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STATUTORY INSTRUMENTS

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**2010 No. 875**

**The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010**

**PART 3**

**AFTER THE CONVERSION PHASE**

**Application of other enactments applying to employment and support allowances**

**16.**—(1) The enactments listed 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.

(2) The listed enactments are—

- (a) Part 1 of the 2007 Act;
- (b) Chapter 2 of Part 1 of the Social Security Act 1998<sup>(1)</sup> (social security decisions and appeals);
- (c) any other Act which is amended by Schedule 3 to the 2007 Act;
- (d) the Social Security (Recovery of Benefits) Act 1997<sup>(2)</sup>; and
- (e) the following regulations—
  - (i) this Part of these Regulations,
  - (ii) the 2008 Regulations, and
  - (iii) the Regulations listed in Schedule 3 to these Regulations (being regulations consequentially amended by regulations made under Part 1 of the 2007 Act).

(3) In the application of those enactments, 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.

**Changes of circumstances before the effective date**

**17.** Where, on or after the effective date of any person's conversion decision, the Secretary of State is notified of any change of circumstances or other relevant event which occurred before that date, the Secretary of State—

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(1) 1998 c. 14.  
(2) 1997 c. 27.

- (a) must treat any award converted by virtue of regulation 14(2) (conversion decision that existing award qualifies for conversion) or terminated by virtue of regulation 15(2) (conversion decision that existing award does not qualify for conversion) as if it had not been converted or 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 the conversion decision made in relation to P; and
- (e) in an appropriate case, must revise that conversion decision.

### **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 2008 Regulations<sup>(3)</sup>; 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 2008 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 Secretary of State that a person who was previously entitled to the support component has become entitled to the work-related activity component.

### **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 section 80 of the Contributions and Benefits Act (beneficiary’s dependent children), as that section has effect by virtue of article 3 of the Tax Credits (Commencement No.3 and Transitional Provisions and Savings) Order 2003<sup>(4)</sup>; 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 termination, on or after the effective date, of T’s entitlement to child benefit in respect of the child or qualifying young person—

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<sup>(3)</sup> The reference to regulation 67(2)(a) of the 2008 Regulations is to that regulation as modified by paragraph 12(b) of Schedule 2 to these Regulations.

<sup>(4)</sup> S.I. 2003/938.

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

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

(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) to which T was entitled.

### **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<sup>(5)</sup> (incapacity benefit: increases for adult dependants), or
  - (ii) section 90 of the Contributions and Benefits Act (adult dependants of beneficiaries in receipt of severe disablement allowance); 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 1979<sup>(6)</sup>) which is equal to 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) to which T was entitled.

### **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 earlier of—

- (a) the reduction in accordance with regulations 18 to 20 (reducing the transitional addition: general rule and increases for dependent children and adult dependants) of the amount of the transitional addition to nil;
- (b) subject to paragraphs (2) and (3), the termination in accordance with the enactments applied by regulation 16 of T’s entitlement to an employment and support allowance; and
- (c) 5th April 2020.

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<sup>(5)</sup> Section 86A was inserted by section 2(5) of the Social Security (Incapacity for Work) Act 1994.

<sup>(6)</sup> S.I. 1979/597.

(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 the termination of the person's entitlement to an employment and support allowance.

(3) Any termination of T's entitlement to a transitional addition by virtue of paragraph (1)(b) shall instead have effect as a suspension of that entitlement in Case 1 or Case 2.

(4) 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) or (2) of the 2008 Regulations (linking rules) as a continuation of an earlier period of limited capability for work; and
- (b) T's entitlement to an employment and support allowance which is referred to in paragraph (1)(b) ("T's old entitlement") was in respect of that earlier period.

(5) Case 2 is where—

- (a) T's old entitlement was to an income-related allowance;
- (b) the reason for terminating that entitlement was that the condition set out in paragraph 6(1)(f) of Schedule 1 to the 2007 Act had ceased to be satisfied in T's case (no entitlement to income-related allowance where other member of a couple engages in remunerative work); and
- (c) on a subsequent claim for an income-related allowance, T's entitlement to such an allowance commences before the end of the 12 week period which begins with the date of termination of T's old entitlement.

(6) In Cases 1 and 2, the amount of the transitional addition which becomes payable on commencement of T's entitlement to an employment and support allowance is to be determined by reference to the amount of the transitional addition that was payable on the termination of T's old entitlement, subject to any subsequent adjustment of that amount that would have been made under this Part.