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STATUTORY RULES OF NORTHERN IRELAND

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**2008 No. 286**

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

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

**22.**—(1) The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999<sup>(1)</sup> are amended in accordance with paragraphs (2) to (14).

(2) In regulation 1(2) (interpretation)—

(a) after the definition of “the Pension Schemes Act” insert—

““the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007;”;

(b) in paragraph (a) of the definition of “claimant”<sup>(2)</sup> for “or section 17(1) of the State Pension Credit Act” substitute “, section 17(1) of the State Pension Credit Act or section 24(1) of the Welfare Reform Act”;

(c) after the definition of “clerk to the appeal tribunal” insert—

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

(d) after the definition of “disability determination”<sup>(3)</sup> insert—

““employment and support allowance decision” means a decision to award a relevant benefit or relevant credit embodied in or necessary to which is a determination that a person has or is to be treated as having limited capability for work under Part 1 of the Welfare Reform Act;

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

“failure determination” means a determination by the Department under regulation 63(1) of the Employment and Support Allowance Regulations that a claimant has failed to satisfy the requirement of regulation 47 or 54 of those Regulations;”;

(e) after the definition of “the Incapacity for Work Regulations”<sup>(4)</sup> insert—

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

(f) after the definition of “legally qualified panel member” insert—

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(1) S.R. 1999 No. 162; relevant amending Rules are S.R. 1999 Nos. 267, 271 (C. 22), 408 and 472 (C. 36), S.R. 2000 No. 215, S.R. 2001 No. 23, S.R. 2002 No. 189, S.R. 2003 Nos. 191, 224 and 312, S.R. 2004 Nos. 110 and 516, S.R. 2005 No. 46, S.R. 2006 Nos. 104, 168 and 365, S.R. 2007 Nos. 332, 392 and 395 and S.R. 2008 No. 179

(2) The definition of “claimant” was amended by Article 3(2)(a)(ii) of S.R. 1999 No. 271 (C. 22) and regulation 16(b) of S.R. 2003 No. 191

(3) The definition of “disability determination” was inserted by regulation 2(2)(a) of S.R. 1999 No. 267

(4) The definition of “the Incapacity for Work Regulations” was inserted by regulation 2(2)(b) of S.R. 1999 No. 267

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““limited capability for work determination” means a determination whether a person has limited capability for work by applying the test of limited capability for work or whether a person is to be treated as having limited capability for work in accordance with regulation 20 of the Employment and Support Allowance Regulations;

“limited capability for work” has the same meaning as in section 1(4) of the Welfare Reform Act;” and

(g) in the definition of “payee”<sup>(5)</sup> for “or “incapacity benefit decision”” substitute “, “incapacity benefit decision” or “employment and support allowance decision””.

(3) In regulation 3 (revision of decisions)—

(a) in paragraph (5)<sup>(6)</sup>—

(i) in sub-paragraph (c)—

(aa) after “an incapacity determination” insert “or is an employment and support allowance decision where there has been a limited capability for work determination”, and

(bb) for “or the incapacity determination” substitute “the incapacity determination or the limited capability for work determination”, and

(ii) in sub-paragraph (d)—

(aa) after “where the decision” insert “is an employment and support allowance decision,”,

(bb) after “in relation to the” insert “limited capability for work determination,” and

(cc) after “necessary to” insert “the employment and support allowance decision,”;

(b) in paragraph (5ZB)<sup>(7)</sup> after sub-paragraph (b) insert—

“(bb) contributory employment and support allowance;”;

(c) after paragraph (5B)<sup>(8)</sup> insert—

“(5C) A decision of the Department under Article 11 made in consequence of a failure determination may be revised at any time if it contained an error to which the claimant did not materially contribute.

(5D) A decision by the Department under Article 9 or 11 awarding employment and support allowance may be revised at any time if—

(a) it incorporates a determination that the condition in regulation 30 of the Employment and Support Allowance Regulations is satisfied;

(b) the condition referred to in sub-paragraph (a) was not satisfied at the time when the claim was first determined; and

(c) there is a period before the award which falls to be decided.”;

(d) in paragraph (7ZA)<sup>(9)</sup>—

(i) in sub-paragraph (a) for “or state pension credit” substitute “, state pension credit or an income-related employment and support allowance”,

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<sup>(5)</sup> The definition of “payee” was inserted by regulation 2(2)(c) of S.R. 1999 No. 267

<sup>(6)</sup> Paragraph (5) was amended by regulation 2(3) of S.R. 1999 No. 267, regulation 3(3)(a) of S.R. 2007 No. 392 and regulation 3(a) of S.R. 2007 No. 395

<sup>(7)</sup> Paragraph (5ZB) was inserted by regulation 3(b) of S.R. 2007 No. 395

