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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 1**  
**GENERAL**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010.

(2) Subject to paragraph (3), these Regulations come into force on 1st October 2010.

(3) Regulations 24 (revocation of transitional claims provisions) and 25(2) (amendment of the 2008 Regulations) and paragraph 2 of Schedule 4 (consequential amendments to the 2008 Regulations) come into force on 31st January 2011.

**Interpretation**

2.—(1) In these Regulations—

“the 2007 Act” means the Welfare Reform Act 2007;

“the 2008 Regulations” means the Employment and Support Allowance Regulations 2008(1);

“benefit week” has the same meaning as in the 2008 Regulations;

“contributory allowance” means an employment and support allowance to which a person is entitled by virtue of these Regulations which was based on an award of incapacity benefit or severe disablement allowance to which the person was entitled(2);

“conversion decision”, in relation to a notified person, has the meaning given in regulation 5(2);

“effective date”, in relation to a conversion decision, is to be construed in accordance with regulation 13;

“enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978(3));

“income-related allowance” means an employment and support allowance to which a person is entitled by virtue of these Regulations which was based on an award of income support to which the person was entitled(4);

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

(2) “Incapacity benefit” and “severe disablement allowance” are defined in paragraph 11 of Schedule 4 to the Welfare Reform Act 2007.

(3) [1978 c. 30](#).

(4) Awards of income support which are “existing awards” (being awards made to persons who are incapable of work or disabled) are specified in paragraph (c) of the definition of “existing award” in paragraph 11 of Schedule 4 to the Welfare Reform Act 2007.

“notified person” has the meaning given in regulation 4(2);

“pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995(5);

“relevant deduction”, in relation to a person, includes such of the following deductions as fall to be made in relation to the person—

- (a) any deduction made under any of the following provisions of the Social Security (Claims and Payments) Regulations 1987(6)—
  - (i) regulation 34A (deductions of mortgage interest which shall be made from benefit and paid to qualified lenders);
  - (ii) regulation 34B (deductions of mortgage interest which may be made from benefits and paid to qualified lenders in other cases); or
  - (iii) regulation 35 (deductions which may be made from benefit and paid to third parties);
- (b) any deduction made under the Community Charges (Deductions from Income Support) (No.2) Regulations 1990(7) (deductions which may be made from benefit for meeting sums due in respect of community charges);
- (c) any deduction made under the Fines (Deductions from Income Support) Regulations 1992(8) (deductions which may be made from an offender’s benefit);
- (d) any deduction made under the Council Tax (Deductions from Income Support) Regulations 1993(9) (deductions which may be made from benefit for meeting sums due in respect of council tax);
- (e) any deduction in respect of overpayment recovery or recovery of social fund loans made under any of the following provisions of the Administration Act(10)—
  - (i) section 71 (overpayments-general),
  - (ii) section 74 (income support and other payments), or
  - (iii) section 78 (recovery of social fund awards).

(2) A requirement under these Regulations to give a notice (or to notify) is a requirement to give notice in writing; and for that purpose—

- (a) a message sent by electronic communication shall be treated as a notice given in writing; and
- (b) electronic communication has the meaning given in section 15(1) of the Electronic Communications Act 2000(11).

(3) For the purposes of these Regulations, the conversion phase, in relation to any person entitled to an existing award or awards, is the period which—

- (a) begins in accordance with regulation 4(4); and
- (b) ends in accordance with regulation 5(6).

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(5) 1995 c. 26. Paragraph 1 of Schedule 4 was amended by paragraph 39 of Schedule 2 to the State Pension Credit Act 2002 (c. 16), paragraph 13 of Schedule 3 to the Welfare Reform Act 2007 and paragraph 4(2) to (6) of Schedule 3 to the Pensions Act 2007 (c. 22).

(6) S.I.1987/1968. Relevant amending instruments are S.I. 1988/522, 1992/1026, 2001/18, 2002/2441, 2002/3019 and 2002/3197.

(7) S.I. 1990/545. These Regulations lapsed on the repeal of the enabling authority, as from 1st April 1993, except in relation to any community charge in respect of a day falling before that date or in relation to any financial year beginning before that date.

(8) S.I. 1992/2182.

(9) S.I. 1993/494.

(10) The “Administration Act” is defined in section 65 of the Welfare Reform Act 2007.

