

*These notes refer to the Welfare Reform Act (Northern Ireland)
2007 (c.2) which received Royal Assent on 27 June 2007*

Welfare Reform Act (Northern Ireland) 2007

EXPLANATORY NOTES

SCHEDULES

Schedule 1 - Employment and support allowance: additional conditions

Part 1 describes the conditions of entitlement to a contributory employment and support allowance relating to National Insurance contributions. These are, in substance, the same as those that exist in relation to incapacity benefit now.

Part 2 provides for certain additional conditions for entitlement to an income-related employment and support allowance. These are similar, though not identical, to the conditions of entitlement that currently apply to income support. For example, as well as there being no entitlement if income exceeds the applicable amount, *paragraph 6(1)(b) and (2)* provide that there is no entitlement to an income-related allowance if the claimant and his partner together have capital assets in excess of a limit set out in regulations, which is expected to be £16,000, i.e. the same as that which applies for the purposes of income support.

Section 1(3) provides that there is no entitlement to either a contributory allowance or an income-related allowance if the claimant is entitled to income support or any type of jobseeker's allowance. *Paragraph 6(1)(c) and (d)* provides that there is no entitlement to an income-related employment and support allowance where the claimant is entitled to state pension credit or the claimant's partner is entitled to income support, state pension credit or an income-based jobseeker's allowance. This is to ensure that only one income-related benefit is paid to a household at any one time in order to prevent duplicate provision from public funds.

The Schedule further provides that there is no entitlement to an income-related employment and support allowance where a claimant or his partner is in full time paid (remunerative) work, as is the case with income support. Regulations will determine what amounts to remunerative work.

The Schedule also provides that there is no entitlement to an income-related allowance where a claimant is receiving education (*paragraph 6(1)(g)*). However, the Department may set out in regulations when a person is or is not to be treated as receiving education. The Department may also disapply this condition so that, for example, certain disabled young people or disabled

students may be entitled to an employment and support allowance (*paragraph 6(4)*).

Paragraph 6(7) provides a power for *paragraph 6* to be modified where the claimant is a member of a polygamous marriage. This includes modifications in respect of how benefit, income and capital in respect of the second and any subsequent spouse will be aggregated for the purposes of determining entitlement to an employment and support allowance. It is intended that the modifications made in respect of an employment and support allowance would be based on the income support rules relating to polygamous marriages.

Schedule 2 - Employment and support allowance: supplementary provision

This Schedule contains additional provisions in respect of the employment and support allowance. *Paragraph 1* confers powers to provide by regulations for claimants to be treated as having (or not having) limited capability for work, as well as to require capability for work to be determined afresh (or for the first time in the case of a person being treated as having limited capability for work, but who has never actually undergone a determination of capability for work). *Paragraph 9* makes equivalent provision in relation to limited capability for work-related activity.

Paragraph 2 provides that a person is not entitled to an employment and support allowance for a certain number of days at the beginning of a period of limited capability for work. It is intended that claimants will be required to wait for three days at the beginning of a period of limited capability for work, before becoming entitled to an employment and support allowance (as now under incapacity benefit). *Paragraph 2* also allows that regulations may disapply the waiting days requirement to ensure that the claimant would not have a break in benefit entitlement where, for example, he was previously entitled to another benefit, such as jobseeker's allowance.

Paragraph 4 provides for periods of limited capability for work to be linked together and treated as one period of limited capability for work. Where periods are linked, regulations can provide that a condition relating to an employment and support allowance that was satisfied in the earlier period of limited capability for work can be treated as satisfied in the later period of limited capability for work.

This Schedule also provides for regulations to prescribe circumstances where people are entitled to an employment and support allowance where they are not in Northern Ireland (for example, where they live abroad or are employed on a ship or oil rig) (*paragraphs 5 to 8*) and other additional matters.

Schedule 3 - Consequential amendments relating to Part 1

Paragraph 1 amends the Education Reform (Northern Ireland) Order 1989 so that for the purposes of qualifying for remission of any charges otherwise payable families receiving income-related employment and support allowance

are treated the same as those receiving income support or income-based jobseeker's allowance.

