
STATUTORY INSTRUMENTS

2010 No. 2430

The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) (Amendment) Regulations 2010

Migration Regulations: Amendment of Schedule 2

17.—(1) Schedule 2 to the Migration Regulations (modification of enactments: after the conversion phase) is amended as follows.

(2) For paragraph 2(a) (modification of section 1 of the 2007 Act after the conversion phase), substitute—

“(a) for subsection (2), there were substituted—

“(2) Subject to the provisions of this Part, a person is entitled to an employment and support allowance if the person satisfies the basic conditions and—

(a) in accordance with Part 2 of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010, the effect of the conversion decision that was made in relation to the person was to convert the person’s existing award or awards into a single award of an employment and support allowance;

(b) that conversion decision has come into effect; and

(c) where—

(i) the effect of that conversion decision is that the person is entitled to an income-related allowance, or

(ii) the effect of that conversion decision is that the person is entitled to a contributory allowance and the person subsequently becomes entitled to an income-related allowance,

the person also satisfies the conditions set out in Part 2 of Schedule 1 (conditions relating to financial position), except for the condition in paragraph 6(1)(g) in the case of a person who, before that conversion decision was made, had been entitled to an existing award of income support by virtue of regulation 13(2)(b) or (bb) of the Income Support (General) Regulations 1987 (circumstances in which persons in relevant education may be entitled to income support), or paragraph 10 (disabled students) or 12 (deaf students) of Schedule 1B to those Regulations.”; and”.

(3) After paragraph 4, insert—

“4A. Schedule 1 to the 2007 Act (employment and support allowance: additional conditions) is to be read as if, in paragraph 6, after sub-paragraph (1), there were inserted—

“(1A) Paragraphs (1B) and (1C) apply where any person (“P”) is entitled by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (“the 2010

Regulations”) to an employment and support allowance which is attributable to an income-related allowance.

(1B) In determining for the purposes of paragraph 6(1)(a) whether P’s income exceeds the applicable amount, the amount of any transitional addition to which P is entitled under the 2010 Regulations shall be disregarded.

(1C) Where—

- (a) P ceases to satisfy the condition set out in sub-paragraph (1)(a); but
- (b) otherwise remains entitled to an amount by way of a transitional addition under the 2010 Regulations,

the condition set out in sub-paragraph (1)(a) shall be treated as satisfied in P’s case and the amount of income-related allowance to which P is entitled shall be the amount of the transitional addition.””

(4) After paragraph 6, insert—
“Income Tax (Earnings and Pensions) Act 2003

6A. The Income Tax (Earnings and Pensions) Act 2003(1) is to be read as if—

- (a) in section 660(1) (taxable benefits: UK benefits), in Table A—
 - (i) in the first column, after the entry for “Contributory employment and support allowance”, there were inserted a new entry “Contributory employment and support allowance (including any transitional addition to which a person is entitled in connection with that award)”;
 - (ii) in the second column, corresponding to the entry inserted by sub-paragraph (i), there were inserted “WRA 2007”;
 - (iii) in the third column, corresponding to the entry inserted by sub-paragraph (i), there were inserted “Section 1(2) (as modified and applied by the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (“the 2010 Regulations”))”, and
 - (iv) under the text inserted in the second and third columns by sub-paragraphs (ii) and (iii), there were inserted “Any provision made for Northern Ireland which corresponds to section 1(2) of WRA 2007 (as modified and applied by any provision made for Northern Ireland which corresponds to those contained in the 2010 Regulations)”;
- (b) in section 661(1) (taxable social security income), after “contributory employment and support allowance” there were inserted “contributory employment and support allowance (including any transitional addition to which a person is entitled in connection with that award),”; and
- (c) in section 677(1) (UK social security benefits wholly exempt from tax), in Table B—
 - (i) in the first column, after the entry for “Income-related employment and support allowance”, there were inserted a new entry “Income-related employment and support allowance (including any transitional addition to which a person is entitled in connection with that award)”;
 - (ii) in the second column, corresponding to the entry inserted by sub-paragraph (i), there were inserted “WRA 2007”;
 - (iii) in the third column, corresponding to the entry inserted by sub-paragraph (i), there were inserted “Section 1(2) (as modified and applied by the Employment

and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (“the 2010 Regulations”)), and

- (iv) under the text inserted in the second and third columns by sub-paragraphs (ii) and (iii), there were inserted “Any provision made for Northern Ireland which corresponds to section 1(2) of WRA 2007 (as modified and applied by any provision made for Northern Ireland which corresponds to those contained in the 2010 Regulations)”.”.

(5) In paragraph 11 (modification of regulation 45 of the 2008 Regulations: exempt work), the definition of “specified work” in regulation 45 as modified by that paragraph is amended as follows—

- (a) after sub-paragraph (a) insert “or”; and
(b) omit sub-paragraph (c) (and the preceding “or”).

(6) Paragraph 15, which modifies regulation 147A of the 2008 Regulations (claimants appealing against a conversion decision) in relation to a person appealing a conversion decision, is amended as follows.

