
STATUTORY RULES OF NORTHERN IRELAND

2017 No. 190

**The Welfare Reform (Northern Ireland) Order
2015 (Commencement No. 8 and Transitional
and Transitory Provisions) Order 2017**

Transition from new style ESA

12.—(1) This article applies where a person makes, or is treated as making, a claim for an employment and support allowance and Part 1 of the 2007 Act, as it has effect apart from the provisions of Schedule 3, and Part 1 of Schedule 12, to the 2015 Order that remove references to an income-related allowance, applies in relation to the claim and the condition referred to in paragraph (2) is satisfied.

(2) The condition is that—

- (a) the person previously made, or was treated as having made, a claim for an employment and support allowance and, under Article 6, Part 1 of the 2007 Act, as amended by the provisions of Schedule 3, and Part 1 of Schedule 12, to the 2015 Order that remove references to an income-related allowance, applied in relation to the claim;
- (b) a notice was issued to the person under regulation 4 of the 2010 Transitional Regulations and, under Article 6, Part 1 of the 2007 Act, as amended by the provisions of Schedule 3, and Part 1 of Schedule 12, to the 2015 Order that remove references to an income-related allowance, applied in relation to the notice; or
- (c) the person previously—
 - (i) had an old style ESA award immediately before the appointed day in relation to a case of a claim for universal credit referred to in Article 6(2) (and any award made in respect of the claim); and
 - (ii) the old style ESA award consisted of or included a contributory employment and support allowance (which allowance therefore continued as a new style ESA award).

(3) Where this article applies, the ESA Regulations 2008 are to be read as if—

- (a)
 - (i) in the definitions of “period of limited capability for work” in regulation 2(1) and (4A) (interpretation), the reference to a period throughout which a person has, or is treated as having, limited capability for work included a reference to a period throughout which the person in question had, or was treated as having, limited capability for work under the ESA Regulations 2016; and
 - (ii) the reference, in the definition in regulation 2(1), to regulation 19 (time for claiming benefit), of the Claims and Payments Regulations 1987 included a reference to regulation 27 (time within which a claim for an employment and support allowance is to be made), of the Claims and Payments Regulations 2016 ;
- (b) in regulation 5 (the assessment phase - previous claimants)—
 - (i) any reference to an employment and support allowance included a reference to a new style ESA award; and

- (ii) in paragraph (2)(c)(v) and (d)(iii), the reference to regulation 30 (conditions for treating a claimant as having limited capability for work has been made) included a reference to regulation 26 of the ESA Regulations 2016 (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made);
- (c) in regulation 7 (circumstances where the condition that the assessment phase has ended before entitlement to the support component arises does not apply)—
 - (i) any reference to an employment and support allowance included a reference to a new style ESA award; and
 - (ii) in paragraph (1B)(b)(iv), (c)(iii), (c)(iv) and (d)(iii), the reference to regulation 30 included a reference to regulation 26 of the ESA Regulations 2016;
- (d) in regulation 10 (condition relating to youth – previous claimants), any reference to an employment and support allowance included a reference to a new style ESA award;
- (e) in regulation 19 (determination of limited capability for work)—
 - (i) the reference in paragraph (7)(a) to a claimant having been determined to have limited capability for work included a reference to such a determination made under Part 4 of the ESA Regulations 2016; and
 - (ii) the reference in paragraph (7)(b) to a person being treated as having limited capability for work included a reference to a person being so treated under regulation 16 (certain claimants to be treated as having limited capability for work), 21 (hospital patients), 22 (claimants receiving certain treatment) or 25 (exceptional circumstances) of the ESA Regulations 2016;
- (f) in regulation 30(2)(b)(ii) (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made)(1), the reference to regulation 22 (failure to provide information in relation to limited capability for work) and 23 (claimant may be called for a medical examination to determine whether the claimant has limited capability for work) included a reference to regulation 18 (failure to provide information in relation to limited capability for work) and 19 (claimant may be called for a medical examination to determine whether the claimant has limited capability for work) of the ESA Regulations 2016;
- (g) in regulation 34(4) (determination of limited capability for work-related activity), the reference to a determination about whether a claimant has, or is to be treated as having or not having, limited capability for work-related activity included such a determination that was made under Part 5 of the ESA Regulations 2016;
- (h) in regulation 45(10) (exempt work), the reference to an employment and support allowance included a reference to a new style ESA award;
- (i) in regulation 147A(1) (claimants appealing a decision)(2), the reference to a relevant decision included a relevant decision made under the ESA Regulations 2016;
- (j) in regulation 157 (disqualification for misconduct etc)—
 - (i) in paragraph (3), for “Paragraph (2) does” there were substituted “Paragraphs (2) and (4) do”; and
 - (ii) after paragraph (3) there were inserted—

“(4) Subject to paragraph (3), a claimant is to be disqualified for receiving an employment and support allowance for any period determined by the Department

(1) Regulation 30(2)(b) was substituted by regulation 3(2)(a) of S.R. 2015 No. 185.

