

STATUTORY RULES OF NORTHERN IRELAND

2016 No. 219

The Employment and Support Allowance Regulations (Northern Ireland) 2016

PROSPECTIVE

PART 11

SUPPLEMENTARY PROVISIONS

Waiting days

85.—(1) The number of days prescribed for the purposes of paragraph 2 of Schedule 2 to the Act (days during which a person is not entitled to an employment and support allowance at the beginning of a period of limited capability for work) is 7.

(2) Paragraph 2 of Schedule 2 to the Act does not apply where—

- (a) the claimant's entitlement to an employment and support allowance commences within 12 weeks of the claimant's entitlement to income support, incapacity benefit, severe disablement allowance, state pension credit, a jobseeker's allowance, a carer's allowance, statutory sick pay or a maternity allowance coming to an end;
- (b) the claimant is terminally ill and has—
 - (i) made a claim expressly on the ground of being terminally ill, or
 - (ii) made an application for supersession or revision in accordance with the Decisions and Appeals Regulations 1999 or the Decisions and Appeals Regulations 2016 which contains an express statement that the claimant is terminally ill;
- (c) the claimant has been discharged from being a member of Her Majesty's forces and 3 or more days immediately before that discharge were days of sickness absence from duty, which are recorded by the Secretary of State; or
- (d) the claimant is entitled to an employment and support allowance by virtue of section 1B of the Act (further entitlement after time-limiting).

Commencement Information

II Reg. 85 in operation at 27.9.2017, see [reg. 1\(2\)](#)

Linking period

86. Any period of limited capability for work which is separated from another such period by not more than 12 weeks is to be treated as a continuation of the earlier period.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Employment and Support Allowance Regulations (Northern Ireland) 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Commencement Information

I2 Reg. 86 in operation at 27.9.2017, see [reg. 1\(2\)](#)

Claimants appealing a decision

87.—(1) This regulation applies where a claimant has made and is pursuing an appeal against a relevant decision of the Department as defined in regulation 26.

(2) Subject to paragraph (3), where this regulation applies, a determination of limited capability for work by the Department under regulation 15 must not be made until the appeal is determined by the appeal tribunal.

(3) Paragraph (2) does not apply where either—

- (a) the claimant suffers from some specific disease or bodily or mental disablement from which the claimant was not suffering when entitlement began; or
- (b) a disease or bodily or mental disablement from which the claimant was suffering when entitlement began has significantly worsened.

(4) Where this regulation applies and the Department makes a determination—

- (a) in a case to which paragraph (3) applies (including where the determination is not the first such determination) that the claimant does not have or, by virtue of regulation 18 or 19, is to be treated as not having limited capability for work; or
- (b) subsequent to a determination that the claimant is to be treated as having limited capability for work by virtue of a provision of these Regulations other than regulation 26, that the claimant is no longer to be so treated,

this regulation and regulation 26 have effect as if that determination had not been made.

(5) Where this regulation applies and—

- (a) the claimant is entitled to an employment and support allowance by virtue of being treated as having limited capability for work in accordance with regulation 26;
- (b) neither of the circumstances in paragraph (3) applies, or, subsequent to the application of either of those circumstances, the claimant has been determined not to have limited capability for work; and
- (c) the claimant's appeal is dismissed, withdrawn or struck out,

the claimant is to be treated as not having limited capability for work with effect from the day specified in paragraph (6).

(6) The day specified for the purposes of paragraph (5) is the first day of the benefit week following the date on which the Department receives the appeal tribunal's notification that the appeal is dismissed, withdrawn or struck out.

(7) Where a claimant's appeal is successful, subject to paragraph (8), any finding of fact or other determination embodied in or necessary to the decision of the appeal tribunal or on which the appeal tribunal's decision is based is to be conclusive for the purposes of the decision of the Department, in relation to an award made in a case to which this regulation applies, as to whether the claimant has limited capability for work or limited capability for work-related activity.

(8) Paragraph (7) does not apply where, due to a change of circumstances after entitlement began, the Department is satisfied that it is no longer appropriate to rely on such finding or determination.

Commencement Information

I3 Reg. 87 in operation at 27.9.2017, see [reg. 1\(2\)](#)

Absence from Northern Ireland

88.—(1) A claimant who is entitled to an employment and support allowance is to continue to be so entitled during a period of temporary absence from Northern Ireland only in accordance with regulations 89 to 92.

