

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(a).

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(b) (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—

- (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(c) (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(d) (welfare to work beneficiary); or

(a) 2007 c. 2 (N.I.)

(b) 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

(c) 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

(d) 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

- (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(a) (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
- (b) would be entitled to an existing award if that person made a claim described in regulation 2(2),

the Jobseekers Order shall continue to have effect as if paragraphs 6(2)(b), (3) and (6) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 had not come into operation.

Sealed with the Official Seal of the Department for Social Development on 3rd July 2008

(L.S.)

John O'Neill
A senior officer of the Department for Social Development

(a) 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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make transitional provisions in relation to the introduction of employment and support allowance.

Regulation 2 provides that, apart from linked claims, after employment and support allowance is introduced no new claim can be made for incapacity benefit, severe disablement allowance or income support on the grounds of disability, since such a claim will be treated as a claim for an employment and support allowance, and sets out the circumstances where a person who has previously been entitled to incapacity benefit, severe disablement allowance or income support on the grounds of disability, can make a linked claim for that benefit.

Regulation 3 provides for a person who is entitled to incapacity benefit, severe disablement allowance or income support on the grounds of disability, or who can make a linked claim for one of those benefits, is prevented from claiming employment and support allowance.

Regulation 4 provides for where a person tries to claim an employment and support allowance ineffectively, either by making a claim for a period before employment and support allowance is introduced or by claiming after the appointed day for a period which includes a period before the appointed day, the claim may be treated instead as a claim for incapacity benefit or income support on the grounds of disability.

Regulation 5 provides that the amendments made to the Jobseekers (Northern Ireland) Order 1995 by paragraph 6 of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 relating to “limited capability for work” do not apply in relation to a person who is entitled, or would be entitled, to incapacity benefit, severe disablement allowance or income support on the grounds of disability.

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, the enabling provisions under which these Regulations are made, were brought into operation for the purpose only of authorising the making of regulations on 1st July 2008, and for all other purposes on 27th July 2008, by virtue of the Welfare Reform (2007 Act) (Commencement No. 5) Order (Northern Ireland) 2008 (S.R. 2008 No. 276 (C. 14)). As these Regulations are made before the end of the period of 6 months from the commencement of those provisions, they are exempt by virtue of section 150(5)(a) of the Social Security Administration (Northern Ireland) Act 1992 from reference to the Social Security Advisory Committee.

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