STATUTORY RULES OF NORTHERN IRELAND

2010 No. 200

SOCIAL SECURITY

The Social Security (Miscellaneous Amendments No. 4) Regulations (Northern Ireland) 2010

Made - - - -	*7th June 2010*
Coming into operation	*28th June 2010*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 86A(1), 167A(2), 167D and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**), sections 1(1), 5(1)(l) and (s), 5B(3) and (5) and 165(1), (4) and (5) of the Social Security Administration (Northern Ireland) Act 1992(**2**), Articles 10(1), 11(3) and (6), 12(1), 17(2), 22(2) and 74(1) and (3) to (5) of the Social Security (Northern Ireland) Order 1998(**3**), and now vested in it(**4**), and sections 2(4)(a), 4(2)(a) and (6)(a), 8(1) and (4) to (6), 11(2)(d) and (g), 12(2)(i), 17(3)(b), 24(1), (2)(b) and (3), 25(2) and 28(2) of, and paragraph 3(2) of Schedule 1 and paragraphs 1(a), 6, 8, 9(a) and 10 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007(**5**).

Citation, commencement and interpretation

1. These Regulations may be cited as the Social Security (Miscellaneous Amendments No. 4) Regulations (Northern Ireland) 2010 and shall come into operation on 28th June 2010.

Amendment of the Social Security Contributions and Benefits Act

2. In section 44A(2)(d)(i) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**6**) (deemed earnings factors) for "paragraph 1" substitute "in paragraphs 1 and 2".

(**1**) 1992 c. 7; sections 86A, 167A and 167D were inserted by Articles 4(4), 7 and 8(1) respectively of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)), section 167A was amended by paragraph 22 of Schedule 8 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)

(**2**) 1992 c. 8; section 5B was inserted by section 38(1) of the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.)) and 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)

(**3**) S.I. 1998/1506 (N.I. 10); Article 74(1) was amended by paragraph 17(2) of Schedule 4 to the Tax Credits Act 2002

(**4**) *See* Article 8(b) of S.R. 1999 No. 481

(**5**) 2007 c. 2

(**6**) Section 44A was inserted by section 29(3) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) and amended by Article 2(2)(a)(i) of S.R. 2002 No. 321, paragraph 30 of Schedule 1 to the National Insurance Contributions Act 2002 (c. 19), paragraph 31 of Schedule 1 to the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.)),

Amendment of the Social Security (Claims and Payments) Regulations

3. In regulation 3 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**7**) (claims not required for entitlement to benefit in certain cases) for paragraph (j) substitute—

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

(i) the beneficiary has made and is pursuing an appeal against a decision of the Department that embodies a determination that the beneficiary does not have limited capability for work, and

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

Amendment of the Social Security (Payments on account, Overpayments and Recovery) Regulations

4. In regulation 5(2) of the Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988(**8**) (offsetting prior payment against subsequent award) in Case 3 after "severe disablement allowance", wherever it occurs, insert ", employment and support allowance for those persons with limited capability for work in relation to youth in accordance with paragraph 4 of Schedule 1 to the Welfare Reform Act".

Amendment of the Social Security (Incapacity Benefit – Increases for Dependants) Regulations

5. In regulation 9(1)(a)(i) and (b) of the Social Security (Incapacity Benefit – Increases for Dependants) Regulations (Northern Ireland) 1994(**9**) (increase of incapacity benefit for adult dependants and persons having the care of children) for "is aged at least 60" substitute "has reached the qualifying age referred to in section 1(6) of the State Pension Credit Act (Northern Ireland) 2002(**10**)".

Amendment of the Social Security (Incapacity for Work) (General) Regulations

6.—(1) The Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995(**11**) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 2 (interpretation) in the definition of "medical evidence"(**12**) for "doctor", in both places where it occurs, substitute "health care professional".