Paragraph 2 amends the Child Support (Northern Ireland) Order 1991 so that an income-related employment and support allowance will be treated the same way as income support and income-based jobseeker's allowance for the purposes of applications, reduced benefit decisions and fees under both the old child support scheme and the modified scheme introduced by the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and calculation of child support maintenance in the old scheme.

Paragraph 3 amends the Contributions and Benefits Act so that earnings factors will be calculated the same way for an employment and support allowance as jobseeker's allowance for the purpose of satisfying the contributions conditions, and also so that an employment and support allowance recipient of either the support component or the work-related activity component will be entitled to a Christmas Bonus. It also makes a number of consequential amendments to that Act.

Paragraph 4 amends the Administration Act so that an employment and support allowance will be subject to the usual provisions that relate to other benefits in respect of claims and overpayments and makes other consequential changes. It also makes provision for the annual up-rating of the rates of an employment and support allowance.

Paragraph 4(10) inserts a reference to income-related employment and support allowance into section 100 of the Administration Act thus ensuring that the offence provided for in that section applies to those in receipt of income-related employment and support allowance. The offence provided for in section 100 currently applies to those in receipt of income support on the grounds of incapacity.

Paragraph 4(20) inserts a new section 139C into the Administration Act which makes provision, like that in relation to other benefits set out in sections 139, 139A and 139B of that Act, which sets out the circumstances such as the annual up-rating of benefits, where the level of a person's employment and support allowance changes without a decision being made by the Department to supersede the decision on the award.

Paragraph 4(21) inserts a new section 140B into the Administration Act to provide for implementation of increases in employment and support allowance due to attainment of particular ages without a decision being made by the Department to supersede the decision on the award.

Paragraph 5 amends the Children (Northern Ireland) Order 1995 so that people receiving income-related employment and support allowance will be exempted from liability to contribute towards the costs of maintaining their children in care, services and assistance provided to children in need and their families and other provision and support.

Paragraph 6 makes consequential amendments to the Jobseekers (Northern Ireland) Order 1995. In particular it amends Article 3 of the Order to provide that one of the conditions of entitlement to a jobseeker's allowance is that the claimant does not have limited capability for work instead of the current condition that the claimant "is capable of work". Further amendments make it clear that the question of whether a person has or does not have limited capability for work is to be determined in accordance with the provisions of Part 1 of this Act.

Paragraph 7 amends the Road Traffic (Northern Ireland) Order 1995 so that people receiving income-related employment and support allowance will be reimbursed the costs of obtaining a medical certificate for the exemption from having to wear a seat belt on medical grounds.

Paragraph 8 amends the Pensions (Northern Ireland) Order 1995 to include the Welfare Reform Act (Northern Ireland) 2007 in the list of enactments to which the rules for determining pensionable age apply for the purposes of the definition in *section 1(6)*.

Paragraph 9 amends the Industrial Tribunals (Northern Ireland) Order 1996 so that income-related employment and support allowance could be recouped from certain awards made by industrial tribunals.

Paragraph 10 makes consequential amendments to the Social Security (Northern Ireland) Order 1998. In particular, the amendments apply the provisions relating to the making of benefit decisions by the Department, the supersession and revision of decisions, and the right of appeal in relation to an employment and support allowance.

Paragraph 11 amends the Immigration and Asylum Act 1999 so that people could not receive income-related employment and support allowance whilst subject to immigration control.

Paragraph 12 amends the Welfare Reform and Pensions (Northern Ireland) Order 1999 so that the powers enabling the Department to share certain information in connection with the administration of benefits will apply to information relating to an employment and support allowance.

Paragraph 13 amends the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 so that the provisions relating to penalties for breaching a community order will apply to income-related employment and support allowance.

Paragraph 14 amends the Social Security Fraud Act (Northern Ireland) 2001. In particular, the amendments apply the provisions relating to the loss of benefit for the commission of offences and the provision of benefit for the families of those who have lost entitlement due to benefit offences to employment and support allowance.

Schedule 4 - Transition relating to Part 1

Schedule 4 provides for transitional arrangements for those people who are on existing benefits. Existing benefits are incapacity benefit (which includes transitional awards of incapacity benefit), severe disablement allowance and income support (on grounds of incapacity or disability).

