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STATUTORY RULES OF NORTHERN IRELAND

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**2010 No. 312**

**The Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010**

**PART 3**

**AFTER THE CONVERSION PHASE**

**Application of other statutory provisions applying to employment and support allowance**

**16.—**(1) The statutory provisions in paragraph (2) apply, subject to the modifications specified in Schedule 2, for the purposes of—

- (a) providing for the revision or supersession of any person's conversion decision at any time on or after that decision's effective date; and
- (b) enabling any other matter to be determined in connection with any person's entitlement or continuing entitlement to an award of an employment and support allowance by virtue of these Regulations.

[<sup>F1</sup>(1A) Where—

- (a) a person makes a claim for an employment and support allowance subsequent to the termination of that person's entitlement to an employment and support allowance by virtue of these Regulations; and
- (b) the period of limited capability for work in relation to that claim would link, by virtue of regulation 145(1) of the 2008 Regulations, to a period of limited capability for work in respect of which an award was made by virtue of these Regulations,

that person's entitlement to an award of an employment and support allowance shall be determined in accordance with these Regulations.]

(2) The statutory provisions to which paragraph (1) refers are—

- (a) Part 1 of the Act (employment and support allowance);
- (b) the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997(1);
- (c) Chapter II of Part II of the Social Security (Northern Ireland) Order 1998(2) (social security decisions and appeals);
- (d) any other statutory provision which is amended by Schedule 3 to the Act (consequential amendments relating to Part 1);
- (e) the Employment and Support Allowance Regulations;
- (f) this Part of these Regulations; and

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(1) S.I. 1997/1183 (N.I. 12)

(2) S.I. 1998/1506 (N.I. 10)

(g) the Regulations listed in Schedule 3.

(3) In the application of those statutory provisions, the conversion decision is to be treated as if it were a decision as to a person's entitlement to an employment and support allowance which had been made on a claim.

#### Textual Amendments

**F1** Reg. 16(1A) inserted (1.5.2012) by The Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2012 (S.R. 2012/121), regs. 1(3), 19

#### Commencement Information

**II** Reg. 16 in operation at 1.10.2010, see [reg. 1](#)

### Changes of circumstances before the effective date

17. Where, on or after the effective date of any person's conversion decision, the Department is notified of any change of circumstances or other relevant event which occurred before that date [<sup>F2</sup>and which would have been relevant to the existing award or awards] , the Department—

[<sup>F3</sup>(a) must treat any award—

- (i) converted by virtue of regulation 14(2) (conversion decision that existing award qualifies for conversion), or
- (ii) terminated by virtue of regulation 14(2B)(a) (termination of an existing award of incapacity benefit or severe disablement allowance where entitlement to award of income support continues), regulation 14(3) (termination of award of an employment and support allowance where that entitlement already exists) or regulation 15(2) (termination of existing awards which do not qualify for conversion),

as if that award had not been converted or terminated;

- (aa) must treat any entitlement to be credited with earnings terminated by virtue of regulation 14(5) or 15(3) as if it had not been terminated;
- (ab) must treat any entitlement to a disability premium terminated by virtue of regulations 14(2B)(b), 15(2B) or 15(6) as if it had not been terminated;]
- (b) must take account of the change of circumstances or other relevant event for the purposes of determining whether to revise or supersede a decision (“the earlier decision”) relating to the award or awards in respect of which the conversion decision was made;
- (c) in an appropriate case, must revise or supersede the earlier decision;
- (d) if any earlier decision is revised or superseded, must determine whether to revise [<sup>F4</sup>or supersede] the conversion decision made in relation to P; and
- (e) in an appropriate case, must revise [<sup>F5</sup>or supersede] that conversion decision.

#### Textual Amendments

**F2** Words in [reg. 17](#) inserted (1.11.2010) by The Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/347), regs. 1(2), 2(8)(a)

**F3** Reg. 17(a)(aa)(ab) substituted for [reg. 17\(a\)](#) (1.11.2010) by The Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/347), regs. 1(2), 2(8)(b)

- F4** Words in [reg. 17\(d\)](#) inserted (31.10.2011) by [The Social Security \(Miscellaneous Amendments No. 2\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/357\)](#), regs. 1(1), **25(3)**
- F5** Words in [reg. 17\(e\)](#) inserted (31.10.2011) by [The Social Security \(Miscellaneous Amendments No. 2\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/357\)](#), regs. 1(1), **25(3)**

**Commencement Information**

- I2** Reg. 17 in operation at 1.10.2010, see [reg. 1](#)

**Reducing the transitional addition: general rule**

**18.**—(1) The amount of any transitional addition to which a person is entitled by virtue of these Regulations shall be reduced, but not below nil, by a sum equal to the aggregate amount of all relevant increases which occur on or after the effective date in the amount payable to the person by way of an employment and support allowance.