(11) 2000 c. 7. The definition of “electronic communication” in section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

(4) In these Regulations, any reference to Step 1, 2 or 3, in relation to any person, is to be construed in accordance with regulation 8.

### **Persons to whom these Regulations apply**

3. These Regulations apply to any person who, on or after 1st October 2010, is entitled to an existing award<sup>(12)</sup>.

## **PART 2**

### **CONVERSION DECISIONS**

#### **The notice commencing the conversion phase**

4.—(1) Subject to paragraph (5), the Secretary of State may at any time issue a notice to any person who is entitled to an existing award.

(2) Any person to whom such a notice is issued is referred to in these Regulations as a notified person.

(3) The notice must inform the notified person—

- (a) that an existing award is to be converted into an award of an employment and support allowance if certain conditions are satisfied;
- (b) that, if those conditions are not satisfied, the existing award will not be converted and will terminate by virtue of these Regulations;
- (c) of the requirements that must be met in order to satisfy those conditions; and
- (d) of such other matters as the Secretary of State considers appropriate.

(4) The issue of the notice to a notified person begins the conversion phase in relation to that person, with effect from the date of issue.

(5) No notice may be issued to any person—

- (a) who reaches pensionable age at any time before 6th April 2014; or
- (b) at any time when payment of the existing award to the person is subject to adjustment under regulation 4 of the Social Security (Transitional Payments) Regulations 2009<sup>(13)</sup> (adjustment of subsequent payments following an adjusting payment of benefit).

(6) Where a person is entitled to—

- (a) an existing award of incapacity benefit or severe disablement allowance; and
- (b) an existing award of income support,

the notice issued to the person under this regulation shall have effect in relation to both such awards.

#### **Deciding whether an existing award qualifies for conversion**

5.—(1) In relation to the existing award or awards to which a notified person (“P”) is entitled, the Secretary of State must, except where paragraph (8)(a) applies, make a conversion decision in accordance with these Regulations.

(2) A conversion decision is—

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<sup>(12)</sup> “Existing award” is defined in paragraph 11 of Schedule 4 to the Welfare Reform Act 2007.

<sup>(13)</sup> S.I. 2009/609.

- (a) a decision that P's existing award or awards qualify for conversion into an award of an employment and support allowance in accordance with regulation 7 (qualifying for conversion); or
  - (b) a decision that P's existing award or awards do not qualify for conversion into an award of an employment and support allowance.
- (3) A notice of a conversion decision under paragraph (2)(a) must specify the amount of an employment and support allowance to which P is entitled on the effective date (subject to any relevant deductions).
- (4) The amount referred to in paragraph (3) is to be determined in accordance with regulation 8 (amount of an employment and support allowance on conversion).
- (5) The Secretary of State must notify P of the Secretary of State's conversion decision.
- (6) The conversion phase ends in relation to P—
- (a) immediately before the effective date of the conversion decision notified to P; or
  - (b) if earlier, when P's entitlement to the award or awards to which the notice under regulation 4 (notice commencing the conversion phase) relates otherwise ceases to be subject to conversion (because entitlement to the award has terminated or for some other reason).
- (7) The effective date of any conversion decision is to be determined in accordance with regulation 13 (effective date of a conversion decision).
- (8) In the event that P's entitlement to an existing award ceases to be subject to conversion (for example, because P's entitlement to an award of income support has ceased to fall within paragraph (c) of the definition of "existing award" in paragraph 11 of Schedule 4 to the 2007 Act)—
- (a) before a conversion decision is made, the Secretary of State must notify P that the conversion phase has ended without a conversion decision being made; or
  - (b) after the making of a conversion decision but before its effective date, the Secretary of State must notify P that the conversion decision shall not come into effect.
- (9) On the giving of a notice under paragraph (8)(b), the conversion decision to which it relates shall lapse with immediate effect.

### **Application of certain enactments for purpose of making conversion decisions**

- 6.—(1) The enactments listed in paragraph (2) apply, subject to the modifications specified in Schedule 1, for the purposes of—
- (a) enabling the Secretary of State to make in relation to any person a conversion decision under this Part; and
  - (b) providing for the revision of such decisions at any time before the effective date.
- (2) The listed enactments are—
- (a) Part 1 of the 2007 Act;
  - (b) the 2008 Regulations;
  - (c) regulation 32(1) and (1A) of the Social Security (Claims and Payments) Regulations 1987<sup>(14)</sup> (information to be given);
  - (d) Chapter 2 of Part 1 of the Social Security Act 1998<sup>(15)</sup> (social security decisions and appeals); and

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<sup>(14)</sup> S.I. 1987/1968. Regulation 32(1) and (1A) were substituted by S.I. 2003/1050.

