
STATUTORY INSTRUMENTS

2012 No. 913

SOCIAL SECURITY

**The Employment and Support Allowance
(Duration of Contributory Allowance)
(Consequential Amendments) Regulations 2012**

<i>Made</i>	- - - -	<i>21st March 2012</i>
<i>Laid before Parliament</i>		<i>26th March 2012</i>
<i>Coming into force</i>	- -	<i>1st May 2012</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 22(5), 122(1), 123(1)(a), (d) and (e), 124(1)(d), 135(1), 137(1) and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992(1), sections 4(5), 35(1) and 36(2) of the Jobseekers Act 1995(2), sections 9(1)(a), 79(1) and (4) and 84 of the Social Security Act 1998(3), sections 2(3)(b) and 17(1) of the State Pension Credit Act 2002(4) and sections 2(4)(a), 4(2)(a) and (6)(a), 24(1), 25(2) and 28(2) of, and paragraph 2 of Schedule 2 and paragraphs 1(1) and 7(1) and (2)(f) of Schedule 4 to, the Welfare Reform Act 2007(5).

In respect of the provisions in these Regulations relating to housing benefit and council tax benefit, the Secretary of State has consulted with organisations appearing to the Secretary of State to be representative of the authorities concerned(6).

This instrument contains only regulations made by virtue of, or consequential upon, sections 51 and 52 of the Welfare Reform Act 2012(7) and is made before the end of the period of 6 months beginning with the coming into force of those sections(8).

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- (1) 1992 c. 4. Section 22(5) was amended by paragraph 22 of Schedule 2 to the Jobseekers Act 1995 (c. 18) and paragraph 9(3)(b) of Schedule 3 to the Welfare Reform Act 2007 (c. 5). Sections 122(1) and 137(1) are interpretation provisions and are cited for their definitions of “prescribe” and “prescribed” respectively. Section 123(1)(e) was substituted by paragraph 1(1) of Schedule 9 to the Local Government Finance Act 1992 (c. 14) in relation to council tax benefit. Section 124(1)(d) was substituted by paragraph 30(4) of Schedule 2 to the Jobseekers Act 1995 (c. 18). Section 175 was amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).
- (2) 1995 c. 18. Section 35(1) is an interpretation provision and is cited because of the meaning given to “regulations”.
- (3) 1998 c. 14. Section 84 is an interpretation provision and is cited because of the meaning given to the word “prescribe”.
- (4) 2002 c. 16. Section 17(1) is an interpretation provision and is cited because of the meaning given to the word “prescribed”.
- (5) 2007 c. 5. Section 24(1) is an interpretation provision and is cited because of the meaning given to the words “prescribed” and “regulations”. Paragraph 7(2)(f) of Schedule 4 was inserted by section 51(4) of the Welfare Reform Act 2012 (c. 5).
- (6) See section 176(1) of the Social Security Administration Act 1992 (c. 5).
- (7) 2012 c. 5.
- (8) See section 173(5) of the Social Security Administration Act 1992.

Citation and commencement

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Duration of Contributory Allowance) (Consequential Amendments) Regulations 2012.

(2) These Regulations come into force on 1st May 2012.

Amendment to the Social Security (Credits) Regulations 1975

2. After regulation 8B(2)(a)(iv) of the Social Security (Credits) Regulations 1975(9) (credits for incapacity for work or limited capability for work) insert—

“(iva) would have been a day of limited capability for work for the purposes of Part 1 of the Welfare Reform Act (limited capability for work) where the person concerned would have been entitled to an employment and support allowance but for the application of section 1A of that Act; or”.

Amendments to the Income Support (General) Regulations 1987

3.—(1) The Income Support (General) Regulations 1987(10) are amended as follows.

(2) In regulation 13(3)(b)(iv)(11) (circumstances in which persons in relevant education are to be entitled to income support) after “support component” insert “or who would be entitled to an employment and support allowance including a work-related activity component but for the application of section 1A of the Welfare Reform Act (duration of contributory allowance)”.

(3) For paragraph 1(3)(d) of Schedule 3(12) (housing costs) substitute—

“(d) who—

- (i) is in receipt of an employment and support allowance which includes an amount under section 2(2) or (3) or 4(4) or (5) of the Welfare Reform Act (components); or
- (ii) would be entitled to an employment and support allowance including an amount of a work-related activity component under section 2(3) of that Act (amount of contributory allowance: work-related activity component), but for the application of section 1A of that Act (duration of contributory allowance).”.

Amendment to the Jobseeker’s Allowance Regulations 1996

4. For paragraph 1(3)(e) of Schedule 2 to the Jobseeker’s Allowance Regulations 1996(13) (housing costs) substitute—

“(e) who—

- (i) is in receipt of an employment and support allowance which includes an amount under section 2(2) or (3) or 4(4) or (5) of the Welfare Reform Act (components); or
- (ii) would be entitled to an employment and support allowance including an amount of a work-related activity component under section 2(3) of that Act (amount of contributory allowance: work-related activity component), but for the application of section 1A of that Act (duration of contributory allowance).”.

(9) S.I. 1975/556. Regulation 8B was inserted by regulation 2(6) of S.I. 1996/2367. Paragraph (2)(a) was substituted by regulation 2(2)(a) of S.I. 2010/385.