(2) A claimant who continues to be entitled to an employment and support allowance during a period of temporary absence is not disqualified for receiving that allowance during that period under section 18(4) of the Act⁽¹⁾.

Commencement Information

I4 Reg. 88 in operation at 27.9.2017, see [reg. 1\(2\)](#)

Short absence

89. A claimant is to continue to be entitled to an employment and support allowance during the first 4 weeks of a temporary absence from Northern Ireland if—

- (a) the period of absence is unlikely to exceed 52 weeks; and
- (b) while absent from Northern Ireland, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance.

Commencement Information

I5 Reg. 89 in operation at 27.9.2017, see [reg. 1\(2\)](#)

Absence to receive medical treatment

90.—(1) A claimant is to continue to be entitled to an employment and support allowance during the first 26 weeks of a temporary absence from Northern Ireland if—

- (a) the period of absence is unlikely to exceed 52 weeks;
- (b) while absent from Northern Ireland, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance;
- (c) the claimant is absent from Northern Ireland only—
 - (i) in connection with arrangements made for the treatment of the claimant for a disease or bodily or mental disablement directly related to the claimant's limited capability for work which commenced before leaving Northern Ireland, or
 - (ii) because the claimant is accompanying a dependent child (which means any child or qualifying young person who is treated as the responsibility of the claimant or the claimant's partner, where that child or young person is a member of the claimant's household) in connection with arrangements made for the treatment of that child for a disease or bodily or mental disablement; and

(1) Section 18(4) was amended by paragraph 21(d) of Schedule 3 to the Welfare Reform (Northern Ireland) Order 2015

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Employment and Support Allowance Regulations (Northern Ireland) 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (d) those arrangements relate to treatment—
- (i) outside Northern Ireland,
 - (ii) during the period whilst the claimant is temporarily absent from Northern Ireland, and
 - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.

(2) In this regulation, “appropriately qualified” means qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

Commencement Information

I6 Reg. 90 in operation at 27.9.2017, see [reg. 1\(2\)](#)

Absence in order to receive health service treatment

91. A claimant is to continue to be entitled to an employment and support allowance during any period of temporary absence from Northern Ireland if—

- (a) while absent from Northern Ireland, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance; and
- (b) that period of temporary absence is for the purpose of the claimant receiving treatment at a hospital or other institution outside Northern Ireland where the treatment is being provided—
 - (i) under Article 5, 7 or 8 of the Health and Personal Social Services Order⁽²⁾ (provision of accommodation and medical services, etc.; prevention of illness, care and after-care; care of mothers and young children),
 - (ii) pursuant to arrangements made under Article 14A of that Order⁽³⁾ (arrangements for provision of health services by other bodies or persons), or
 - (iii) pursuant to arrangements made under paragraph 13 of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991⁽⁴⁾ (Health and Social Services trusts: specific powers).

Commencement Information

I7 Reg. 91 in operation at 27.9.2017, see [reg. 1\(2\)](#)

Absence of member of family of member of Her Majesty’s forces

92.—(1) A claimant is to continue to be entitled to an employment and support allowance during any period of temporary absence from Northern Ireland if the claimant is a member of the family

-
- (2) Article 5 was amended by Schedule 6 to the Health and Social Security (Northern Ireland) Order 1984 (S.I. 1984/1158 (N.I. 8)), Schedule 5 to the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) and paragraph 3 of Schedule 1 to the Primary Medical Services (Northern Ireland) Order 2004 (S.I. 2004/311 (N.I. 2)) and Article 7 was amended by section 121(1) of the Immigration and Asylum Act 1999 (c. 33) and section 46(6) of the Nationality, Immigration and Asylum Act 2002 (c. 41)
 - (3) Article 14A was inserted by paragraph 2(1) of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992 (S.I. 1992/3204 (N.I. 20))
 - (4) S.I. 1991/194 (N.I. 1); paragraph 13 was amended by Schedule 1 to the Health and Personal Social Services (Northern Ireland) Order 1994 (S.I. 1994/429 (N.I. 2))

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Employment and Support Allowance Regulations (Northern Ireland) 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

of a member of Her Majesty's forces and temporarily absent from Northern Ireland by reason only of the fact that the claimant is living with that member.

(2) In this regulation "member of the family of a member of Her Majesty's forces" means the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in law or step-mother of such a member.

Commencement Information

18 Reg. 92 in operation at 27.9.2017, see [reg. 1\(2\)](#)

Status:

This version of this part contains provisions that are prospective.

