
STATUTORY INSTRUMENTS

2008 No. 1554

The Employment and Support Allowance
(Consequential Provisions) (No. 2) Regulations 2008

PART 4

Administrative Provisions

CHAPTER 2

The Social Security and Child Support (Decisions and Appeals) Regulations 1999

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations 1999

29. The Social Security and Child Support (Decisions and Appeals) Regulations 1999(1) are amended in accordance with this Chapter.

Amendment of regulation 1

30. In regulation 1(3) (citation, commencement and interpretation)—

- (a) in paragraph (a) of the definition of “claimant”(2) for “or section 17(1) of the State Pension Credit Act” substitute “, section 17(1) of the State Pension Credit Act or section 24(1) of the Welfare Reform Act”;
- (b) after the definition of “clerk to the appeal tribunal” insert—
““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;”;
- (c) after the definition of “designated authority”(3) insert—
““the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008(4);
“failure determination” means a determination by the Secretary of State under regulation 63(1) of the Employment and Support Allowance Regulations that a claimant has failed to satisfy the requirement of regulation 47 or 54 of those Regulations (requirement to take part in a work-focused health related assessment or a work-focused interview);”;
- (d) after the definition of “the Graduated Retirement Benefit Regulations”(5) insert—
““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act;”;

(1) [S.I. 1999/991](#).

(2) Definition amended by [S.I. 1999/1662](#) and [2002/3019](#).

(3) Definition substituted by [S.I. 2002/1703](#).

(4) [S.I. 2008/794](#)

(5) Definition was inserted by [S.I. 2005/2677](#).

- (e) after the definition of “legally qualified panel member” insert—
““limited capability for work” has the same meaning as in section 1(4) of the Welfare Reform Act”; and
- (f) after the definition of “the Variations Regulations”(6) insert—
““the Welfare Reform Act” means the Welfare Reform Act 2007;”.

Amendment of regulation 3

31.—(1) Regulation 3 (revision of decisions) is amended as follows.

- (2) In paragraph (5)—
 - (a) in sub-paragraph (c)(7)—
 - (i) after “incapacity determination” the first time it occurs insert “or is an employment and support allowance decision where there has been a limited capability for work determination”; and
 - (ii) for “or the incapacity determination” substitute “, the incapacity determination or the limited capability for work determination”; and
 - (b) in sub-paragraph (d)(8)—
 - (i) after “where the decision” insert “is an employment and support allowance decision,”;
 - (ii) after “not in relation to the” insert “limited capability for work determination,”; and
 - (iii) after “in or necessary to” insert “the employment and support allowance decision,”.
- (3) In paragraph (5ZB)(9)—
 - (a) after sub-paragraph (f) omit “and”; and
 - (b) after sub-paragraph (g) add—
 - “and
 - (h) contributory employment and support allowance.”
- (4) After paragraph (5B)(10) insert—
 - “(5C) A decision of the Secretary of State under section 10 made in consequence of a failure determination may be revised at any time if it contained an error to which the claimant did not materially contribute;
 - (5D) A decision by the Secretary of State under section 8 or 10 awarding employment and support allowance may be revised at any time if—
 - (a) it incorporates a determination that the condition in regulation 30 of the Employment and Support Allowance Regulations is satisfied;
 - (b) the condition referred to in sub-paragraph (a) was not satisfied at the time when the claim was first determined; and
 - (c) there is a period before the award which falls to be decided.”.
- (5) In paragraph (7ZA)(11)—

(6) Definition inserted by [S.I. 2000/3185](#).

(7) Sub-paragraph (c) was inserted by [S.I. 1999/1623](#) and amended by [S.I. 2007/2470](#).

(8) Sub-paragraph (d) was inserted by [S.I. 2007/2470](#).

(9) Paragraph (5ZB) was inserted by [S.I.2007/2582](#).

(10) Paragraph (5B) was inserted by [S.I. 2007/2470](#).

