

## **EXPLANATORY MEMORANDUM**

### **THE EMPLOYMENT AND SUPPORT ALLOWANCE (TRANSITIONAL PROVISIONS AND HOUSING BENEFIT) (EXISTING AWARDS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2010**

**S.R. 2010 No. 347**

#### **1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under sections paragraphs 4(3) and 20(1)(b) of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and sections 25(2) and 28(2) of, and paragraphs 1, 4 and 9 of Schedule 2 and paragraphs 1(1), 7 and 8(1) of Schedule 4 to, the Welfare Reform Act (Northern Ireland) 2007 and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1 These Regulations make a number of amendments to the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 to clarify the existing policy and prevent unintended outcomes for claimants. Some additional amendments to the Income Support (General) Regulations (Northern Ireland) 1987, the Jobseeker's Allowance Regulations (Northern Ireland) 1996, the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001 and the Employment and Support Allowance Regulations (Northern Ireland) 2008 are also included.
- 2.2 The main amendments are designed to clarify—
  - that Incapacity Benefit and Severe Disablement Allowance claimants are deemed to have satisfied the contribution conditions whilst an appeal is ongoing against an adverse conversion decision, so that assessment-phase rate can be payable;
  - that the disability premium will not be payable for those Income Support recipients whose awards fail to qualify for conversion but who remain on Income Support on grounds other than incapacity, where that premium is wholly linked to the incapacity condition; however, if a claimant continues to satisfy any of the other criteria for entitlement to the disability premium (for example, receipt of Disability Living Allowance) it will remain in payment;
  - the position of claimants who fail to qualify for conversion but who then suffer a deterioration in their condition after the date of decision but before the date the decision takes effect;
  - the rules governing the treatment of claims which link to previous

- Employment and Support Allowance awards; and
- the conversion process where claimants are concurrently entitled to both Employment and Support Allowance and Incapacity Benefit.

### **3. Background**

- 3.1 The Welfare Reform Act (Northern Ireland) 2007 made provision for the new integrated contributory and income-related allowance for those who claim benefit on the basis that they have a health condition or disability which affects their ability to work. The Employment and Support Allowance Regulations (Northern Ireland) 2008 and the Employment and Support Allowance (Transitional Provisions) Regulations (Northern Ireland) 2008 came into operation in October 2008 when, for new claimants, Employment and Support Allowance replaced Incapacity Benefit and Income Support paid on the grounds of incapacity or disability.
- 3.2 The Employment and Support Allowance Regulations (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 made provision for the conversion of existing awards of incapacity benefits to awards of Employment and Support Allowance and related changes to Housing Benefit. They also made consequential amendments to decision-making and appeals provisions.

### **4. Consultation**

- 4.1 The proposals for Employment and Support Allowance were set out in the Green Paper, *A new deal for welfare: Empowering people to work*, which was widely consulted on. Substantive responses received were broadly supportive of the thrust of the proposals.

### **5. Equality Impact**

- 5.1 The impact of Employment and Support Allowance on equality of opportunity among those groups listed in section 75 of the Northern Ireland Act 1998 was assessed as part of the equality screening of the Welfare Reform Act (Northern Ireland) 2007 and in relation to the Employment and Support Allowance Regulations (Northern Ireland) 2008. These Regulations make amendments to clarify existing policy and as such do not have any additional implications for equality of opportunity.

### **6. Regulatory Impact**

- 6.1 These Regulations do not require a Regulatory Impact Assessment as they do not impose any new costs on business, charities or voluntary bodies.

### **7. Financial Implications**

- 7.1 These Regulations do not have any significant financial implications.

## **8. Section 24 of the Northern Ireland Act 1998**

8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the Rule—

- (a) is not incompatible with any of the Convention rights,
- (b) is not incompatible with Community law,
- (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and
- (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

## **9. EU Implications**

9.1 Not applicable.

## **10. Parity or Replicatory Measure**

10.1 The corresponding Great Britain Regulations are the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No.2) (Amendment) Regulations 2010 (S.I. 2010/2430) and in keeping with the long-standing policy of parity in social security, the Regulations will come into operation on 1 November 2010, the same date as the corresponding Great Britain Regulations. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.