

"conversion decision", in relation to a notified person, has the meaning given in regulation 5(2);

"effective date", in relation to a conversion decision, is to be construed in accordance with regulation 13;

"the Employment and Support Allowance Regulations" means the Employment and Support Allowance Regulations (Northern Ireland) 2008(**9**);

"income-related allowance" means an employment and support allowance to which a person is entitled by virtue of these Regulations which was based on an award of income support to which the person was entitled;

"notified person" has the meaning given in regulation 4(2);

"pensionable age" has the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995(**10**);

"relevant deduction", in relation to a person, includes such of the following deductions as fall to be made in relation to the person—

(a) any deduction made under any of the following provisions of the Claims and Payments Regulations—

(i) regulation 34ZA(**11**) (deductions of mortgage interest which shall be made from benefit and paid to qualifying lenders),

(**8**) S.R. 1987 No. 465
(**9**) S.R. 2008 No. 280
(**10**) S.I. 1995/3213 (N.I. 22); paragraph 1 was amended by paragraph 28 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)), paragraph 8 of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.)) and paragraph 4 of Schedule 3 to the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.))
(**11**) Regulation 34ZA was inserted by regulation 2 of S.R. 1992 No. 271 and amended by regulation 12(1) of S.R. 2003 No. 191 and regulation 2(2) of S.R. 2010 No. 129

(ii) regulation 34ZB(**12**) (deductions of mortgage interest which may be made from benefit and paid to qualifying lenders in other cases), or

(iii) regulation 34A(**13**) (deductions which may be made from benefits and paid to third parties);

(b) any deduction in respect of overpayment recovery or recovery of social fund loans made under any of the following provisions of the Administration Act—

(i) section 69(**14**) (overpayments – general),

(ii) section 72(**15**) (income support and other payments), or

(iii) section 74(**16**) (recovery of social fund awards).

(2) A requirement under these Regulations to give a notice (or to notify) is a requirement to give notice in writing; and for that purpose a message sent by electronic communication (within the meaning of section 4(1) of the Electronic Communications Act (Northern Ireland) 2001(**17**)) shall be treated as a notice given in writing.

(3) For the purposes of these Regulations, the conversion phase, in relation to any person entitled to an existing award or awards(**18**), is the period which—

(a) begins in accordance with regulation 4(4); and

(b) ends in accordance with regulation 5(6).

(4) In these Regulations any reference to Step 1, 2 or 3, in relation to any person, is to be construed in accordance with regulation 8.

(5) The Interpretation Act (Northern Ireland) 1954(**19**) shall apply to these Regulations as it applies to an Act of the Assembly.

Persons to whom these Regulations apply

3. These Regulations apply to any person who, on or after 1st October 2010, is entitled to an existing award or awards.

(**12**) Regulation 34ZB was inserted by regulation 12(2) of S.R. 2009 No. 191 and amended by regulation 2(2) of S.R. 2010 No. 129

(**13**) Regulation 34A was inserted by regulation 2(2) of S.R. 1988 No. 67 and amended by regulation 7(b) of S.R. 1988 No. 141, regulation 3(7) of S.R. 1988 No. 369, regulation 3 of S.R. 1992 No. 271, regulation 2(2) of S.R. 2001 No. 22 and regulation 2(9) of S.R. 2002 No. 297

(**14**) Section 69 was amended by Article 33(1) of, and paragraph 31 of Schedule 2 to, the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)), section 2(2) and (4) of the Social Security (Overpayments) Act 1996 (c. 51), paragraph 62(1) and (3) of Schedule 6 to the Social Security (Northern Ireland) Order 1998, paragraph 10 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002, paragraph 8 of Schedule 4 to the Tax Credits Act 2002, paragraph 110 of Schedule 24 to the Civil Partnership Act 2004 (c. 33), section 41(3) of, and paragraph 4(6) of Schedule 3 to, the Welfare Reform Act (Northern Ireland) 2007 and section 135(4) of the Health and Social Care Act 2008 (c. 14)

(**15**) Section 72 was amended by paragraph 11 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002, paragraph 4(8) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 and regulation 2 of S.R. 2008 No. 413

(**16**) Section 74 was amended by paragraph 186 of Schedule 9 to the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)), Article 33(2) of, and paragraph 34 of Schedule 2 to, the Jobseekers (Northern Ireland) Order 1995 and paragraph 113 of Schedule 24 to the Civil Partnership Act 2004

(**17**) 2001 c. 9 (N.I.); section 4(1) was amended by paragraph 170 of Schedule 17 to the Communications Act 2003 (c. 21)

(**18**) "Existing award" is defined in paragraph 11 of Schedule 4 to the Welfare Reform Act (Northern Ireland) 2007

(**19**) 1954 c. 33 (N.I.)