(2) For the purposes of paragraph (1), a relevant increase is—

- (a) in relation to a person entitled to a contributory allowance, an increase in any amount applicable to the person under regulation 67(2)(a) or (3) of the Employment and Support Allowance Regulations(3); and
- (b) in relation to a person entitled to an income-related allowance, an increase in any amount applicable to the person under regulation 67(1)(a) or (b) or (3) or 68(1)(a), (b) or (c) of the Employment and Support Allowance Regulations,

which is not excluded by paragraph (3).

(3) In relation to any person, the excluded increases are—

- (a) any increase applicable to the benefit week the first day of which is the effective date of the person’s conversion decision; and
- (b) any increase resulting from the reversal, on appeal or otherwise, of any decision made by the Department that a person who was previously entitled to the support component has become entitled to the work-related activity component.

**Commencement Information**

- I3** Reg. 18 in operation at 1.10.2010, see [reg. 1](#)

**Reducing the transitional addition: increases for dependent children**

**19.**—(1) Paragraphs (2) and (3) apply to any person (“T”) who—

- (a) on the day before the effective date of T’s conversion decision, was entitled in connection with an existing award of incapacity benefit or severe disablement allowance to an increase under—
  - (i) section 80 of the Contributions and Benefits Act(4) (beneficiary’s dependent children), or
  - (ii) section 90 of the Contributions and Benefits Act(5) (beneficiaries in receipt of severe disablement allowance) for a child dependant; and

(3) The reference to regulation 67(2)(a) of the Employment and Support Allowance Regulations (Northern Ireland) 2008 is to that regulation as modified by paragraph 4(f)(ii) of Schedule 2 to these Regulations

(4) Increases in benefits in respect of children under section 80 were abolished by section 1(3)(e) of the Tax Credits Act 2002 (c. 21) and section 80 was repealed by Schedule 6 to that Act. See Article 2 of S.R. 2003 No. 212 for savings provisions

(5) Severe disablement allowance was abolished by section 62 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and section 90 was amended by paragraph 25 of Schedule 8 to that Order. See Article 4 of

(b) on and after the effective date, is entitled by virtue of these Regulations to an employment and support allowance which includes an amount by way of transitional addition.

(2) The amount of the transitional addition shall be reduced in accordance with paragraph (3) on the termination, on or after the effective date, of T's entitlement to child benefit in respect of the child or qualifying young person—

- (a) for whom; or
- (b) for whose care by an adult dependant,

T was entitled to the increase referred to in paragraph (1)(a).

[<sup>F6</sup>(3) The amount of the transitional addition shall be reduced, but not below nil, by a sum equal to the amount of the increase referred to in paragraph (1)(a) payable to T on the day before the effective date, in respect of the child or qualifying young person in relation to whom child benefit terminated.]

#### Textual Amendments

**F6** Reg. 19(3) substituted (1.11.2010) by [The Employment and Support Allowance \(Transitional Provisions and Housing Benefit\) \(Existing Awards\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/347\)](#), regs. 1(2), **2(9)**

#### Commencement Information

**I4** Reg. 19 in operation at 1.10.2010, see [reg. 1](#)

### Reducing the transitional addition: increases for adult dependants

**20.**—(1) Paragraphs (2) and (3) apply to any person (“T”) who—

- (a) on the day before the effective date of T's conversion decision, was entitled in connection with an existing award of incapacity benefit or severe disablement allowance to an increase under—
  - (i) section 86A of the Contributions and Benefits Act(**6**) (incapacity benefit: increase for adult dependants), or
  - (ii) section 90 of the Contributions and Benefits Act (beneficiaries in receipt of severe disablement allowance) for an adult dependant; and
- (b) on and after the effective date, is entitled by virtue of these Regulations to an employment and support allowance which includes an amount by way of a transitional addition.