(3) After regulation 16(**13**) (person who works to be treated as capable of work) insert—

"**Person to be treated as capable of work at the end of the period covered by medical evidence**

16A. Where the Department is satisfied that it is appropriate in the circumstances of the case then a person may be treated as being capable of work if—

regulation 2(2) of S.R. 2008 No. 286 and paragraph 4 of Schedule 7 to the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.))

(**7**) S.R. 1987 No. 465; paragraph (j) was added by regulation 13(3)(b) of S.R. 2008 No. 286

(**8**) S.R. 1988 No. 142; regulation 5(2) was amended by Article 11(4) of S.R. 1999 No. 472 (C. 36), regulation 5 of S.R. 2000 No. 404 and regulation 7 of S.R. 2005 No. 299; see also regulation 15(2)(c) of S.R. 2008 No. 286

(**9**) S.R. 1994 No. 485

(**10**) 2002 c. 14 (N.I.)

(**11**) S.R. 1995 No. 41; relevant amending Regulations are S.R. 1996 No. 601, S.R. 2006 No. 150, S.R. 2008 No. 375 and S.R. 2009 No. 318

(**12**) The definition of "medical evidence" was inserted by regulation 4(2)(b) of S.R. 1996 No. 601

(**13**) Regulation 16 was substituted by regulation 2(3) of S.R. 2006 No. 150

(a) the person has supplied medical evidence in accordance with regulation 28(2)(a);

(b) the period for which medical evidence was supplied has ended;

(c) the Department has requested further medical evidence; and

(d) the person has not, before whichever is the later of either the end of the period of six weeks beginning with the date of the Department's request or the end of six weeks beginning with the day after the end of the period for which medical evidence was supplied—

(i) supplied further medical evidence, or

(ii) otherwise made contact with the Department to indicate a wish to have the question of incapacity for work determined.".

(4) In regulation 17(**14**) (exempt work)—

(a) in paragraph (3)(b) for "voluntary organisation" substitute "by a voluntary organisation or community interest company(**15**)";

(b) for paragraph (4)(a) substitute—

"(a) is done during a period of specified work, provided that—

(i) the person has not previously done specified work,

(ii) since the beginning of the last period of specified work, the person has ceased to be entitled to a relevant benefit for a continuous period exceeding 8 weeks, or

(iii) not less than 52 weeks have elapsed since the last period of specified work; or"; and

(c) after paragraph (8) add—

"(9) For the purposes of this regulation, a period of specified work begins on the first day on which any specified work is undertaken and continues for a period of 52 weeks, whether or not any further specified work is undertaken during that period.".

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations

7.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(**16**) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 3 (revision of decisions) before paragraph (6)(**17**) insert—

"(5E) A decision under Article 9 or 11 awarding an employment and support allowance may be revised if—

(a) the decision of the Department awarding an employment and support allowance was made on the basis that the claimant had made and was pursuing an appeal against a decision of the Department that the claimant did not have limited capability for work ("the original decision"); and

(b) the appeal to the appeal tribunal in relation to the original decision is successful.

(5F) A decision under Article 9 or 11 awarding an employment and support allowance may be revised if—

(**14**) Regulation 17 was substituted by regulation 2(4) of S.R. 2006 No. 150 and amended by regulation 4(b) of S.R. 2008 No. 375 and regulation 4 of S.R. 2009 No. 318

(**15**) *See* Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) and section 1284 of the Companies Act 2006 (c. 49)

(**16**) S.R. 1999 No. 162; relevant amending Regulations are S.R. 2000 No. 365 and S.R. 2008 No. 286

(**17**) Paragraph (6) was amended by regulation 4(a) of S.R. 2000 No. 365

(a) the person's current period of limited capability for work is treated as a continuation of another such period under regulation 145(1) and (2) of the Employment and Support Allowance Regulations; and

(b) regulation 7(1)(b) of those Regulations applies.".

(3) In regulation 6(2) (supersession of decisions) for sub-paragraph (q)(**18**) substitute—

"(q) is an employment and support allowance decision where, since the decision was made, the Department has—

(i) received medical evidence from a health care professional approved by the Department, or

(ii) made a determination that the claimant is to be treated as having limited capability for work in accordance with regulation 20, 25, 26 or 33(2) of the Employment and Support Allowance Regulations.".