<sup>(15)</sup> 1998 c. 14.

(e) the Social Security and Child Support (Decisions and Appeals) Regulations 1999(16).

(3) In the application of the enactments listed in paragraph (2)(d) and (e), 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.

### **Qualifying for conversion**

7. For the purposes of regulation 5(2)(a) (deciding whether an existing award qualifies for conversion), an existing award or awards to which a notified person is entitled qualify for conversion into an award of an employment and support allowance only if the person satisfies the basic conditions set out in section 1(3)(a) to (d) and (f) of the 2007 Act.

### **Amount of an employment and support allowance on conversion**

8. For the purposes of regulation 5(3), the amount of an employment and support allowance to which a notified person is entitled shall be determined as follows.

#### *Step 1*

Determine in accordance with Part 1 of the 2007 Act and the 2008 Regulations the amount (if any) of an employment and support allowance to which the notified person would be entitled if, on a claim made by that person—

- (a) it had been determined that the person was entitled to an award of an employment and support allowance; and
- (b) the assessment phase had ended.

#### *Step 2*

Determine in accordance with regulations 9 to 12—

- (a) whether the notified person is entitled to a transitional addition; and
- (b) if so, the amount of the transitional addition.

#### *Step 3*

Aggregate the amounts (if any) which result from Steps 1 and 2.

### **Determining entitlement to a transitional addition**

9.—(1) In relation to any notified person whose existing award or awards qualify for conversion into an employment and support allowance—

- (a) the person's entitlement (if any) to a transitional addition; and
- (b) the amount of any such transitional addition,

are to be determined in accordance with regulation 10(2) (transitional addition: incapacity benefit or severe disablement allowance) or 11(2) (transitional addition: income support).

(2) The amount of transitional addition to which a notified person is entitled is subject to reduction in accordance with regulations 18 to 20.

(3) The entitlement of a notified person to any transitional addition terminates in accordance with regulation 21 (termination of transitional addition).

### **Transitional addition: incapacity benefit or severe disablement allowance**

**10.**—(1) This regulation applies to any notified person who is entitled to an existing award of incapacity benefit or severe disablement allowance (and for these purposes it is irrelevant whether the person is also entitled to any existing award of income support).

(2) In any case falling within paragraph (1)—

- (a) the notified person shall be entitled to a transitional addition if Amount A exceeds Amount B; and
- (b) the amount of transitional addition to which the notified person is entitled under this paragraph shall be equal to the amount of any such excess.

(3) Amount A is the amount of the weekly rate of the existing award applicable to the notified person.

(4) To calculate Amount B—

- (a) take the amount prescribed under paragraph (2) of regulation 67 of the 2008 Regulations (prescribed amounts for purpose of calculating a contributory allowance) which is applicable to the notified person; and
- (b) add the amount of the applicable component determined in accordance with regulation 12(5).

(5) In paragraph (3), the reference to the weekly rate of an existing award applicable to the notified person is to—

- (a) in the case of incapacity benefit, the weekly rate payable—
  - (i) under section 30B(2), (6) or (7) of the Contributions and Benefits Act(17) (incapacity benefit: rate),
  - (ii) under section 40(5) or 41(4) of the Contributions and Benefits Act(18) (long-term incapacity benefit for widows and for widowers),
  - (iii) by virtue of regulation 11(4) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995(19) (former sickness benefit), or
  - (iv) by virtue of regulation 17(1) of those Regulations (former invalidity benefit);
- (b) in the case of severe disablement allowance, the weekly rate payable under sections 68(7) and 69(1) of the Contributions and Benefits Act (as they have effect by virtue of article 4 of the Welfare Reform and Pensions Act 1999 (Commencement No.9 and Transitional and Savings Provisions) Order 2000(20)).

### **Transitional addition: income support**

**11.**—(1) This regulation applies to any notified person who is entitled to an existing award of income support (and for these purposes it is irrelevant whether the person is also entitled to any existing award of incapacity benefit or severe disablement allowance).