(11) Paragraph (7ZA) was inserted by [S.I. 2005/337](#).

- (a) in sub-paragraph (a) for “or state pension credit” substitute “, state pension credit or an income-related employment and support allowance”;
 - (b) in sub-paragraph (b) after “Income Support Regulations” insert “or regulation 71 of the Employment and Support Allowance Regulations”;
 - (c) in sub-paragraph (c)(i) after “Income Support Regulations” insert “or regulation 67 of the Employment and Support Allowance Regulations”; and
 - (d) in sub-paragraph (d)(ii) after “Income Support Regulations” insert “, paragraph 6(4)(a) of Schedule 4 to the Employment and Support Allowance Regulations”.
- (6) In paragraph (9)(12)—
- (a) after sub-paragraph (a) omit “nor”; and
 - (b) after sub-paragraph (b) insert—
 - “nor
 - (c) a decision which relates to an employment and support allowance where the claimant is terminally ill, within the meaning of regulation 2(1) of the Employment and Support Allowance Regulations unless the claimant makes an application which contains an express statement that he is terminally ill and where such an application is made, the decision may be revised.”.

Amendment of regulation 6

32.—(1) Regulation 6 (supersession of decisions) is amended as follows.

(2) In paragraph (2)(13)—

- (a) in sub-paragraph (a)(i) after “Regulations” insert “or regulation 146 of the Employment and Support Allowance Regulations”;
- (b) in sub-paragraph (i) for “or income support” substitute “, income support or an employment and support allowance”; and
- (c) after sub-paragraph (o) add—
 - “(p) is a decision awarding employment and support allowance where there has been a failure determination;
 - (q) is a decision made in consequence of a failure determination where the reduction ceases to have effect under of regulation 64 of the Employment and Support Allowance Regulations;
 - (r) is an employment and support allowance decision where, since the decision was made, the Secretary of State has received medical evidence from a health care professional approved by the Secretary of State for the purposes of regulation 23 or 38 of the Employment and Support Allowance Regulations.”.

(3) In paragraph (6)(a)(14) after “Income Support Regulations” insert “, regulation 137 of the Employment and Support Allowance Regulations”.

Amendment of regulation 7

33.—(1) Regulation 7 (date from which a decision superseded under section 10 takes effect) is amended as follows.

(12) Paragraph 9 was substituted by S.I. 1999/2677 and amended by S.I. 1999/2570, 2003/1050 and 2005/337.

(13) Paragraph (2) was amended by S.I. 1999/1623, 1999/2570 and 1999/2677, 2000/1596, 2001/1711 and 2000/1982, 2002/428, 2002/490, 2000/897 and 2002/3019, 2003/1050, 2003/1886 and 2003/2274, 2004/959, 2005/337 and 2005/2677.

(14) Paragraph (6) was amended by S.I. 1999/2677 and 2005/337.

- (2) In paragraph (1)(a)(15)—
- (a) after “(2)(b)” insert “or (be)”; and
 - (b) for “and 3B” substitute “, 3B and 3C”.
- (3) In paragraph (2)(16)—
- (a) in sub-paragraph (b)(i) for “or state pension credit” substitute “, state pension credit or an employment and support allowance”; and
 - (b) after paragraph (bc)(17) insert—
 - “(be) in the case of a claimant who is in receipt of an employment and support allowance and the claimant makes an application which contains an express statement that he is terminally ill within the meaning of regulation 2(1) of the Employment and Support Allowance Regulations, from the date the claimant became terminally ill;”.
- (4) For paragraph (3)(18) substitute—
- “(3) For the purposes of paragraphs (2) and (8) “benefit week” has the same meaning, as the case may be, as in—
 - (a) regulation 2(1) of the Income Support Regulations;
 - (b) regulation 1(3) of the Jobseeker’s Allowance Regulations;
 - (c) regulation 1(2) of the State Pension Credit Regulations; or
 - (d) regulation 2(1) of the Employment and Support Allowance Regulations.”.
- (5) In paragraph (7)(b)(19)—
- (a) in paragraph (i) after “(guarantee credit)” add “or paragraph 6 of Schedule 4 to the Employment and Support Allowance Regulations;”; and
 - (b) in paragraph (ii)(aa) after “Income Support Regulations” add “or regulation 71 of the Employment and Support Allowance Regulations”.
- (6) In paragraph (13)(a)(20)—
- (a) in paragraph (iii) for “and” substitute “or”; and
 - (b) after paragraph (iii) insert—
 - “(iv) paragraph 16 or 17 of Schedule 6 to the Employment and Support Allowance Regulations; and”.
- (7) After paragraph (17C)(21) insert—
- “(17D) Except in a case where paragraph (23) applies, where a claimant is in receipt of an employment and support allowance and his applicable amount includes an amount determined in accordance with Schedule 6 to the Employment and Support Allowance Regulations (housing costs), and there is a reduction in the amount of eligible capital owing in connection with a loan which qualifies under paragraph 16 or 17 of that Schedule, a decision made under section 10 shall take effect—