(7) After paragraph (1) of the modified regulation 147A, insert—

“(1A) A person to whom this regulation applies who has made and is pursuing an appeal against a conversion decision in respect of an existing award of incapacity benefit or severe disablement allowance shall be treated as having satisfied the conditions in Part 1 of Schedule 1 to the Act (contributory allowance: conditions relating to national insurance).”.

(8) In paragraph 17 (modification of the Social Security (Claims and Payments) Regulations 1987) for “58 to 61” substitute “18 to 22”.

(9) Paragraph 18 (modification of regulation 3 of the Social Security (Claims and Payments) Regulations 1987) is amended as follows—

- (a) in sub-paragraph (a)—
(i) omit “; or” where it first occurs, and
(ii) for the inserted sub-paragraphs (iii) and (iv), substitute—

“(k) the beneficiary—

- (i) has made and is pursuing an appeal against a conversion decision made by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 which embodies a determination that the beneficiary does not have limited capability for work; or
(ii) was entitled to an employment and support allowance by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 and has made and is pursuing an appeal against a later decision which embodies a determination that the beneficiary does not have limited capability for work;”;

- (b) in sub-paragraph (b)—
(i) for “(j)” substitute “(k)”, and
(ii) for “(k)” substitute “(l)”.

(10) In paragraph 21(b)(ii) (modification of Schedule 9 to the Social Security (Claims and Payments) Regulations 1987) for “52 and 53” substitute “12 and 13”.

(11) After paragraph 22 (modification of the Social Security (Claims and Payments) Regulations 1987) insert—

“Community Charges (Deductions from Income Support) (Scotland) Regulations 1989

22A. Regulation 1 of the Community Charges (Deductions from Income Support) (Scotland) Regulations 1989(2) (citation, commencement and interpretation) is to be read as if, after paragraph (2), there were inserted—

“(2A) In the application of these Regulations to a debtor whose entitlement to an employment and support allowance is by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (“the 2010 Regulations”), any reference to an employment and support allowance includes any transitional addition to which the debtor is entitled under those Regulations.

(2B) Where a debtor’s award of income support is subject to conversion under the 2010 Regulations and—

(a) immediately before the effective date of the conversion decision made in relation to the debtor, any deduction is being made under these Regulations from sums payable to the debtor by way of income support; and

(b) with effect from that date, the award of income support is converted into an award of an employment and support allowance under the 2010 Regulations,

any deduction falling within sub-paragraph (a) shall have effect as a deduction from the employment and support allowance to which the debtor is entitled.””.

(12) After paragraph 25 (modification of the Council Tax (Deductions from Income Support) Regulations 1999) insert—

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

25A.—(1) Regulation 3 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999(3) (revision of decisions) is to be read as if—

(a) in the case of a revision of a decision to award jobseeker’s allowance made following the reinstatement of an existing award in accordance with regulation 15(5) of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (“the 2010 Regulations”), the words “within one month of the date of notification of the original decision” in paragraph (1)(a) were omitted;

(b) in the case of a conversion decision where there has been a change of circumstances to which regulation 12(4) of the 2010 Regulations (calculation of transitional addition) applies, paragraph (9)(a) were omitted; and

(c) in paragraph (9)(a), for “in the case of an advance award under regulation 13, 13A or 13C of the Claims and Payments Regulations” there were substituted, “in the cases of an advance award under regulation 13, 13A or 13C of the Claims and Payments Regulations or a conversion decision within the meaning of regulation 5(2)(a) of the 2010 Regulations”.

(2) *S.I. 1989/507.* These Regulations were made under section 31(3) of, and paragraph 7A of Schedule 2 to, the Abolition of Domestic Rates Etc. (Scotland) Act 1987 (1987 c. 47) and those provisions remain in force, notwithstanding that the Local Government Finance Act 1992 (1992 c. 14) provides for the eventual repeal of the whole of that Act.

(3) *S.I. 1999/991.* Paragraph (1) of regulation 3 was amended by *S.I. 2002/1379*, regulation 3(a). Paragraph (9) of regulation 3 of *S.I. 1999/991* was substituted by *S.I. 1999/2677*, regulation 6(b). Paragraph (9)(a) of regulation 3 of *S.I. 1999/991* was amended by *S.I. 2005/337*, regulation 2(1) and 2(2)(c).

(2) Regulation 6(2)(a)(i) of those Regulations⁽⁴⁾ (supersession of decisions) is to be read as if for “in the case of an advance award under regulation 13, 13A or 13C of the Claims and Payments Regulations or regulation 146 of the Employment and Support Allowance Regulations” there were substituted “in the cases of an advance award under regulation 13, 13A or 13C of the Claims and Payments Regulations or regulation 146 of the Employment and Support Allowance Regulations or a conversion decision within the meaning of regulation 5(2)(a) of the 2010 Regulations”.

⁽⁴⁾ Paragraph (2)(a)(i) was amended by regulation 3(3)(a) of [S.I. 2003/1050](#), regulations 2(1) and (4)(a) of [S.I. 2005/337](#) and regulations 29, 32(1) and 32(2)(a) of [S.I. 2008/1554](#). Paragraph (2) has been amended by other instruments but not in a way material to these Regulations.