PART 2

CONVERSION DECISIONS

The notice commencing the conversion phase

4.—(1) Subject to paragraph (5), the Department may at any time issue a notice to any person who is entitled to an existing award.

(2) Any person to whom such a notice is issued is referred to in these Regulations as a notified person.

(3) The notice must inform the notified person—

(a) that an existing award is to be converted into an award of an employment and support allowance if certain conditions are satisfied;

(b) that, if those conditions are not satisfied, the existing award will not be converted and will terminate by virtue of these Regulations;

(c) of the requirements that must be met in order to satisfy those conditions; and

(d) of such other matters as the Department considers appropriate.

(4) The issue of the notice to a notified person begins the conversion phase in relation to that person, with effect from the date of issue.

(5) No notice may be issued to any person—

(a) who reaches pensionable age at any time before 6th April 2014; or

(b) at any time when payment of the existing award to the person is subject to adjustment under regulation 4 of the Social Security (Transitional Payments) Regulations (Northern Ireland) 2009(**20**) (adjustment of subsequent payments following an adjusting payment of benefit).

(6) Where a person is entitled to—

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

(b) an existing award of income support,

the notice issued to the person under this regulation shall have effect in relation to both such awards.

Deciding whether an existing award qualifies for conversion

5.—(1) In relation to the existing award or awards to which a notified person ("P") is entitled, the Department must, except where paragraph (8)(a) applies, make a conversion decision in accordance with these Regulations.

(2) A conversion decision is—

(a) a decision that P's existing award or awards qualify for conversion into an award of an employment and support allowance in accordance with regulation 7; or

(b) a decision that P's existing award or awards do not qualify for conversion into an award of an employment and support allowance.

(3) A notice of a conversion decision under paragraph (2)(a) must specify the amount of an employment and support allowance to which P is entitled on the effective date, subject to any relevant deductions.

(4) The amount referred to in paragraph (3) is to be determined in accordance with regulation 8.

(**20**) S.R. 2009 No. 108

(5) The Department must notify P of the Department's conversion decision.

(6) The conversion phase ends in relation to P—

(a) immediately before the effective date of the conversion decision notified to P; or

(b) if earlier, when P's entitlement to the award or awards to which the notice under regulation 4 relates otherwise ceases to be subject to conversion (because entitlement to the award has terminated or for some other reason).

(7) The effective date of any conversion decision is to be determined in accordance with regulation 13.

(8) In the event that P's entitlement to an existing award ceases to be subject to conversion (for example, because P's entitlement to an award of income support has ceased to fall within paragraph (c) of the definition of existing award in paragraph 11 of Schedule 4 to the Act)—

(a) before a conversion decision is made, the Department must notify P that the conversion phase has ended without a conversion decision being made; or

(b) after the making of a conversion decision but before its effective date, the Department must notify P that the conversion decision shall not come into effect.

(9) On the giving of a notice under paragraph (8)(b), the conversion decision to which it relates shall lapse with immediate effect.

Application of certain statutory provisions for purpose of making conversion decisions

6.—(1) The statutory provisions in paragraph (2) apply, subject to the modifications specified in Schedule 1, for the purposes of—

(a) enabling the Department to make in relation to any person a conversion decision under this Part; and

(b) providing for the revision of such decisions at any time before the effective date.

(2) The statutory provisions to which paragraph (1) refers are—

(a) Part 1 of the Act (employment and support allowance);

(b) Chapter II of Part II of the Social Security (Northern Ireland) Order 1998(**21**) (social security decisions and appeals);

(c) regulation 32(1) and (1A) of the Claims and Payments Regulations(**22**) (information to be given);

(d) the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(**23**); and

(e) the Employment and Support Allowance Regulations.

(3) In the application of the statutory provisions listed in paragraph (2)(b) and (d), the conversion decision is to be treated as if it were a decision as to a person's entitlement to an employment and support allowance which had been made on a claim.

Qualifying for conversion

7. For the purposes of regulation 5(2)(a), an existing award or awards to which a notified person is entitled qualify for conversion into an award of an employment and support allowance only if the person satisfies the basic conditions set out in section 1(3)(a) to (d) and (f) of the Act.

(**21**) S.I. 1998/1506 (N.I. 10)
(**22**) Regulation 32(1) and (1A) was substituted by regulation 2 of S.R. 2003 No. 224
(**23**) S.R. 1999 No. 162