(15) Paragraph (1) was substituted by [S.I. 1999/3178](#) and sub-paragraph (a) was substituted by [S.I. 2002/3019](#) and amended by [S.I. 2003/1050](#).

(16) Paragraph (2) was amended by [S.I. 1999/3178](#), [2000/1596](#), [2002/3019](#), [2003/1050](#), [2005/337](#), [2006/832](#) and [2006/2377](#) and [2007/2470](#).

(17) Sub-paragraph (bc) was inserted by [S.I. 2006/2377](#). Sub-paragraph (bd) was inserted by [S.I. 2007/2470](#) and omitted by [S.I. 2008/1042](#).

(18) Paragraph (3) was amended by [S.I. 2002/3019](#).

(19) Paragraph (7) was substituted by [S.I. 2006/832](#).

(20) Paragraph (3)(a) was amended by [S.I. 2002/3019](#).

(21) Paragraph (17C) was inserted by [S.I. 2002/3197](#) and substituted by [S.I. 2004/647](#).

- (a) on the first anniversary of the date on which the claimant's housing costs were first met under that Schedule; or
- (b) where the reduction in eligible capital occurred after the first anniversary of the date referred to in sub-paragraph (a), on the next anniversary of that date following the date of the reduction.

(17E) Where a claimant is in receipt of an employment and support allowance and payments made to that claimant which fall within paragraph 31 or 32(1)(a) to (c) of Schedule 8 to the Employment and Support Allowance Regulations have been disregarded in relation to any decision under section 8 or 10 and there is a change in the amount of interest payable—

- (a) on a loan qualifying under paragraph 16 or 17 of Schedule 6 to those Regulations to which those payments relate; or
- (b) on a loan not so qualifying which is secured on the dwelling occupied as the home to which those payments relate,

a decision under section 10 which is made as a result of that change in the amount of interest payable shall take effect on whichever of the dates referred to in paragraph (17F) is appropriate in the claimant's case.

(17F) The date on which a decision under section 10 takes effect for the purposes of paragraph (17E) is—

- (a) the date on which the claimant's housing costs are first met under paragraph 8(1)(a), 9(1)(a) or 10(2)(a) of Schedule 6 to the Employment and Support Allowance Regulations; or
- (b) where the change in the amount of interest payable occurred after the date referred to in sub-paragraph (a), on the date of the next alteration in the standard rate following the date of that change.

(17G) In paragraph (17F) "standard rate" has the same meaning as it has in paragraph 13(2) of Schedule 6 to the Employment and Support Allowance Regulations.

(17H) Where the decision is superseded in accordance with regulation 6(2)(a)(i) and the relevant circumstances are that the claimant has a non-dependant who has become entitled to main phase employment and support allowance, the superseding decision shall take effect from the date the main phase employment and support allowance is first paid to the non-dependant."

