STATUTORY RULES OF NORTHERN IRELAND

2008 No. 283

SOCIAL SECURITY

The Employment and Support Allowance (Transitional Provisions) Regulations (Northern Ireland) 2008

Made - - - - 3rd July 2008

Coming into operation in accordance with regulation 1

The Department for Social Development makes the following Regulations in exercise of the powers conferred by section 25(2) of, and paragraphs 1(1), 2 and 3(b) to (d) of Schedule 4 to, the Welfare Reform Act (Northern Ireland) 2007(**1**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Transitional Provisions) Regulations (Northern Ireland) 2008 and, subject to paragraph (2), shall come into operation on 27th July 2008.

(2) Regulation 5 shall come into operation on 27th October 2008.

(3) In these Regulations "income support on the grounds of disability" means income support awarded to 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, the Income Support (General) Regulations (Northern Ireland) 1987(**2**) (prescribed categories of person) applies.

Claim for an existing benefit

2.—(1) Subject to paragraphs (2) and (3), a claim for incapacity benefit, severe disablement allowance or income support on the grounds of disability, whenever made, in respect of a period which begins on or after the appointed day, is to be treated as a claim for an employment and support allowance.

(2) Paragraph (1) does not apply to—

(**1**) 2007 c. 2 (N.I.)
(**2**) S.R. 1987 No. 459; relevant amending regulations are S.R. 1991 No. 338, S.R. 1996 No. 199, S.R. 2000 Nos. 74, 241 and 242 and S.R. 2006 No. 128

(a) a claim for incapacity benefit or severe disablement allowance relating to a period of incapacity for work which is one of two periods treated as one period of incapacity for work under section 30C(1)(c) of the Contributions and Benefits Act(**3**) (linking rules);

(b) a claim made by a welfare to work beneficiary in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995(**4**) (welfare to work beneficiary); or

(c) a claim for income support on the grounds of disability where—

(i) the claimant was previously entitled to income support on the grounds of disability for a period of 4 or more consecutive days, and

(ii) the claimant ceased to be entitled to income support on the grounds of disability not more than 8 weeks before the commencement of the period in respect of which the current claim is made.

(3) Paragraph (1) does not apply insofar as a claim is treated as a claim for severe disablement allowance, maternity allowance or carer's allowance under regulation 9(1) of, and Part 1 of Schedule 1 to, the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**5**) (benefit claimed and other benefit which may be treated as if claimed in addition or in the alternative).

Claim by a person entitled or potentially entitled to an existing award

3.—(1) A person who is entitled to an existing award is excluded from making a claim for an employment and support allowance.

(2) A claim for an employment and support allowance made by a person who would be entitled to an existing award if that person made a claim described in regulation 2(2), is to be treated as a claim for incapacity benefit, severe disablement allowance or, as the case may be, income support.

Claim for a period before the appointed day

4. Where—

(a) (i) before the appointed day a person purports to make a claim, or

(ii) on or after the appointed day a person makes a claim,

for an employment and support allowance for a period beginning before the appointed day; and

(b) it appears to the Department that the person would be entitled to incapacity benefit or income support on the grounds of disability if that person made a claim for it in accordance with section 1(1)(a) of the Administration Act,

the purported claim or claim may be treated by the Department as a claim in the alternative for incapacity benefit or income support on the grounds of disability.

Transitional protection in relation to the Jobseekers Order

5. In relation to a person who—

(a) is entitled to an existing award; or

(**3**) Section 30C was inserted by Article 5(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)) and applies to severe disablement allowance by virtue of regulation 2(3) of S.R. 1984 No. 317 as substituted by regulation 2(2)(c) of S.R. 1994 No. 462

(**4**) S.R. 1995 No. 41; regulation 13A was inserted by regulation 4(2) of S.R. 1998 No. 324 and amended by regulation 2(6) of S.R. 2000 No. 4, regulation 2(2) of S.R. 2006 No. 150 and regulation 12(3) of S.R. 2006 No. 359

(**5**) S.R. 1987 No. 465; relevant amending regulations are S.R. 1994 No. 456, S.R. 1996 No. 354, S.R. 2001 No. 108, S.R. 2002 No. 323 and S.R. 2005 No. 299