<sup>(8)</sup> Paragraph (5B) was inserted by regulation 3(3)(b) of S.R. 2007 No. 392

<sup>(9)</sup> Paragraph (7ZA) was inserted by regulation 7(2)(a) of S.R. 2005 No. 46

- (ii) in sub-paragraph (b) after “Income Support Regulations” insert “or regulation 71 of the Employment and Support Allowance Regulations”,
- (iii) in sub-paragraph (c)(i) after “Income Support Regulations” add “or regulation 67 of the Employment and Support Allowance Regulations”, and
- (iv) in sub-paragraph (d)(ii) after “Income Support Regulations” insert “, paragraph 6(4) (a) of Schedule 4 to the Employment and Support Allowance Regulations”; and
- (e) in paragraph (9)(10)—
  - (i) omit “or” after sub-paragraph (a), and
  - (ii) after sub-paragraph (b) add—
    - “or
    - (c) a decision which relates to an employment and support allowance where the claimant is terminally ill, within the meaning of regulation 2(1) of the Employment and Support Allowance Regulations, unless the claimant makes an application which contains an express statement that he is terminally ill and where such an application is made, the decision may be revised.”.
- (4) In regulation 6 (supersession of decisions)—
  - (a) in paragraph (2)—
    - (i) in sub-paragraph (a)(i)(11) after “Regulations” insert “or regulation 146 of the Employment and Support Allowance Regulations”, and
    - (ii) after sub-paragraph (n)(12) add—
      - “(o) is a decision awarding employment and support allowance where there has been a failure determination;
      - (p) is a decision made in consequence of a failure determination where the reduction ceases to have effect under regulation 64 of the Employment and Support Allowance Regulations;
      - (q) is an employment and support allowance decision where, since the decision was made, the Department has received medical evidence from a health care professional approved by the Department for the purposes of regulation 23 or 38 of the Employment and Support Allowance Regulations.”; and
  - (b) in paragraph (6)(a)(13) after “Income Support Regulations” insert “, regulation 137 of the Employment and Support Allowance Regulations”.
- (5) In regulation 7 (date from which a decision superseded under Article 11 takes effect)—
  - (a) in paragraph (1)(a)(14)—
    - (i) after “(2)(b)” insert “or (be)”, and
    - (ii) for “and 2B” substitute “, 2B and 2C”;
  - (b) in paragraph (2)(15)—

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(10) Paragraph 9 was substituted by regulation 3(2)(b) of S.R. 1999 No. 408 and amended by regulation 3(3) of S.R. 2003 No. 224 and regulation 7(2)(c) of S.R. 2005 No. 46

(11) Sub-paragraph (a) was amended by regulation 3(4)(a) of S.R. 2003 No. 224 and regulation 7(4)(a)(i) of S.R. 2005 No. 46

(12) Sub-paragraph (n) was added by regulation 9(4) of S.R. 2006 No. 104

(13) Paragraph (6) was amended by regulation 3(3)(b) of S.R. 1999 No. 408 and regulation 7(4)(b) of S.R. 2005 No. 46

(14) Paragraph (1) was substituted by Article 17(a) of S.R. 1999 No. 472 (C. 36) and amended by regulation 18(a) of S.R. 2003 No. 191 and regulation 3(6)(a) of S.R. 2003 No. 224

(15) Paragraph (2) was amended by regulation 2(5) of S.R. 1999 No. 267, Article 17(b) of S.R. 1999 No. 472 (C. 36), regulation 6(5) (b) of S.R. 2000 No. 215, regulation 18(b) of S.R. 2003 No. 191, regulation 3(6)(b) of S.R. 2003 No. 224, regulation 7(5)

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- (i) in sub-paragraph (b)(i) for “or state pension credit” substitute “, state pension credit or an employment and support allowance”, and
- (ii) before sub-paragraph (c) insert—
  - “or
  - (be) in the case of a claimant who is in receipt of an employment and support allowance and the claimant makes an application which contains an express statement that he is terminally ill within the meaning of regulation 2(1) of the Employment and Support Allowance Regulations, from the date the claimant became terminally ill;”;
- (c) for paragraph (3)(16) substitute—
  - “(3) For the purposes of paragraphs (2) and (8) “benefit week” has the same meaning, as the case may be, as in—
  - (a) regulation 2(1) of the Income Support Regulations;
  - (b) regulation 1(2) of the Jobseeker’s Allowance Regulations;
  - (c) regulation 1(2) of the State Pension Credit Regulations; or
  - (d) regulation 2(1) of the Employment and Support Allowance Regulations.”;
- (d) in paragraph (7)(b)(17)—
  - (i) for “or section 2(7) of the State Pension Credit Act” substitute “, section 2(7) of the State Pension Credit Act or paragraph 6 of Schedule 4 to the Employment and Support Allowance Regulations”, and
  - (ii) in head (i) after “Income Support Regulations” add “or regulation 71 of the Employment and Support Allowance Regulations”;
- (e) in paragraph (13)(a)(18) for “and” after head (iii) substitute—
  - “or
  - (iv) paragraph 16 or 17 of Schedule 6 to the Employment and Support Allowance Regulations; and”;
- (f) after paragraph (17C)(19) insert—
  - “(17D) Except in a case where paragraph (23) applies, where a claimant is in receipt of an employment and support allowance and his applicable amount includes an amount determined in accordance with Schedule 6 to the Employment and Support Allowance Regulations, and there is a reduction in the amount of eligible capital owing in connection with a loan which qualifies under paragraph 16 or 17 of that Schedule, a decision made under Article 11 shall take effect—
  - (a) on the first anniversary of the date on which the claimant’s housing costs were first met under that Schedule; or
  - (b) where the reduction in eligible capital occurred after the first anniversary of the date referred to in sub-paragraph (a), on the next anniversary of that date following the date of the reduction.
  - (17E) Where a claimant is in receipt of an employment and support allowance and payments made to that claimant which fall within paragraph 30 or 31(1)(a) to (c) of

