

SCHEDULES

SCHEDULE 2

Modification of enactments: after the conversion phase

PART 3

MODIFICATION OF THE 2008 REGULATIONS

7. Any reference to a claimant is to be read as if it were a reference to a person in relation to whom a conversion decision has been made under these Regulations.

8. Part 2 (which makes provision about the assessment phase) does not apply, except for the purposes of applying regulation 147A of the 2008 Regulations.

9. Part 3 (which makes provision about contribution conditions which do not apply by virtue of modifications contained in these Regulations) does not apply.

10. In its application to a person who has made and is pursuing an appeal against a conversion decision which embodies a determination that the person does not have limited capability for work, regulation 30 (which provides for payment of the allowance pending determination of limited capability for work) is to be read as if, after paragraph (3), before “decision” there were inserted “conversion”.

11. Regulation 45 (exempt work) is to be read as if, for the definition of “specified work” in paragraph (10), there were substituted—

““specified work” means—

- (a) work done in accordance with paragraph (4);
- (b) work done in accordance with regulation 17(4)(a) of the Social Security (Incapacity for Work) (General) Regulations 1995⁽¹⁾; or
- (c) work done in accordance with regulation 17(1A) of those Regulations, as then in force.”.

12. Regulation 67 (prescribed amounts) is to be read as if—

(a) in paragraph (1), after sub-paragraph (c) there were added—

“(d) the amount of any transitional addition to which the person is entitled under regulation 11 of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010.”;

(b) in paragraph (2), for the words from “is the amount” to the end, there were substituted “are such of the following amounts as may apply in the person’s case—

- “(a) the amount determined in accordance with paragraph 1(1) of Schedule 4; and
- (b) the amount of any transitional addition to which the person is entitled under regulation 10 of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010.”.

(1) [S.I. 1995/311](#). Regulation 17(1A) was in force from 8th April 2002 to 9th April 2006. Regulation 17 was substituted by [S.I. 2006/757](#) with effect from 10th April 2006.

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13. Regulation 68 (polygamous marriages) is to be read as if, in paragraph (1), after subparagraph (d) there were added—

“(e) the amount of any transitional addition to which the person is entitled under regulation 11 of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010.”.

14. Regulation 75 (payments treated as not being payments to which section 3 of the 2007 Act applies) is to be read subject to the same modifications as are specified in paragraph 11 of Schedule 1 to these Regulations.

15. In its application to a person who has made and is pursuing an appeal against a conversion decision which embodies a determination that the person does not have limited capability for work, Regulation 147A(2) (claimants appealing a decision) is to be read as if there were substituted—

“Claimants appealing a decision

147A.—(1) This regulation applies where a person has made and is pursuing an appeal against a conversion decision which embodies a determination that the person does not have limited capability for work.

(2) Subject to paragraph (3), where this regulation applies, a determination of limited capability for work by the Secretary of State under regulation 19 shall not be made until the appeal is determined by the First-tier Tribunal.

(3) Paragraph (2) does not apply where either—

- (a) the claimant suffers from some specific disease or bodily or mental disablement from which the claimant was not suffering when entitlement began; or
- (b) a disease or bodily or mental disablement from which the claimant was suffering at that date has significantly worsened.

(4) Where this regulation applies and the Secretary of State makes a determination—

- (a) in a case to which paragraph (3) applies (including where the determination is not the first such determination) that the claimant does not have, or by virtue of regulation 22 or 23 is to be treated as not having, limited capability for work; or
- (b) subsequent to a determination that the claimant is to be treated as having limited capability for work by virtue of a provision of these Regulations other than regulation 30, that the claimant is no longer to be so treated,

this regulation and regulation 30 apply as if that determination had not been made.

(5) Where this regulation applies and—

- (a) the claimant is entitled to an employment and support allowance by virtue of being treated as having limited capability for work in accordance with regulation 30;
- (b) neither of the circumstances in paragraph (3) applies or, subsequent to the application of either of those circumstances, the claimant has been determined not to have limited capability for work; and
- (c) the claimant’s appeal is dismissed, withdrawn or struck out,

the claimant is to be treated as not having limited capability for work from the first day of the benefit week following the date on which the Secretary of State was notified by the First-tier Tribunal that the appeal is dismissed, withdrawn or struck out.

(2) Regulation 147A was inserted by [S.I. 2010/840](#), regulation 9(15).

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(6) Where a claimant's appeal is successful, any entitlement to which this regulation applies shall terminate on the first day of the benefit week following the date on which the Secretary of State was notified by the First-tier Tribunal of that decision.”.

16. Schedule 5 (prescribed amounts in special case) is to be read as if any reference to the amount—

- (a) applicable to a person under regulation 67(1)(a); or
- (b) to which a person is entitled under regulation 67(1)(a),

included the amount of any transitional addition to which the person is entitled under regulation 67(1)(d) (see modification made by paragraph 12(a) of this Schedule).