(2) In any case falling within paragraph (1)—

- (a) the notified person shall be entitled to a transitional addition if Amount C exceeds Amount D; and

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(17) 1992 c. 4. “Contributions and Benefits Act” is defined in section 65 of the Welfare Reform Act 2007. Section 30B was inserted by section 2(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18) and is to be repealed by paragraph 9(5) of Schedule 3 to the Welfare Reform Act 2007.

(18) Sections 40 and 41 were substituted by paragraphs 8 and 9 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994. They are to be repealed by Schedule 8 to the Welfare Reform Act 2007.

(19) S.I. 1995/310.

(20) S.I. 2000/2958 (C. 89).

- (b) the amount of transitional addition to which the notified person is entitled under this paragraph shall be equal to the amount of any such excess.
- (3) To calculate Amount C—
  - (a) take the notified person’s weekly applicable amount under regulation 17 or 18 of, and Schedule 2 to, the Income Support (General) Regulations 1987(21) (applicable amounts);
  - (b) disregard any amount determined in accordance with (as the case may be) regulation 17(1)(e) or 18(1)(f) of, and Schedule 3 to, those Regulations (housing costs); and
  - (c) disregard any amount included in the person’s applicable amount—
    - (i) under regulation 17(1)(b), (c) or (d) of those Regulations(22) in respect of a child or young person who is a member of the notified person’s family, or
    - (ii) under regulation 18(1)(b), (c), (d) or (e) of those Regulations in respect of a child or young person who is a member of the same household as the notified person,as those provisions have effect by virtue of regulations 1 and 7 of the Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendment) Regulations 2003(23).
- (4) To calculate Amount D—
  - (a) take the amount prescribed under regulation 67(1) or 68(1) of the 2008 Regulations (prescribed amounts for purpose of calculating an income-related allowance) which is applicable to the notified person;
  - (b) disregard any amount determined in accordance with (as the case may be) regulation 67(1)(c) or 68(1)(d) (housing costs) of the 2008 Regulations; and
  - (c) add the amount of the applicable component determined in accordance with regulation 12(5) of these Regulations.

### **Regulations 10 and 11: supplementary**

- 12.**—(1) This regulation has effect for the purposes of applying regulations 10 and 11 in relation to any notified person.
- (2) Subject to paragraphs (3) and (4)—
    - (a) Amounts A and C are to be calculated in respect of the benefit week which ends immediately before the effective date of the notified person’s conversion decision; and
    - (b) Amounts B and D are to be calculated in respect of the benefit week the first day of which is the effective date of the notified person’s conversion decision.
  - (3) Where—
    - (a) by virtue of an order made under section 150 of the Administration Act (annual up-rating of benefits), there is an increase in—
      - (i) the weekly rate which, in accordance with regulation 10(3) (transitional addition: incapacity benefit or severe disablement allowance), is to be used to calculate Amount A, or

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(21) S.I. 1987/1967. Regulation 17 was amended by S.I. 1988/910 and 1445, 1989/1678, 1991/387, 1992/3147, 1996/206, 2003/455 and 1121, 2005/2687 and 2006/588. Regulation 18 was amended by S.I. 1988/1228 and 1445, 1989/1034, 1992/3147, 1996/206, 2001/3767, 2003/455 and 1121 and 2006/588.

(22) Regulations 17(1)(b) and (c) and 18(1)(c) and (d) of, and paragraphs 2, 3 and 6(1)(c) of Schedule 2 to, the Income Support (General) Regulations 1987 (“the 1987 Regulations”) (amounts for child or young person, family premium and disabled child premium) were revoked by S.I. 2003/455. Paragraph 13A(b) and (2)(a) of the 1987 Regulations (which provide for enhanced disability premium) were also amended by S.I. 2003/455 so as to exclude children or young persons from the list of persons to whom such premiums may relate. The revocations and amendments are subject to savings in accordance with regulations 1 and 7 of S.I. 2003/455, as amended by regulation 2(2) of S.I. 2005/2294.

(23) S.I. 2003/455.

(ii) the applicable amount which, in accordance with regulation 11(3) (transitional addition: income support), is to be used to calculate Amount C; and

(b) that increase takes effect from any day in the benefit week referred to in paragraph (2)(b), the calculation of Amount A or C is to be made using the increased weekly rate or applicable amount (as the case may be).