Paragraph 1 provides a general transitional power, allowing the Department to make such provision, by regulations, as it considers necessary or expedient in connection with the coming into operation of Part 1 or the transition to employment and support allowance. The remaining paragraphs of this Schedule provide specific powers relating to the transition to the new allowance.

Paragraphs 2 to 4 provide for regulations to specify when a claim can be treated as a claim for an existing benefit and when a claim can be treated as a claim for an employment and support allowance. Regulations may make provision that a claim for an existing benefit made before the day that the provisions in respect of an employment and support allowance come into effect can be treated as a claim for an employment and support allowance.

Regulations may provide that, after the appointed day (i.e. the day on which the provisions about an employment and support allowance take effect), existing benefits cannot be claimed and an employment and support allowance is claimed instead. *Paragraph 3(c)* enables regulations to provide for a claim to an employment and support allowance to be treated as a claim for existing benefit. This power may be used, for example, when someone's benefit is backdated to a period before the appointed day.

Paragraphs 5 and 6 relate to claims that are made by those who had previously been entitled to an existing benefit, who subsequently ceased to be entitled to that benefit, but who could have returned to benefit because they would have been covered by linking rules. It covers those cases where the claimant's original claim was for an existing benefit, but the subsequent claim is made after the provisions in relation to employment and support allowance have come into operation. Regulations may provide that these cases may be awarded an employment and support allowance on terms which match wholly or partly the terms of the existing benefit.

Paragraph 7 provides for regulations to make provision for the migration of existing claimants onto an employment and support allowance. Regulations could prescribe the timing, conditions, kind and amount of any such entitlement to an employment and support allowance in such cases. Regulations could also make provision for determining whether a claimant has limited capability for work-related activity (i.e. that they would be entitled to the support component of an employment and support allowance). *Paragraphs 8 and 9* provide for regulations to make provision for the conditions of continuing entitlement, or for reviewing or terminating such awards.

Schedule 5 - Minor and consequential amendments relating to Part 2

Paragraphs 2 to 4 amend the Administration Act to take account of the more flexible powers of direction provided for in *section 36*. The amendments enable the Department to require information it needs from the Housing Executive to decide whether it has taken the action specified in the direction, in the same way as it already decides whether specified standards have been obtained. The amendments also provide for the Department to take the same enforcement action when the Housing Executive fails to comply with a direction on actions, as it can when the Housing Executive fails to deliver on standards set down in a direction.

Paragraph 6 amends Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 which provides for the revision and appeals process in respect of housing benefit. The amendment makes it clear that an overpayment decision under or by virtue of section 73 of the Administration Act can be revised, if appropriate.

Schedule 6 - Schedule to be inserted in the Pneumoconiosis Order

Schedule 6 inserts the Schedule in the Pneumoconiosis Order which defines a “relevant employer” as any person by whom the person was employed in a prescribed occupation at any time during the period he was developing the disease and against whom he might have or might have had a claim for damages in respect of the disablement.

The following periods of employment would be disregarded for the purposes of determining whether there is a relevant employer:

- those that ended more than 20 years before the date on which the employee’s claim for industrial injuries disablement benefit was determined (or, in the case of a claim from a dependant, where such a date does not exist, from the date of the death of the sufferer); and
- in cases of diffuse mesothelioma, any employment which began not more than 15 years before that date.

A person is not a relevant employer if, disregarding the periods of employment mentioned in the previous paragraph, the period during which he employed the person suffering from the disease:

- did not exceed 12 months; and
- did not exceed 5 years in total and does not represent more than 25 per cent. of the total period during which the person was employed in a prescribed occupation (or 7 years and not more than 20 per cent. of the total period employed in a prescribed occupation).

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Schedule 7 - Minor and consequential amendments relating to Part 4

Schedule 7 makes provision for minor and consequential amendments to the Contributions and Benefits Act, the Administration Act, the Deregulation and Contracting Out (Northern Ireland) Order 1996 and the Social Security (Northern Ireland) Order 1998 which arise from the provisions of Part 4 of the Act.