STATUTORY RULES OF NORTHERN IRELAND

2008 No. 378

HOUSING; RATES

The Housing Benefit (Employment and Support Allowance Consequential Provisions) Regulations (Northern Ireland) 2008

Made - - - -	*15th September 2008*
Coming into operation	*27th October 2008*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by section 28(2) of the Welfare Reform Act (Northern Ireland) 2007(**1**).

Citation and commencement

1. These Regulations may be cited as the Housing Benefit (Employment and Support Allowance Consequential Provisions) Regulations (Northern Ireland) 2008 and shall come into operation on 27th October 2008.

Amendment of the Housing Benefit (Decisions and Appeals) Regulations

2.—(1) The Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001(**2**) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 1(2) (citation, commencement and interpretation) after the definition of "relevant decision" add—

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

(3) In regulation 7(2) (decisions superseding earlier decisions)—

(a) in sub-paragraph (h)(**3**) at the beginning insert "except where sub-paragraph (j) applies,"; and

(b) after sub-paragraph (i)(**4**) add—

"(j) where—

(i) the claimant has been awarded entitlement to housing benefit;

(ii) the claimant or the claimant's partner has made a claim for employment and support allowance;

(**1**) 2007 c. 2 (N.I.)
(**2**) S.R. 2001 No. 213; relevant amending Regulations are S.R. 2003 No. 418, S.R. 2006 No. 104 and S.R. 2007 No. 266
(**3**) Sub-paragraph (h) was added by regulation 4(4) of S.R. 2003 No. 418
(**4**) Sub-paragraph (i) was added by regulation 10(3) of S.R. 2006 No. 104

(iii) subsequent to the first day of the period to which entitlement to housing benefit relates, the Department has decided that the claimant or the claimant's partner has, or is to be treated as having, limited capability for work within the meaning of section 1(4) of the Welfare Reform Act or limited capability for work-related activity within the meaning of section 2(5) of that Act, and

(iv) either—

(aa) the assessment phase as defined in section 24(2) of the Welfare Reform Act has ended; or

(bb) regulation 7 of the Employment and Support Allowance Regulations (Northern Ireland) 2008(**5**) (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) applies.".

(4) In regulation 8 (date from which a decision superseding an earlier decision takes effect) after paragraph (12)(**6**) add—

"(13) Where the decision is superseded in accordance with regulation 7(2)(j), the decision shall take effect from—

(a) the first day of entitlement to an amount in consequence of the decision of the Department referred to in regulation 7(2)(j)(iii); or

(b) the first day that there would have been such entitlement had the claimant or the claimant's partner been entitled to an employment and support allowance by virtue of section 1 of the Welfare Reform Act,

if that day is the first day of the benefit week but, if it is not, from the next following such day.".

Amendment of the Housing Benefit Regulations

3.—(1) The Housing Benefit Regulations (Northern Ireland) 2006(**7**) are amended in accordance with paragraphs (2) to (21).

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of "the Taxes Act" insert—

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

(ii) in the definition of "appropriate office" after "state pension credit" insert "or employment and support allowance";

(iii) in the definition of "the benefit Acts" for "and the Jobseekers Order" substitute ", the Jobseekers Order and the Welfare Reform Act";

(iv) after the definition of "the Consequential Provisions Regulations" insert—

""contributory employment and support allowance" means a contributory allowance under Part 1 of the Welfare Reform Act;";

(v) after the definition of "employed earner" insert—

(**5**) S.R. 2008 No. 280

(**6**) Paragraph (12) was added as paragraph (11) by regulation 4(5) of S.R. 2003 No. 418 and renumbered by regulation 2(3)(b) of S.R. 2007 No. 266

(**7**) S.R. 2006 No. 405; relevant amending Rules are S.R. 2006 No. 462 and S.R. 2008 Nos. 92, 101, 112, 179, 262 and 285

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

(vi) after the definition of "an income-based jobseeker's allowance" insert—

""income-related employment and support allowance" means an income-related allowance under Part 1 of the Welfare Reform Act;";

(vii) after the definition of "a joint-claim jobseeker's allowance" insert—

""limited capability for work" has the meaning given in section 1(4) of the Welfare Reform Act;

"limited capability for work-related activity" has the meaning given in section 2(5) of the Welfare Reform Act;";

(viii) after the definition of "the Macfarlane Trust" insert—

""main phase employment and support allowance" means an employment and support allowance where the calculation of the amount payable in respect of the claimant includes a component under section 2(1)(b) or 4(2)(b) of the Welfare Reform Act;";

(ix) in the definition of "qualifying contributory benefit"(**8**) after paragraph (b) add—

"(c) contributory employment and support allowance;", and

(x) in the definition of "qualifying income-related benefit"(**9**) after paragraph (b) add—

"(c) income-related employment and support allowance;"; and

(b) after paragraph (3) insert—

"(3A) For the purposes of these Regulations, a person is on an income-related employment and support allowance on any day in respect of which an income-related employment and support allowance is payable to him and on any day—

(a) in respect of which he satisfies the conditions for entitlement to an income-related employment and support allowance but where the allowance is not paid in accordance with section 18 of the Welfare Reform Act (disqualification); or

(b) which is a waiting day for the purposes of paragraph 2 of Schedule 2 to that Act and which falls immediately before a day in respect of which an income-related employment and support allowance is payable to him or would be payable to him but for section 18 of that Act.".