(4) Where—

(a) there is a change of circumstances in relation to a notified person which, but for sub-paragraph (b), would have resulted in an increase or decrease of the weekly rate or applicable amount referred to in paragraph (3)(a)(i) or (ii); and

(b) that increase or decrease would have taken effect from any day in the benefit week referred to in paragraph (2)(b),

the calculation of Amount A or C is to be made using the weekly rate or applicable amount (as the case may be) which would have been payable in respect of the existing award if it had not been subject to conversion under these Regulations.

(5) The “applicable component”, in relation to the notified person, means—

(a) the work-related activity component, if it has been determined in accordance with the enactments applied by regulation 6 (application of certain enactments for purpose of making conversion decisions) that the notified person does not have and is not to be treated as having limited capability for work-related activity; or

(b) the support component, if it has been determined in accordance with those enactments that the notified person has or is to be treated as having limited capability for work-related activity.

### **The effective date of a conversion decision**

**13.**—(1) For the purposes of determining the date on which a conversion decision takes effect in relation to any notified person—

(a) take the date on which the person is notified of the conversion decision; and

(b) unless paragraph (2) applies, determine the first complete fortnightly period in respect of which the person’s existing benefit is payable after that date,

and the effective date of the person’s conversion decision is the first day of the benefit week immediately following the end of the fortnightly period referred to in sub-paragraph (b).

(2) Where existing benefit is payable to the notified person in respect of a period other than a fortnight—

(a) determine the second complete benefit week in respect of which the person’s existing benefit is payable after the date on which the person is notified of the conversion decision; and

(b) the effective date of the person’s conversion decision is the first day of the benefit week immediately following the end of that second complete benefit week.

(3) “Existing benefit”, in relation to a notified person, means the benefit in respect of the person’s existing award or awards.

### **Conversion decision that existing award qualifies for conversion**

**14.**—(1) Paragraphs (2) and (3) apply in any case where the conversion decision is a decision that a notified person’s (“P”) existing award or awards qualify for conversion into an employment and support allowance.



(2) On the effective date of the conversion decision—

- (a) P’s existing award; or
- (b) both of P’s existing awards (as the case may be),

are by virtue of this paragraph converted into, and shall have effect on and after that date as, a single award of an employment and support allowance of such amount as is specified in the conversion decision.

(3) Where immediately before the effective date of the conversion decision, any relevant deduction was made from the existing award or awards, an equivalent deduction shall be made from the employment and support allowance to which P is entitled by virtue of these Regulations.

(4) Paragraphs (2) and (3) are subject to regulation 17.

### **Conversion decision that existing award does not qualify for conversion**

**15.**—(1) Subject to paragraph (4), paragraphs (2) and (3) apply in any case where the conversion decision is a decision that a notified person’s (“P”) existing award or awards do not qualify for conversion into an employment and support allowance.

(2) P’s entitlement to one or both of—

- (a) an existing award of incapacity benefit or severe disablement allowance; or
- (b) an existing award of income support (being an award made to a person incapable of work or disabled),

shall terminate by virtue of this paragraph immediately before the effective date of P’s conversion decision.

(3) Where, immediately before that date, P is entitled to be credited with any earnings under regulation 8B(2)(a) of the Social Security (Credits) Regulations 1975(24) (credits for incapacity for work), P shall not be entitled to be so credited under that regulation on or after that date.

(4) Paragraph (5) applies where—

- (a) a conversion decision within the meaning of regulation 5(2)(b) (“the earlier conversion decision”) is made by virtue of either of the following provisions of the 2008 Regulations (as they apply by virtue of regulation 6)—
  - (i) regulation 22(1) (failure to provide information or evidence requested in relation to limited capability for work), or
  - (ii) regulation 23(2) (failure to attend for a medical examination to determine whether the claimant has limited capability for work); and
- (b) after P is notified of the earlier conversion decision, the Secretary of State is satisfied (or where the conversion decision is appealed to the First-tier Tribunal, that tribunal determines) that P had good cause for failing to—
  - (i) provide the information requested, or
  - (ii) attend for or submit to the medical examination for which P was called.