(8) In paragraph (23)(22)—

- (a) after "(17A)" insert ", (17D)";
- (b) after "a jobseeker's allowance" the first time it occurs insert ", an employment and support allowance"; and
- (c) in sub-paragraph (a) for "or jobseeker's allowance" substitute ", jobseeker's allowance or employment and support allowance".

(9) After paragraph (34)(23) add—

"(35) A decision made in accordance with regulation 6(2)(p), where the failure determination was made before the 13th week of entitlement, shall take effect from the first day of the benefit week following that week.

(22) Paragraph (23) was substituted by [S.I. 2002/3197](#) and amended by [S.I. 2004/647](#).

(23) Paragraph (34) was inserted by [S.I. 2005/337](#).

(36) A decision made in accordance with regulation 6(2)(p) where paragraph (35) does not apply shall take effect from the first day of the benefit week in which the failure determination was made.

(37) A decision made in accordance with regulation 6(2)(q) shall take effect from the first day of the benefit week in which the reduction mentioned in that sub-paragraph ceased to have effect.

(38) A decision made in accordance with regulation 6(2)(r) that embodies a determination that the claimant has limited capability for work which is the first such determination shall take effect from the beginning of the 14th week of entitlement.

(39) A decision made in accordance with regulation 6(2)(r), following an application by the claimant, that embodies a determination that the claimant has limited capability for work-related activity shall take effect from the date of the application.”.

Amendment of regulation 7A

34.—(1) Regulation 7A(24) (definitions etc.) is amended as follows.

(2) For the heading substitute “Definitions for the purposes of Chapters I and II”.

(3) In paragraph (1)—

(a) after the definition of “disability determination” insert—

““employment and support allowance decision” means a decision to award a relevant benefit or relevant credit embodied in or necessary to which is a determination that a person has or is to be treated as having limited capability for work under Part 1 of the Welfare Reform Act;”

(b) after the definition of “incapacity determination” insert—

““limited capability for work determination” means a determination whether a person has limited capability for work by applying the test of limited capability for work or whether a person is to be treated as having limited capability for work in accordance with regulation 20 of the Employment and Support Allowance Regulations;” and

(c) in the definition of “payee” after “incapacity benefit decision” insert “or “employment and support allowance decision””.

Amendment of regulation 7B

35. In regulation 7B(23)(25) (date from which a decision superseded under section 17 of the Child Support Act takes effect) in the definition of “benefit week” after “Income Support Regulations” insert “, in relation to employment and support allowance has the same meaning as in regulation 2(1) of the Employment and Support Allowance Regulations”.

Amendment of regulation 10

36. For regulation 10 (effect of a determination as to capacity for work) substitute—

“Effect of determination as to capacity or capability for work

10.—(1) This regulation applies to a determination whether a person—

(a) is capable or incapable of work;

(24) Regulation 7A was inserted by [S.I. 1999/1623](#) and amended by [2000/1596](#)

(25) Regulation 7B was inserted by [S.I. 2000/3185](#).

- (b) is to be treated as capable or incapable of work;
- (c) has or does not have limited capability for work; or
- (d) is to be treated as having or not having limited capability for work.

(2) A determination (including a determination made following a change of circumstances) as set out in paragraph (1) which is embodied in or necessary to a decision under Chapter II of Part I of the Act or on which such a decision is based shall be conclusive for the purposes of any further decision.”.

Amendment of regulation 11

37. In regulation 11 (Secretary of State to determine certain matters)—

- (a) after “Act” insert “or Part 1 of the Welfare Reform Act”; and
- (b) after sub-paragraph (a) insert—
 - “(aa) whether a person is, or is to be treated as, having or not having limited capability for work; or”.