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(a) of S.R. 2005 No. 46, regulation 4(4)(a) of S.R. 2006 No. 168, regulation 3(2) of S.R. 2006 No. 365 and regulation 2(a) of S.R. 2008 No. 179

(16) Paragraph (3) was amended by regulation 18(c) of S.R. 2003 No. 191

(17) Paragraph (7) was substituted by regulation 4(4)(b) of S.R. 2006 No. 168

(18) Paragraph (13) was amended by regulation 18(d) of S.R. 2003 No. 191

(19) Paragraph (17C) was inserted by regulation 18(e) of S.R. 2003 No. 191 and substituted by regulation 2(a) of S.R. 2004 No. 110

Schedule 8 to the Employment and Support Allowance Regulations have been disregarded in relation to any decision under Article 9 or 11 and there is a change in the amount of interest payable—

- (a) on a loan qualifying under paragraph 16 or 17 of Schedule 6 to those Regulations to which those payments relate; or
- (b) on a loan not so qualifying which is secured on the dwelling occupied as the home to which those payments relate,

a decision under Article 11 which is made as a result of that change in the amount of interest payable shall take effect on whichever of the dates referred to in paragraph (17F) is appropriate in the claimant's case.

(17F) The date on which a decision under Article 11 takes effect for the purposes of paragraph (17E) is—

- (a) the date on which the claimant's housing costs are first met under paragraph 8(1)(a), 9(1)(a) or 10(2)(a) of Schedule 6 to the Employment and Support Allowance Regulations; or
- (b) where the change in the amount of interest payable occurred after the date referred to in sub-paragraph (a), on the date of the next alteration in the standard rate following the date of that change.

(17G) In paragraph (17F) "standard rate" has the same meaning as in paragraph 13(2) of Schedule 6 to the Employment and Support Allowance Regulations.

(17H) Where the decision is superseded in accordance with regulation 6(2)(a)(i) and the relevant circumstances are that the claimant has a non-dependant who has become entitled to main phase employment and support allowance, the superseding decision shall take effect from the date the main phase employment and support allowance is first paid to the non-dependant.”;

(g) in paragraph (23)(20)—

- (i) after "(17A)" insert “, (17D)”,
- (ii) after “a jobseeker's allowance” insert “, an employment and support allowance”, and
- (iii) in sub-paragraph (a) for “or jobseeker's allowance” substitute “, jobseeker's allowance or employment and support allowance”; and

(h) after paragraph (33)(21) add—

“(34) A decision made in accordance with regulation 6(2)(o), where the failure determination was made before the 13th week of entitlement, shall take effect from the first day of the benefit week following that week.

(35) A decision made in accordance with regulation 6(2)(o) where paragraph (34) does not apply shall take effect from the first day of the benefit week in which the failure determination was made.

(36) A decision made in accordance with regulation 6(2)(p) shall take effect from the first day of the benefit week in which the reduction mentioned in that sub-paragraph ceased to have effect.

(37) A decision made in accordance with regulation 6(2)(q) that embodies a determination that the claimant has limited capability for work which is the first such determination shall take effect from the beginning of the 14th week of entitlement.

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(20) Paragraph (23) was substituted by regulation 18(f) of [S.R. 2003 No. 191](#) and amended by regulation 2(b) of [S.R. 2004 No. 110](#)

(21) Paragraph (33) was added by regulation 7(5)(d) of [S.R. 2005 No. 46](#)

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(38) A decision made in accordance with regulation 6(2)(q), following an application by the claimant, that embodies a determination that the claimant has limited capability for work-related activity shall take effect from the date of the application.”.