(3) In regulation 5(1)(b) (persons who have attained the qualifying age for state pension credit) for "or on an income-based jobseeker's allowance" substitute ", on an income-based jobseeker's allowance or on an income-related employment and support allowance".

(4) In—

(a) regulation 6(6) (remunerative work);

(b) regulation 11(2) and (4), in both places where it occurs, (eligible housing costs);

(c) regulation 17(2)(a) (persons of prescribed description);

(d) regulation 23(1) (circumstances in which income and capital of non-dependant is to be treated as claimant's); and

(e) regulation 84(2)(e) (duty to notify changes of circumstances) in each place where it occurs,

(**8**) The definition of "qualifying contributory benefit" was inserted by regulation 2(2)(d) of S.R. 2008 No. 285

(**9**) The definition of "qualifying income-related benefit" was inserted by regulation 2(2)(d) of S.R. 2008 No. 285

for "or an income-based jobseeker's allowance" substitute ", an income-based jobseeker's allowance or an income-related employment and support allowance".

(5) In regulation 7(8)(c)(ii)(**10**) (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) after "Schedule 4" insert "or a component under paragraph 23 or 24 of that Schedule".

(6) In regulation 10(5)(l) (persons from abroad) for "or a person on an income-based jobseeker's allowance" substitute ", an income-based jobseeker's allowance or on an income-related employment and support allowance".

(7) In regulation 20 (applicable amounts) after paragraph (d) add—

"(e) the amount of either the—

(i) work-related activity component, or

(ii) support component,

which may be applicable to him in accordance with Part V of Schedule 4.".

(8) In regulation 21 (polygamous marriages) after paragraph (e) add—

"(f) the amount of either the—

(i) work-related activity component, or

(ii) support component,

which may be applicable to him in accordance with Part V of Schedule 4.".

(9) In regulation 25 (treatment of child care charges)—

(a) in paragraph (2)—

(i) after sub-paragraph (b) insert—

"(ba) is paid an employment and support allowance;", and

(ii) in sub-paragraph (d) after "incapacity for work" insert " or limited capability for work";

(b) in paragraph (3)(a) after "short-term incapacity benefit" insert ", an employment and support allowance";

(c) in paragraph (11)—

(i) in sub-paragraph (a)(**11**) after "incapacity" add "or the support component or the work-related activity component on account of the other member having limited capability for work";

(ii) after sub-paragraph (b)(**12**) insert—

"(ba) the claimant's applicable amount would include the support component or the work-related activity component on account of the other member having limited capability for work but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations;";

(iii) after sub-paragraph (c) insert—

"(ca) the claimant (within the meaning of regulation 2(1)) has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment

(**10**) Regulation 7(8)(c)(ii) was amended by regulation 3(2) of S.R. 2008 No. 179
(**11**) Sub-paragraph (a) was substituted by regulation 3(3)(a) of S.R. 2008 No. 179
(**12**) Sub-paragraph (b) was amended by regulation 3(3)(b) of S.R. 2008 No. 179

and Support Allowance Regulations for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period;", and

(iv) in sub-paragraph (d) after head (vi) add—

"(vii) main phase employment and support allowance;"; and

(d) after paragraph (12) insert—

"(12A) For the purposes of paragraph (11), once paragraph (11)(ca) applies to the claimant, if he then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is, on his again having, or being treated as having, limited capability for work at the end of that period, immediately thereafter to apply to him for so long as he has, or is treated as having, limited capability for work.".

(10) In regulation 37(**13**) (calculation of income other than earnings) after paragraph (3) insert—

"(3A) Where the claimant or, where the claimant is a member of a couple, his partner is receiving a contributory employment and support allowance and that benefit has been reduced under regulation 63 of the Employment and Support Allowance Regulations the amount of that benefit to be taken into account is the amount as if it had not been reduced.".

(11) In regulation 47 (diminishing notional capital rule)—

(a) in paragraph (3)—

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

(ii) after sub-paragraph (c) add—

"and

(d) where the claimant has also claimed an employment and support allowance, the amount of an income-related employment and support allowance to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations (notional capital).";

(b) in paragraph (4) after sub-paragraph (c) add—

"(d) if the claimant would, but for regulation 115 of the Employment and Support Allowance Regulations, have been entitled to an income-related employment and support allowance in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount must be determined by dividing the amount of the income-related employment and support allowance to which he would have been so entitled by the number equal to the number of days in that part-week and multiplying the quotient so obtained by 7."; and

(c) in paragraph (8) in the definition of "part-week"—

(i) for "and (c)" substitute ", (c) and (d)", and

(ii) in paragraph (a) after "income support" insert ", an income-related employment and support allowance".

(**13**) Regulation 37 was amended by regulation 5(2) of S.R. 2008 No. 262