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STATUTORY INSTRUMENTS

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**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 regulation 3**

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

(2) In paragraph (5)—

(a) in sub-paragraph (c) <sup>M1</sup>—

(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) <sup>M2</sup>—

(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) <sup>M3</sup>—

(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) <sup>M4</sup> 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) <sup>M5</sup>—
- (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) <sup>M6</sup>—
- (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.”.

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**Marginal Citations**

**M1** Sub-paragraph (c) was inserted by [S.I. 1999/1623](#) and amended by [S.I. 2007/2470](#).

**M2** Sub-paragraph (d) was inserted by [S.I. 2007/2470](#).

**M3** Paragraph (5ZB) was inserted by [S.I.2007/2582](#).

**M4** Paragraph (5B) was inserted by [S.I. 2007/2470](#).

**M5** Paragraph (7ZA) was inserted by [S.I. 2005/337](#).

**M6** [Paragraph 9](#) was substituted by [S.I. 1999/2677](#) and amended by [S.I. 1999/2570](#), [2003/1050](#) and [2005/337](#).

**Changes to legislation:**

There are currently no known outstanding effects for the The Employment and Support Allowance (Consequential Provisions) (No. 2) Regulations 2008, Section 31.