(6) In regulation 7B(22)(22) (date from which a decision superseded under Article 19 of the Child Support Order takes effect)—

- (a) in the definition of “benefit week” after “Income Support Regulations” insert “, in relation to employment and support allowance has the same meaning as in regulation 2(1) of the Employment and Support Allowance Regulations”; and
- (b) in the definition of “partner” after “Jobseeker’s Allowance Regulations” add “or regulation 2(1) of the Employment and Support Allowance Regulations.

(7) For regulation 10 (effect of a determination as to capacity for work) substitute—

**“Effect of determination as to capacity or capability for work**

**10.—**(1) This regulation applies to a determination whether a person—

- (a) is capable or incapable of work;
- (b) is to be treated as capable or incapable of work;
- (c) has or does not have limited capability for work; or
- (d) is to be treated as having or not having limited capability for work.

(2) A determination (including a determination made following a change of circumstances) as set out in paragraph (1) which is embodied in or necessary to a decision under Chapter II of Part II of the Order or on which such a decision is based shall be conclusive for the purposes of any further decision.”.

(8) In regulation 11 (Department to determine certain matters)—

- (a) after “Act” insert “or Part 1 of the Welfare Reform Act”; and
- (b) for “or” after sub-paragraph (a) substitute—
  - “(aa) whether a person is, or is to be treated as, having or not having limited capability for work; or”.

(9) In regulation 13 (income support and social fund determinations on incomplete evidence)—

- (a) in paragraph (1)(a)(23)—
  - (i) omit “or” after head (i), and
  - (ii) for “and” after head (ii) substitute—
    - “or
    - (iii) a claimant’s applicable amount under regulation 67(1)(c) or 68(1)(d) of the Employment and Support Allowance Regulations; and”; and
- (b) in paragraph (2)(a)—
  - (i) omit “or” after head (ii), and
  - (ii) for “and” after head (iii) substitute—
    - “or
    - (iv) in relation to any claimant, the applicable amount includes the severe disability premium by virtue of regulation 67(1) or 68(1) of, and paragraph

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(22) Regulation 7B was inserted by regulation 2(8) of S.R. 2001 No. 23

(23) Paragraph (1) was amended by regulation 19(a) of S.R. 2003 No. 191

- 6 of Schedule 4 to, the Employment and Support Allowance Regulations; and”.
- (10) In regulation 14A(**24**) (termination of award of income support or jobseeker’s allowance)—
- (a) in the heading for “or jobseeker’s allowance” substitute “, jobseeker’s allowance or employment and support allowance”;
  - (b) in paragraph (1)—
    - (i) for “or a jobseeker’s allowance” substitute “, a jobseeker’s allowance or an employment and support allowance”, and
    - (ii) after “a jobseeker’s allowance” insert “, an employment and support allowance,”; and
  - (c) after paragraph (4) add—

“(5) Where an award of an employment and support allowance is made in accordance with the provisions of this regulation, paragraph 2 of Schedule 2 to the Welfare Reform Act shall not apply.”.
- (11) In regulation 17(2) (provision of information or evidence) after sub-paragraph (e) add—

“(f) a person whose entitlement to an employment and support allowance is conditional on his having, or being treated as having, limited capability for work.”.
- (12) In regulation 19(1)(**25**) (suspension and termination for failure to submit to medical examination) after “1995” insert “or regulation 23 of the Employment and Support Allowance Regulations”.
- (13) In paragraph 5 of Schedule 1(**26**) (decisions against which no appeal lies)—
- (a) after sub-paragraph (a) insert—

“(aa) regulation 4H (as to which partner should make a claim for an employment and support allowance);”;
  - (b) in sub-paragraph (f) after “benefit” insert “or employment and support allowance”; and
  - (c) after sub-paragraph (kk) insert—

“(kl) regulation 26C (as to the time and manner of payment of employment and support allowance);”.
- (14) After Schedule 2B(**27**) (date on which change of circumstances takes effect where claimant is entitled to state pension credit) insert as Schedule 2C the Schedule set out in Schedule 1 to these Regulations.

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#### Commencement Information

- II** Reg. 22 in operation at 27.7.2008, see [reg. 1\(a\)](#)

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(24) Regulation 14A was inserted by regulation 2(6) of [S.R. 2002 No. 189](#)  
(25) Regulation 19(1) was amended by regulation 4(3) of [S.R. 2007 No. 332](#)  
(26) Paragraph 5 was substituted by regulation 2(20) of [S.R. 2002 No. 189](#) and amended by regulation 2(b) of [S.R. 2003 No. 312](#) and regulation 3(9) of [S.R. 2004 No. 516](#)  
(27) Schedule 2B was inserted by regulation 22 of [S.R. 2003 No. 191](#)

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**Changes and effects yet to be applied to :**

- reg. 22(6) revoked by [S.R. 2009/133 Sch. 2](#)