(4) In regulation 7(**19**) (date from which a decision to supersede under Article 11 takes effect)—

(a) for paragraph (37) substitute—

"(37) A decision made in accordance with regulation 6(2)(q) that embodies a determination that the claimant has—

(a) limited capability for work;

(b) limited capability for work-related activity; or

(c) limited capability for work and limited capability for work-related activity,

which is the first such determination shall take effect from the beginning of the 14th week of entitlement."; and

(b) after paragraph (38) add—

"(39) A decision made in accordance with regulation 6(2)(q) that embodies a determination that the claimant has—

(a) limited capability for work;

(b) limited capability for work-related activity; or

(c) limited capability for work and limited capability for work-related activity,

where regulation 5 of the Employment and Support Allowance Regulations (the assessment phase – previous claimants) applies shall take effect from the beginning of the 14th week of the person's continuous period of limited capability for work.".

(5) In regulation 17(5) (provision of information or evidence) for "(e)" substitute "(f)".

Amendment of the Social Security (Claims and Information) Regulations

8. In regulation 1(3) of the Social Security (Claims and Information) Regulations (Northern Ireland) 2007(**20**) (interpretation) in the definition of "specified benefit" after paragraph (e) insert—

"(ee) employment and support allowance;".

Amendment of the Employment and Support Allowance Regulations

9.—(1) The Employment and Support Allowance Regulations (Northern Ireland) 2008(**21**) are amended in accordance with paragraphs (2) to (20).

(**18**) Sub-paragraph (q) was added by regulation 22(4)(a)(ii) of S.R. 2008 No. 286
(**19**) Paragraphs (37) and (38) were added by regulation 22(5)(h) of S.R. 2008 No. 286
(**20**) S.R. 2007 No. 467
(**21**) S.R. 2008 No. 280; relevant amending Regulations are S.R. 2008 Nos. 413 and 478 and S.R. 2009 Nos. 318 and 338

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) omit the definition of "medical examination centre";

(ii) for the definition of "period of limited capability for work" substitute—

""period of limited capability for work" means, except in paragraph (4A), a period throughout which a person has, or is treated as having, limited capability for work, and does not include a period which is outside the prescribed time for claiming as specified in regulation 19 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987"; and

(b) after paragraph (4) insert—

"(4A) For the purposes of paragraph 4 of Schedule 1 to the Act (condition relating to youth) "period of limited capability for work" means a period throughout which a person has, or is treated as having, limited capability for work.".

(3) In regulation 4(1) (the end of the assessment phase) for "regulations 5 and 6" substitute "regulation 5".

(4) In regulation 5 (the assessment phase – previous claimants)—

(a) in paragraph (1)(b) for "paragraph (3) and regulation 6" substitute "paragraphs (3) and (4)";

(b) in paragraph (2)—

(i) at the end of sub-paragraph (a)(ii) omit "and",

(ii) at the end of sub-paragraph (a)(iii) for "or" substitute "and",

(iii) after sub-paragraph (a)(iii) insert—

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

(iv) at the end of sub-paragraph (b)(i) omit "and", and

(v) in sub-paragraph (b) after head (ii) add—

"and

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

(c) after paragraph (3) add—

"(4) Where a person has made and is pursuing an appeal against a decision of the Department that embodies a determination that the claimant does not have limited capability for work—

(a) paragraph (3) does not apply; and

(b) paragraph (1) does not apply to any period of limited capability for work to which regulation 147A(2) applies until a determination of limited capability for work has been made following the determination of the appeal by the appeal tribunal.".

(5) Omit regulation 6 (the assessment phase – claimants appealing against a decision).

(6) In regulation 7(**22**) (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)—

(**22**) Regulation 7 was amended by regulation 12 of S.R. 2008 No. 478