(2) The amount of the transitional addition shall be reduced in accordance with paragraph (3) on the occurrence, on or after the effective date, of any of the following events—

- (a) the death of the adult dependant in respect of whom T was entitled to the increase referred to in paragraph (1)(a);
- (b) the permanent separation of T and that adult dependant;
- (c) the termination of the entitlement of either T or that adult dependant to child benefit; or
- (d) the award to that adult dependant of a personal benefit within the meaning of the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979(**7**) which is equal to

[S.R. 2000 No. 332 \(C. 14\)](#) for savings provisions. Increases in benefits in respect of children under section 90 were abolished by section 1(3)(e) of the Tax Credits Act 2002 and section 90 was amended by Schedule 6 to that Act. See Article 2 of [S.R. 2003 No. 212](#) for savings provisions

(6) Section 86A was inserted by Article 4(4) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 ([S.I. 1994/1898 \(N.I. 12\)](#))

(7) [S.R. 1979 No. 242](#)

or more than the amount which, on the day before the effective date, was the amount of the increase referred to in paragraph (1)(a) to which T was entitled.

(3) The amount of the transitional addition shall be reduced, but not below nil, by a sum equal to the amount which, on the day before the effective date, was the amount of the increase referred to in paragraph (1)(a) [<sup>F7</sup>payable to T] .

**Textual Amendments**

**F7** Words in [reg. 20\(3\)](#) substituted (1.11.2010) by [The Employment and Support Allowance \(Transitional Provisions and Housing Benefit\) \(Existing Awards\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/347\)](#), [regs. 1\(2\)](#), [2\(10\)](#)

**Commencement Information**

**I5** Reg. 20 in operation at 1.10.2010, see [reg. 1](#)

**Termination of transitional addition**

**21.—(1)** Any entitlement to a transitional addition which a person (“T”) may have by virtue of these Regulations terminates on whichever is the earliest of—

- (a) the reduction in accordance with regulations 18 to 20 of the amount of the transitional addition to nil [<sup>F8</sup>and]
- (b) subject to [<sup>F9</sup>paragraphs (2), (3) [<sup>F10</sup>, (3A)] and (4)] , the termination in accordance with the statutory provisions applied by regulation 16 of T’s entitlement to [<sup>F11</sup>an employment and support allowance which arises from section 1(2)(a) or (b) of the Act, or to a contributory allowance or to an income-related allowance] ; <sup>F12</sup>...

<sup>F13</sup>(c) .....

(2) Nothing in paragraph (1)(b) prevents reinstatement of a person’s entitlement to a transitional addition following the reversal on appeal of any determination which results in [<sup>F14</sup>a termination of the person’s entitlement to which that provision refers] .

[<sup>F15</sup>(3) Any termination by virtue of paragraph (1)(b) of T’s entitlement to a transitional addition under regulation 10(2)(a) (transitional addition: incapacity benefit or severe disablement allowance) shall instead have effect as a suspension of that entitlement in Case 1.

[<sup>F16</sup>(3A) Any termination of T’s entitlement to a transitional addition under regulation 10(2)(a) (transitional addition: incapacity benefit or severe disablement allowance) shall instead have effect as a suspension of that entitlement in Case 1A.]

(4) Any termination by virtue of paragraph (1)(b) of T’s entitlement to a transitional addition under regulation 11(2)(a) (transitional addition: income support) shall instead have effect as a suspension of that entitlement in Case 1 or Case 2.

(5) Case 1 is where—

- (a) on a subsequent claim made by T for an employment and support allowance, a period of limited capability for work is treated under regulation 145(1) <sup>F17</sup>... of the Employment and Support Allowance Regulations (linking rules) as a continuation of an earlier period of limited capability for work;
- (b) T’s entitlement to an allowance which is referred to in paragraph (1)(b) (“T’s old entitlement”) was in respect of that earlier period; and
- (c) <sup>F18</sup>[<sup>F19</sup>... in respect of that earlier period, it was terminated—

- (i) other than by virtue of a determination that T did not have, or was treated as not having, limited capability for work, or
- (ii) by virtue of a determination that the claimant did not have, or was treated as not having, limited capability for work, and, in respect of that subsequent claim, it is determined that T has, or is treated as having, limited capability for work, other than under regulation 30 of those Regulations.]

[<sup>F20</sup>(5A) Case 1A is where—

- (a) T was previously entitled to a contributory allowance;
- (b) entitlement to that previous allowance terminated by virtue of section 1A of the Act (duration of contributory allowance);
- (c) on a subsequent claim made by T for an employment and support allowance, a period of limited capability for work is treated under regulation 145(1) of the Employment and Support Allowance Regulations (linking rules) as a continuation of an earlier period of limited capability for work; and
- (d) it is determined in relation to the subsequent claim that T has, or is treated as having, limited capability for work-related activity.]