(2) Regulation 147A was inserted by regulation 9(15) of S.R. 2010 No. 200 and substituted by regulation 3(3) of S.R. 2015 No. 185.

under regulation 93(2) of the Employment and Support Allowance Regulations 2016 less any days during that period on which those Regulations applied to the claimant.

(5) Where paragraph (4) applies to a claimant, paragraph (2) is not to apply to that claimant with respect to any matter referred to in paragraph (1) that formed the basis for the claimant's disqualification under regulation 93(2) of the Employment and Support Allowance Regulations 2016.”;

- (k) in regulation 159 (treating a claimant as not having limited capability for work)—
- (i) in paragraph (1), after “Subject to paragraph (2),” there were inserted “and paragraph (3)”;
 - (ii) after paragraph (2), there were inserted—
 - “(3) A claimant is to be treated as not having limited capability for work if—
 - (a) under Part 1 of the Act as amended by the provisions of Schedule 3, and Part 1 of Schedule 12, to the 2015 Order that remove references to an income-related allowance (“the former law”), the claimant was disqualified for receiving an employment and support allowance during a period of imprisonment or detention in legal custody;
 - (b) Part 1 of the Act as it has effect apart from the amendments made by Schedule 3, and Part 1 of Schedule 12, to the 2015 Order that remove references to an income-related allowance (“the current law”) applied to the claimant with effect from a day that occurred during the period of imprisonment or detention in legal custody referred to in sub-paragraph (a) and during the period of 6 weeks with effect from the day on which the claimant was first disqualified as referred to in sub-paragraph (a); and
 - (c) the total of—
 - (i) the period for which the claimant was disqualified for receiving an employment and support allowance during the period of imprisonment or detention in legal custody when the former law applied to the claimant; and
 - (ii) the period for which the claimant was disqualified for receiving a contributory employment and support allowance during the period of imprisonment or detention in legal custody when the current law applied to the claimant,amounts to more than 6 weeks.”; and
- (l) in Schedule 6 (housing costs), in paragraph 9(1), each reference to an employment and support allowance included a reference to new style ESA.
- (4) Subject to paragraph (5), where this Article applies, the 2007 Act is to be read as though—
- (a) the reference to a contributory allowance in section (1A)(1) and (4) to (6)(3);
 - (b) the first reference to a contributory allowance in section (1A)(1) and (3); and
 - (c) the first reference to a contributory allowance in section 1B(4),
- included a reference to a new style ESA award.
- (5) Where this Article applies and the 2010 Transitional Regulations apply to a person, paragraph (4)(c) becomes paragraph (4)(b) and, for paragraph (4)(a) and (b), there is substituted—
- “(a) in section 1A as substituted by the 2010 Transitional Regulations—

(3) Section 1A was inserted by Article 57(1) of the 2015 Order.

(4) Section 1B was inserted by Article 58(1) of the 2015 Order.

Changes to legislation: There are currently no known outstanding effects for the The Welfare Reform (Northern Ireland) Order 2015 (Commencement No. 8 and Transitional and Transitory Provisions) Order 2017, Section 12. (See end of Document for details)

- (i) the reference to a contributory allowance in section 1A(1), (4) and (5); and
- (ii) the first reference to a contributory allowance in section 1A(3); and”.

Modifications etc. (not altering text)

- C1** Arts. 10-23 applied (13.11.2017) by The Welfare Reform (Northern Ireland) Order 2015 (Commencement No. 9 and Transitional and Transitory Provisions) Order 2017 (S.R. 2017/216), **art. 5**
- C2** Arts. 10-23 applied (15.1.2018) by The Welfare Reform (Northern Ireland) Order 2015 (Commencement No. 10 and Transitional and Transitory Provisions and Commencement No. 9 and Transitional and Transitory Provisions (Amendment)) Order 2018 (S.R. 2018/1), **art. 5**
- C3** Arts. 10-23 applied (9.5.2018) by The Welfare Reform (Northern Ireland) Order 2015 (Commencement No. 11 and Transitional and Transitory Provisions) Order 2018 (S.R. 2018/97), **art. 5**
- C4** Arts. 10-23 applied (19.7.2018) by The Welfare Reform (Northern Ireland) Order 2015 (Commencement No. 12 and Transitional and Transitory Provisions and Commencement No. 9, 10 and 11 and Transitional and Transitory Provisions (Amendment)) Order 2018 (S.R. 2018/138), **art. 5**
- C5** Arts. 10-23 applied (31.1.2019) by The Welfare Reform (Northern Ireland) Order 2015 (Commencement No. 14 and Savings and Transitional Provisions) Order 2019 (S.R. 2019/7), **art. 2(12)**

Commencement Information

- I1** Art. 12 in operation at made date

Changes to legislation:

There are currently no known outstanding effects for the The Welfare Reform (Northern Ireland) Order 2015 (Commencement No. 8 and Transitional and Transitory Provisions) Order 2017, Section 12.