Amendment of regulation 13

38. In regulation 13(26) (income support and social fund determinations on incomplete evidence)

- (a) in paragraph (1)(a)—
 - (i) after paragraph (i) omit “or”; and
 - (ii) after paragraph (ii) for “and” substitute—
 - “or
 - (iii) a claimant’s applicable amount under regulation 67(1)(c) or 68(1)(d) of the Employment and Support Allowance Regulations; and” and
- (b) in paragraph (2)(a)—
 - (i) in paragraph (ii) omit “or”;
 - (ii) after paragraph (iii) for “and” substitute—
 - “or
 - (iv) in relation to any claimant, the applicable amount includes the severe disability premium by virtue of regulation 67(1) or 68(1) of, and paragraph 6 of Schedule 4 to, the Employment and Support Allowance Regulations; and”.

Amendment of regulation 14A

39.—(1) Regulation 14A(27) (termination of award of income support or jobseeker’s allowance) is amended as follows.

(2) In the heading for “or jobseeker’s allowance” substitute “, jobseeker’s allowance or employment and support allowance”.

(3) In paragraph (1)—

- (a) for “or a jobseeker’s allowance” substitute “, a jobseeker’s allowance or an employment and support allowance”; and

(26) Regulation 13 was amended by [S.I. 2002/3019](#).

(27) Regulation 14A was inserted by [S.I. 2002/1379](#).

- (b) after “partner for” insert “an employment and support allowance.”
- (4) After paragraph (4) add—
- “(5) Where an award of an employment and support allowance is made in accordance with the provisions of this regulation, paragraph 2 of Schedule 2 to the Welfare Reform Act (waiting days) shall not apply.”

Amendment of regulation 17

- 40.** In regulation 17(2) (provision of information or evidence) after sub-paragraph (e) add—
- “(f) a person whose entitlement to an employment and support allowance is conditional on his having, or being treated as having, limited capability for work.”

Amendment of regulation 19

- 41.** In regulation 19(1)(**28**) (suspension and termination for failure to submit to medical examination)—
- (a) omit “applies”; and
- (b) after “capable of work)” insert “or regulation 23 of the Employment and Support Allowance Regulations (where a question arises whether a person has limited capability for work) applies”.

Amendment of Schedule 2

- 42.** In paragraph 5 of Schedule 2 (decisions against which no appeal lies)—
- (a) after paragraph (a) insert—
- “(aa) regulation 4I (which partner should make a claim for an employment and support allowance);”;
- (b) in sub-paragraph (h) after “benefit” add “or employment and support allowance”; and
- (c) after paragraph (mm) insert—
- “(mn) regulation 26C (manner and time of payment of employment and support allowance);”.

Schedule 3C

- 43.** After Schedule 3B(**29**) (date on which change of circumstances takes effect where claimant entitled to state pension credit) insert—

“SCHEDULE 3C

Regulation 7(1)(a)

DATE FROM WHICH CHANGE OF CIRCUMSTANCES TAKES EFFECT WHERE CLAIMANT ENTITLED TO EMPLOYMENT AND SUPPORT ALLOWANCE

- 1.** Subject to paragraphs 2 to 7, where the amount of an employment and support allowance payable under an award is changed by a superseding decision made on the ground of a change of circumstances, that superseding decision shall take effect from the first day of the benefit week in which the relevant change of circumstances occurs or is expected to occur.

(28) Regulation 19 was amended by S.I. 1999/2570 and 2007/1626.

(29) Schedule 3B was inserted by S.I. 2002/3019.

2. In the cases set out in paragraph 3, the superseding decision shall take effect from the day on which the relevant change of circumstances occurs or is expected to occur.