(6) Case 2 is where—

- (a) the reason for terminating T's entitlement to an employment and support allowance arising from section 1(2)(b) of the Act (conditions relating to financial position), or to an income-related allowance, as the case may be, was that the condition set out in paragraph 6(1)(f) of Schedule 1 to the Act (no entitlement to income-related allowance where other member of a couple engages in remunerative work) had ceased to be satisfied in T's case;
- (b) the condition referred to in sub-paragraph (a) is subsequently satisfied;
- (c) T again becomes entitled to an allowance which is referred to in sub-paragraph (a); and
- (d) that entitlement commences before the end of the 12 week period which begins with the date of termination of T's old entitlement.

(7) In Cases 1 [<sup>F21</sup>, 1A] and 2, the amount of the transitional addition or additions, as the case may be, to which T becomes entitled from the commencement of T's subsequent entitlement to an allowance which is referred to in paragraph (1)(b) is to be determined by reference to the amount of the transitional addition or additions, as the case may be, to which T was entitled on the termination of T's old entitlement, subject to any subsequent adjustment of that amount that would have been made under this Part.]

#### Textual Amendments

- F8** Word in reg. 21(1)(a) inserted (4.4.2020) by [The Employment and Support Allowance and the Housing Benefit \(Transitional Provisions\) \(Amendment\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/45\)](#), regs. 1(1), **2(a)**
- F9** Words in reg. 21(1)(b) substituted (1.11.2010) by [The Employment and Support Allowance \(Transitional Provisions and Housing Benefit\) \(Existing Awards\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/347\)](#), regs. 1(2), **2(11)(a)(i)**
- F10** Words in reg. 21(1)(b) inserted (28.11.2016) by [The Employment and Support Allowance \(Duration of Contributory Allowance\) \(Consequential Amendments\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/175\)](#), regs. 1(1), **9(3)(a)**
- F11** Words in reg. 21(1)(b) substituted (1.11.2010) by [The Employment and Support Allowance \(Transitional Provisions and Housing Benefit\) \(Existing Awards\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/347\)](#), regs. 1(2), **2(11)(a)(ii)**

- F12** Word in reg. 21(1)(b) omitted (4.4.2020) by virtue of The Employment and Support Allowance and the Housing Benefit (Transitional Provisions) (Amendment) Regulations (Northern Ireland) 2020 (S.R. 2020/45), regs. 1(1), **2(b)**
- F13** Reg. 21(1)(c) omitted (4.4.2020) by virtue of The Employment and Support Allowance and the Housing Benefit (Transitional Provisions) (Amendment) Regulations (Northern Ireland) 2020 (S.R. 2020/45), regs. 1(1), **2(c)**
- F14** Words in reg. 21(2) substituted (1.11.2010) by The Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/347), regs. 1(2), **2(11)(b)**
- F15** Reg. 21(3)-(7) substituted for reg. 21(3)-(6) (1.11.2010) by The Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/347), regs. 1(2), **2(11)(c)**
- F16** Reg. 21(3A) inserted (28.11.2016) by The Employment and Support Allowance (Duration of Contributory Allowance) (Consequential Amendments) Regulations (Northern Ireland) 2016 (S.R. 2016/175), regs. 1(1), **9(3)(b)**
- F17** Words in reg. 21(5)(a) omitted (28.11.2016) by virtue of The Employment and Support Allowance (Amendment of Linking Rules) Regulations (Northern Ireland) 2016 (S.R. 2016/176), regs. 1(2), **5(a)**
- F18** Words in reg. 21(5)(c) omitted (28.11.2016) by virtue of The Employment and Support Allowance (Amendment of Linking Rules) Regulations (Northern Ireland) 2016 (S.R. 2016/176), regs. 1(2), **5(b)**
- F19** Reg. 21(5)(c) substituted (1.5.2012) by The Employment and Support Allowance (Amendment of Linking Rules) Regulations (Northern Ireland) 2012 (S.R. 2012/160), regs. 1, **3**
- F20** Reg. 21(5A) inserted (28.11.2016) by The Employment and Support Allowance (Duration of Contributory Allowance) (Consequential Amendments) Regulations (Northern Ireland) 2016 (S.R. 2016/175), regs. 1(1), **9(3)(c)**
- F21** Words in reg. 21(7) inserted (28.11.2016) by The Employment and Support Allowance (Duration of Contributory Allowance) (Consequential Amendments) Regulations (Northern Ireland) 2016 (S.R. 2016/175), regs. 1(1), **9(3)(d)**

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#### **Commencement Information**

- I6** Reg. 21 in operation at 1.10.2010, see **reg. 1**

**Changes to legislation:**

There are currently no known outstanding effects for the The Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010, PART 3.