

2008 No. 490

SOCIAL SECURITY

**The Social Security (Miscellaneous Amendments No. 6)
Regulations (Northern Ireland) 2008**

Made - - - - *5th December 2008*

Coming into operation - *5th January 2009*

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(a) and sections 5(4)(a) and (b) and 9(3) of the Mesothelioma, etc., Act (Northern Ireland) 2008(b).

Citation and commencement

1. These Regulations may be cited as the Social Security (Miscellaneous Amendments No. 6) Regulations (Northern Ireland) 2008 and shall come into operation on 5th January 2009.

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

2.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(c) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 36 (composition of appeal tribunals)—

(a) in paragraph (2)(a)(d) for head (i) substitute—

“(i) the appeal involves the personal capability assessment, the limited capability for work assessment or the determination of limited capability for work-related activity,”; and

(b) for paragraph (7)(e) substitute—

“(7) In paragraph (2)(a)(i)—

“determination of limited capability for work-related activity” shall be construed in accordance with regulations 34 and 35 of the Employment and Support Allowance Regulations;

“limited capability for work assessment” has the same meaning as in regulation 2(1) of the Employment and Support Allowance Regulations;

“personal capability assessment” has the same meaning as in regulation 2(1) of the Incapacity for Work Regulations(f).”.

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

(b) 2008 c. 9 (N.I.)

(c) S.R. 1999 No. 162; relevant amending Rules are S.R. 1999 Nos. 242, 272 and 473, S.R. 2000 No. 215, S.R. 2004 No. 516, S.R. 2007 No. 142 and S.R. 2008 No. 286

(d) Paragraph (2) was substituted by regulation 2(a) of S.R. 1999 No. 242 and amended by regulation 2(4) of S.R. 1999 No. 473, regulation 6(11) of S.R. 2000 No. 215, regulation 3(4)(a) of S.R. 2004 No. 516 and Article 2 of S.R. 2007 No. 142

(e) Paragraph (7) was added by regulation 2(c) of S.R. 1999 No. 242 and amended by regulation 6(11)(c) of S.R. 2000 No. 215

(f) The definition of “personal capability assessment” was inserted by regulation 2(2)(b) of S.R. 2000 No. 4

- (3) In regulation 41(a) (medical examination required by appeal tribunal)—
- (a) omit “or” after paragraph (h); and
 - (b) after paragraph (i) add—
 - “or
 - (j) is whether a person has limited capability for work or work-related activity for the purposes of the Welfare Reform Act.”.

Amendment of the Mesothelioma Lump Sum Payments (Claims and Reconsiderations) Regulations

3. After regulation 5 of the Mesothelioma Lump Sum Payments (Claims and Reconsiderations) Regulations (Northern Ireland) 2008(b) (appeal treated as reconsideration) add—

“Appeals

6.—(1) Subject to paragraph (2), the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 apply to an appeal—

- (a) against a determination made by the Department—
 - (i) on a claim, or
 - (ii) on a reconsideration under section 4 of the Mesothelioma, etc., Act (Northern Ireland) 2008 of a determination made on a claim,
as they apply to an appeal under Article 13 of the Social Security (Northern Ireland) Order 1998(c); and
- (b) to a Commissioner under section 6 of that Act against a decision of an appeal tribunal as they apply to an appeal under Article 13 or 14 of that Order(d).

(2) Regulation 36(2)(a) of those Regulations applies in relation to the composition of an appeal tribunal where the appeal arises under section 5(1) of that Act.”.

Revocations

4. Regulation 2(c) of the Social Security and Child Support (Decisions and Appeals) (Amendment) Regulations (Northern Ireland) 1999(e) and regulation 6(11)(c) of the Social Security and Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 2000(f) are revoked.

Sealed with the Official Seal of the Department for Social Development on 5th December 2008

(L.S.)

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

(a) Regulation 41 was amended by regulation 2(5) of S.R. 1999 No.272
(b) S.R. 2008 No. 353
(c) S.I. 1998/1506 (N.I. 10); Article 13 was amended by paragraph 19 of Schedule 6 and Schedule 9 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)
(d) Article 14 was amended by paragraph 20 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999
(e) S.R. 1999 No. 242
(f) S.R. 2000 No. 215

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision consequential upon the introduction of employment and support allowance by Part 1 of the Welfare Reform Act (Northern Ireland) 2007 (“the 2007 Act”) and lump sum payments in respect of diffuse mesothelioma by the Mesothelioma, etc., Act (Northern Ireland) 2008 (“the 2008 Act”).

Regulation 2 amends the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 (“the Decisions and Appeals Regulations”) to—

provide that where an appeal to an appeal tribunal relating to employment and support allowance involves the limited capability for work assessment or the determination of limited capability for work-related activity, the appeal tribunal shall consist of a legally qualified panel member and a medically qualified panel member (paragraph (2));

include limited capability for work or work-related activity for the purposes of the 2007 Act as one of the issues in relation to which an appeal tribunal may require a person to undergo a medical examination (paragraph (3)).

Regulation 3 amends the Mesothelioma Lump Sum Payments (Claims and Reconsiderations) Regulations (Northern Ireland) 2008 to apply the provisions of the Decisions and Appeals Regulations to an appeal to an appeal tribunal or a Social Security Commissioner as they apply to an appeal under Article 13 or 14 of the Social Security (Northern Ireland) Order 1998.

Regulation 4 makes consequential revocations.

Section 28(2) of the 2007 Act, one of the provisions under which these Regulations are made, was brought fully into operation 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)). Sections 5(4)(a) and (b) and 9(3) of the 2008 Act, the other provisions under which these Regulations are made, were brought fully into operation on 1st October 2008 by virtue of the Mesothelioma, etc., (2008 Act) (Commencement) Order (Northern Ireland) 2008 (S.R. 2008 No. 351 (C. 19)).

As these Regulations, in so far as they are made under section 28(2) of the 2007 Act, are made before the end of the period of 6 months from the commencement of that provision, they are, accordingly, exempt, by virtue of section 150(5)(a) of the Social Security Administration (Northern Ireland) Act 1992, from prior reference to the Social Security Advisory Committee.

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