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Employment and Support Allowance Regulations (Northern Ireland) 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. View outstanding changes

Changes and effects yet to be applied to the whole Rule associated Parts and Chapters:

Whole provisions yet to be inserted into this Rule (including any effects on those provisions):

- Pt. 8(crossheading)Pt. 8(step)(1) coming into force by S.R. 2016/219 reg. 1(2)
- Pt. 8(crossheading)Pt. 8(step)(2) coming into force by S.R. 2016/219 reg. 1(2)
- reg. 45(2) inserted by S.R. 2022/14 reg. 3(b)
- reg. 62(1)(a)(i) sum substituted by S.R. 2021/82 art. 32(3)(a)
- reg. 62(1)(a)(i) sum substituted by S.R. 2022/143 art. 32(3)(a)
- reg. 62(1)(a)(i) sum substituted by S.R. 2022/231 art. 31(3)(a)
- reg. 62(1)(a)(i) sum substituted by S.R. 2023/143 art. 31(3)(a) (This amendment not applied to legislation.gov.uk. S.R. 2023/143 revoked before coming into operation (26.9.2023) by The Social Security Benefits Up-rating (No. 3) Order (Northern Ireland) 2023 (S.R. 2023/150), arts. 1, 33)
- reg. 62(1)(a)(i) sum substituted by S.R. 2023/150 art. 31(3)(a)
- reg. 62(1)(a)(i) sum substituted by S.R. 2023/27 art. 31(3)(a)
- reg. 62(1)(a)(i) sum substituted by S.R. 2023/43 art. 32(3)(a)
- reg. 62(1)(a)(i) sum substituted by S.R. 2024/69 art. 30(3)(a)
- reg. 62(1)(a)(i) sum substituted by S.R. 2024/73 art. 31(3)(a)
- reg. 62(1)(a)(ii)(aa) sum substituted by S.R. 2021/82 art. 32(3)(a)
- reg. 62(1)(a)(ii)(bb) sum substituted by S.R. 2021/82 art. 32(3)(b)
- reg. 62(1)(a)(ii) sum substituted by S.R. 2022/143 art. 32(3)(a)
- reg. 62(1)(a)(ii)(bb) sum substituted by S.R. 2022/143 art. 32(3)(b)
- reg. 62(1)(a)(ii)(aa) sum substituted by S.R. 2022/231 art. 31(3)(a)
- reg. 62(1)(a)(ii)(bb) sum substituted by S.R. 2022/231 art. 31(3)(b)
- reg. 62(1)(a)(ii)(aa) sum substituted by S.R. 2023/143 art. 31(3)(a) (This amendment not applied to legislation.gov.uk. S.R. 2023/143 revoked before coming into operation (26.9.2023) by The Social Security Benefits Up-rating (No. 3) Order (Northern Ireland) 2023 (S.R. 2023/150), arts. 1, 33)
- reg. 62(1)(a)(ii)(bb) sum substituted by S.R. 2023/143 art. 31(3)(b) (This amendment not applied to legislation.gov.uk. S.R. 2023/143 revoked before coming into operation (26.9.2023) by The Social Security Benefits Up-rating (No. 3) Order (Northern Ireland) 2023 (S.R. 2023/150), arts. 1, 33)
- reg. 62(1)(a)(ii)(aa) sum substituted by S.R. 2023/150 art. 31(3)(a)
- reg. 62(1)(a)(ii)(bb) sum substituted by S.R. 2023/150 art. 31(3)(b)
- reg. 62(1)(a)(ii)(aa) sum substituted by S.R. 2023/27 art. 31(3)(a)
- reg. 62(1)(a)(ii)(bb) sum substituted by S.R. 2023/27 art. 31(3)(b)
- reg. 62(1)(a)(ii) sum substituted by S.R. 2023/43 art. 32(3)(a)
- reg. 62(1)(a)(ii)(bb) sum substituted by S.R. 2023/43 art. 32(3)(b)
- reg. 62(1)(a)(ii)(aa) sum substituted by S.R. 2024/69 art. 30(3)(a)
- reg. 62(1)(a)(ii)(bb) sum substituted by S.R. 2024/69 art. 30(3)(b)
- reg. 62(1)(a)(ii)(aa) sum substituted by S.R. 2024/73 art. 31(3)(a)
- reg. 62(1)(a)(ii)(bb) sum substituted by S.R. 2024/73 art. 31(3)(b)