(5) Where this paragraph applies—

- (a) the earlier conversion decision is treated as never having been made;
- (b) any entitlement of P—
  - (i) to an existing award which was terminated by virtue of paragraph (2), or
  - (ii) to be credited with earnings which was terminated by virtue of paragraph (3),

shall be reinstated with effect from the effective date of the earlier conversion decision;

- (c) the Secretary of State must make a conversion decision (“the new conversion decision”) in accordance with regulation 5 (deciding whether an existing award qualifies for conversion) in relation to the existing award or awards to which P is entitled;
  - (d) the notice issued under regulation 4 (notice commencing the conversion phase) has effect in relation to that existing award or those existing awards; and
  - (e) with the exception of regulation 4 (notice commencing the conversion phase), the remaining provisions of this Part, including this regulation, apply to the new conversion decision.
- (6) Paragraphs (2) and (3) are subject to regulation 17 (changes of circumstances before the effective date).

## 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>(25)</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>(26)</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.

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<sup>(25)</sup> 1998 c. 14.

<sup>(26)</sup> 1997 c. 27.

### **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—

- (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>(27)</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>(28)</sup>; and

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<sup>(27)</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>(28)</sup> S.I. 2003/938.

(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—

- (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(29) (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(30)) 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;

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

(30) S.I. 1979/597.

(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.

(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.

## PART 4

### MISCELLANEOUS

#### **Disapplication of certain enactments following conversion decision**

**22.** Where a conversion decision has been made in relation to any person, the following enactments shall not apply to that person with effect from the conversion decision's effective date—

(a) sections 30A, 40 or 41 of the Contributions and Benefits Act(31) (incapacity benefit);

(b) section 68 of the Contributions and Benefits Act (as it has effect by virtue of article 4 of the Welfare Reform and Pensions Act 1999 (Commencement No. 9, and Transitional and Savings Provisions) Order 2000(32));

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(31) Section 30A was inserted by section 1(1) of the Social Security (Incapacity for Work) Act 1994 and is to be repealed by paragraph 9(5) of the Welfare Reform Act 2007. Section 40 was substituted, and section 41 inserted, by paragraphs 8 and 9 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 and are to be repealed by Schedule 8 to the Welfare Reform Act 2007.

(32) S.I. 2000/2958 (C. 89).

- (c) regulation 13(2)(b) or (bb) of, or paragraph 7(a) or (b), 10, 12 or 13 of Schedule 1B to, the Income Support (General) Regulations 1987<sup>(33)</sup> (prescribed category of persons for the purposes of entitlement on grounds of incapacity or disability);
- (d) the Income Support Transitional Regulations 1987<sup>(34)</sup>; and
- (e) the Incapacity Benefit Transitional Regulations 1995<sup>(35)</sup>.

#### **Treatment of claims until coming into force of regulation 24**

23. In sub-paragraphs (a), (b) and (c) of regulation 2(2) of the Employment and Support Allowance (Transitional Provisions) Regulations 2008<sup>(36)</sup> (claim for existing award), for “a claim” substitute “a claim made in respect of a period commencing before 31st January 2011”.

#### **Revocation of transitional claims provisions**

24. In regulation 2(2) of the Employment and Support Allowance (Transitional Provisions) Regulations 2008, sub-paragraphs (a) to (c) are revoked.

#### **Amendment of the 2008 Regulations**

25.—(1) Regulation 31 of the 2008 Regulations (claimant who claims jobseeker’s allowance to be treated as not having limited capability for work) is revoked.

(2) In regulation 144(2)(a) of the 2008 Regulations (which sets out exceptions from the requirement to serve a period of waiting days at the beginning of a period of limited capability for work), between “income support,” and “state pension credit” insert “incapacity benefit, severe disablement allowance,”.

#### **Consequential amendments**

26. Schedule 4 (which makes amendments consequential on these Regulations) has effect.

#### **Amendments to legislation relating to Housing Benefit and Council Tax Benefit**

27. Schedule 5 (which makes amendments to legislation relating to Housing Benefit and Council Tax Benefit) has effect.

Signed by authority of the Secretary of State for Work and Pensions.

*Jonathan Shaw*  
Parliamentary Under Secretary of State,  
Department for Work and Pensions

18th March 2010

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(33) S.I. 1987/1967. Relevant amending instruments are S.I. 1996/206, 2000/1981 and 2006/718. The enactments referred to in regulation 22(c) are revoked, subject to savings, by S.I. 2009/3152 with effect from 30th December 2009.

(34) S.I. 1987/1969.

(35) S.I. 1995/310.

(36) S.I. 2008/795.