3. The cases referred to in paragraph 2 are where—

- (a) entitlement ends, or is expected to end, for a reason other than that the claimant no longer satisfies the provisions of paragraph 6(1)(a) of Schedule 1 to the Welfare Reform Act;
- (b) a child or young person referred to in regulation 156(6)(d) or (h) of the Employment and Support Allowance Regulations (child in care of local authority or detained in custody) lives, or is expected to live, with the claimant for part only of the benefit week;
- (c) a person referred to in paragraph 12 of Schedule 5 to the Employment and Support Allowance Regulations—
 - (i) ceases, or is expected to cease, to be a patient; or
 - (ii) a member of the person's family ceases, or is expected to cease, to be a patient, in either case for a period of less than a week;
- (d) a person referred to in paragraph 3 of Schedule 5 to the Employment and Support Allowance Regulations—
 - (i) ceases to be a prisoner; or
 - (ii) becomes a prisoner;
- (e) during the currency of the claim a claimant makes a claim for a relevant social security benefit—
 - (i) the result of which is that his benefit week changes; or
 - (ii) in accordance with regulation 13 of the Claims and Payments Regulations and an award of that benefit on the relevant day for the purposes of that regulation means that his benefit week is expected to change.

4. A superseding decision made in consequence of a payment of income being treated as paid on a particular day under regulation 93 of the Employment and Support Allowance Regulations (date on which income is treated as paid) shall take effect from the day on which that payment is treated as paid.

5. Where—

- (a) it is decided upon supersession on the ground of a relevant change of circumstances or change specified in paragraphs 9 and 10 that the amount of an employment and support allowance is, or is to be, reduced; and
- (b) the Secretary of State certifies that it is impracticable for a superseding decision to take effect from the day prescribed in paragraph 9 or the preceding paragraphs of this Schedule (other than where paragraph 3(e) or 4 applies),

that superseding decision shall take effect—

- (i) where the relevant change has occurred, from the first day of the benefit week following that in which that superseding decision is made; or
- (ii) where the relevant change is expected to occur, from the first day of the benefit week following that in which that change of circumstances is expected to occur.

6. Where—

- (a) a superseding decision (“the former supersession”) was made on the ground of a relevant change of circumstances in the cases set out in paragraph 3(b) to (e); and

- (b) that superseding decision is itself superseded by a subsequent decision because the circumstances which gave rise to the former supersession cease to apply (“the second change”),

that subsequent decision shall take effect from the date of the second change.

7. In the case of an employment and support allowance decision where there has been a limited capability for work determination, where—

- (a) the Secretary of State is satisfied that, in relation to a limited capability for work determination, the claimant or payee failed to notify an appropriate office of a change of circumstances which regulations under the Administration Act required him to notify; and
 - (b) the claimant or payee, as the case may be, could reasonably have been expected to know that the change of circumstances should have been notified,
- the superseding decision shall take effect—
- (i) from the date on which the claimant or payee, as the case may be, ought to have notified the change of circumstances; or
 - (ii) if more than one change has taken place between the date from which the decision to be superseded took effect and the date of the superseding decision, from the date on which the first change ought to have been notified.

Changes other than changes of circumstances

8. Where—

- (a) the Secretary of State supersedes a decision made by an appeal tribunal or a Commissioner on the grounds specified in regulation 6(2)(c)(i) (ignorance of, or mistake as to, a material fact);
- (b) the decision to be superseded was more advantageous to the claimant because of the ignorance or mistake than it would otherwise have been; and
- (c) the material fact—
 - (i) does not relate to the limited capability for work determination embodied in or necessary to the decision; or
 - (ii) relates to a limited capability for work determination embodied in or necessary to the decision and the Secretary of State is satisfied that at the time the decision was made the claimant or payee, as the case may be, knew or could reasonably have been expected to know of it and that it was relevant,

the superseding decision shall take effect from the first day of the benefit week in which the decision of the appeal tribunal or the Commissioner took effect or was to take effect.

9. Where an amount of an employment and support allowance payable under an award is changed by a superseding decision specified in paragraph 10 the superseding decision shall take effect from the day specified in paragraph 1 for a change of circumstances.

10. The following are superseding decisions for the purposes of paragraph 9—

- (a) a decision which supersedes a decision specified in regulation 6(2)(b) and (d) to (ee); and
- (b) a superseding decision which would, but for paragraph 9, take effect from a date specified in regulation 7(6), (7), (12), (13), (17D) to (17F), and (33).”.

