

EXPLANATORY MEMORANDUM

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

S.R. 2010 No. 312

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 122(1)(D), 131(1), and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, Article 74(3) of the Social Security (Northern Ireland) Order 1998, paragraphs 4(3) and (5) and 20(1)(b) of Schedule 7 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and sections 24(2) and (3), 25(2), 28(2) of, and paragraph 2 of Schedule 2 and paragraphs 1(1), 3(b), 7 and 8 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 provide for the conversion of existing awards of Incapacity Benefit and Income Support paid on the grounds of incapacity/disability (known collectively as ‘incapacity benefits’) to awards of Employment and Support Allowance and related changes to Housing Benefit provisions. They provide that all claims to incapacity benefits after 31 January 2011 will be treated as new Employment and Support Allowance claims with no link to earlier claims for incapacity benefits. They also make consequential amendments to decision making and appeals provisions.
- 2.2 Migration to Employment and Support Allowance will align and simplify the benefit system by ensuring that all claimants with a health condition or disability claim the same benefit and receive support to get into work.

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 These Regulations make transitional provision in relation to the introduction of Employment and Support Allowance and apply to persons entitled to any existing award (which is defined in Schedule 4 to the Welfare Reform Act (Northern Ireland) 2007 in terms of incapacity benefit, severe disablement allowance and income support on the grounds of incapacity or disability). The Regulations set out the process for determining whether existing awards are to be converted into awards of an employment and support allowance. An award may be converted only if certain conditions are satisfied in relation to the person entitled to the award.
- 3.3 A person's existing award or awards qualify for conversion if the person satisfies the basic conditions for entitlement to an Employment and Support Allowance, except for the condition that they are not entitled to income support. One of these basic conditions is that the person has limited capability for work. This will be determined on an individual basis with claimants required to undergo the new work capability assessment to determine their entitlement to Employment and Support Allowance.
- 3.4 If an existing award or awards qualify for conversion, claimants will be entitled to the aggregate of the amount to which they would have been entitled on a successful claim for an Employment and Support Allowance and the additional amount referred to in the Regulations as a "transitional addition". The transitional addition is based on the difference between specified elements of the person's existing award and specified elements of the Employment and Support Allowance into which it is to be converted.
- 3.5 The Regulations make consequential provisions for claimants who are also receiving Housing Benefit. This will ensure that the claimant's applicable amount for Housing Benefit purposes will not decrease because an existing benefit has been converted to an Employment and Support Allowance or pending an appeal against a decision not to convert an existing benefit to an Employment and Support Allowance.

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. As Housing Benefit amendments are included in these proposals the Regulations were referred to the Social Security Advisory Committee for consideration only in relation to the Housing Benefit provisions and they were in agreement that they did not require the proposals for these Regulations to be formally referred. Consent was also received from the Department of Finance and Personnel.

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 provide for the migration from existing incapacity benefits to Employment and Support Allowance and 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) Regulations 2010 (S.I. 2010/1907) and in keeping with the long-standing policy of parity in social security, the Regulations will come into operation on 01 October 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.