(10) S.I. 1987/1967.

(11) Regulation 13(3)(b)(iv) was inserted by regulation 14 of S.I. 2012/757.

(12) Schedule 3 was substituted by regulation 2 of, and Schedule 1 to, S.I. 1995/1613. Paragraph 1(3)(d) was inserted by regulation 2(11)(a)(i) of S.I. 2008/1554.

(13) S.I. 1996/207. Paragraph 1(3)(e) of Schedule 2 was inserted by regulation 3(25)(a)(i)(bb) of S.I. 2008/1554.

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

5. After regulation 3(5H) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999(14) (revision of decisions) insert—

“(5I) Where—

- (a) a decision to terminate a person’s entitlement to a contributory employment and support allowance is made because of section 1A of the Welfare Reform Act (duration of contributory allowance); and
- (b) it is subsequently determined, in relation to the period of entitlement before that decision, that the person had or is treated as having had limited capability for work-related activity,

the decision to terminate that entitlement may be revised.”.

Amendment to the State Pension Credit Regulations 2002

6. In paragraph 1(2)(a)(iii)(dd) of Schedule II to the State Pension Credit Regulations 2002(15) (housing costs) after “(components)” insert “or would be entitled to an employment and support allowance including an amount of a work-related activity component under section 2(3) of that Act (amount of contributory allowance: work-related activity component), but for the application of section 1A of that Act (duration of contributory allowance)”.

Amendment to the Housing Benefit Regulations 2006

7.—(1) In Schedule 3 to the Housing Benefit Regulations 2006(16) (applicable amounts), after “converted employment and support allowance” where it appears in the paragraphs mentioned in paragraph (2), insert “, or would be entitled but for the application of section 1A of the Welfare Reform Act (duration of contributory allowance)”.

(2) The paragraphs are—

- (a) 1A(b)(17) (personal allowances);
- (b) 21A(18) (the components); and
- (c) 27(1)(a)(19) (transitional addition).

Amendment to the Council Tax Benefit Regulations 2006

8.—(1) In Schedule 1 to the Council Tax Benefit Regulations 2006(20) (applicable amounts), after “converted employment and support allowance” where it appears in the paragraphs mentioned in paragraph (2), insert “, or would be entitled but for the application of section 1A of the Welfare Reform Act (duration of contributory allowance)”.

(2) The paragraphs are—

- (a) 1A(b)(21) (personal allowances);

(14) S.I. 1999/991. Paragraph (5H) was inserted, with paragraph (5G), by regulation 12(b) of S.I. 2011/2425.

(15) S.I. 2002/1792. Paragraph 1(2)(a)(iii)(dd) was inserted by regulation 4(8)(a)(i) of S.I. 2008/1554.

(16) S.I. 2006/213.

(17) Paragraph 1A was inserted by regulation 6(10)(a) of S.I. 2009/583 and substituted by paragraph 1(5)(a) of Schedule 5 to S.I. 2010/1907.

(18) Paragraph 21A was inserted by paragraph 1(5)(b) of Schedule 5 to S.I. 2010/1907.

(19) Paragraph 27(1)(a) was added by paragraph 1(5)(c) of Schedule 5 to S.I. 2010/1907.

(20) S.I. 2006/215.

(21) Paragraph 1A was inserted by regulation 8(10)(a) of S.I. 2009/583 and substituted by paragraph 2(5)(a) of Schedule 5 to S.I. 2010/1907.

- (b) 21A(22) (the components); and
- (c) 27(1)(a)(23) (transitional addition).

Amendments to the Employment and Support Allowance Regulations 2008

9.—(1) The Employment and Support Allowance Regulations 2008(24) are amended as follows.

(2) In regulation 7(25) (circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work-related activity component arises does not apply)—

- (a) in paragraph (1)(b) omit “or” where it appears at the end of that paragraph; and
- (b) after paragraph (1)(c) add—
 - “; or
 - (d) a claimant is entitled to an employment and support allowance by virtue of section 1B of the Act(26) (further entitlement after time-limiting).”.

(3) In regulation 144(27) (waiting days) after paragraph (2)(d) add—
“; or

- (e) the claimant is entitled to an employment and support allowance by virtue of section 1B of the Act (further entitlement after time-limiting).”.
- (4) For paragraph 1(3)(a) of Schedule 6(28) (housing costs) substitute—
 - “(a) (i) in respect of whom the main phase employment and support allowance is payable to the claimant or to a person living with the claimant; or
 - (ii) where they are the claimant or a person living with the claimant, in respect of whom there would be entitlement to an employment and support allowance including a work-related activity component under section 2(3) of the Act (amount of contributory allowance: work-related activity component), but for the application of section 1A of the Act (duration of contributory allowance);”.

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

10.—(1) The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010(29) are amended as follows.

(2) In regulation 7 (qualifying for conversion)—

- (a) in paragraph (1) for “paragraph (2)” substitute “paragraphs (2) and (3)”; and
- (b) after paragraph (2)(30) add—
 - “(3) Where P would be entitled to an award of an employment and support allowance under the 2007 Act but for the application of section 1A of that Act(31) (duration of contributory allowance) and it had been determined in respect of the entitlement that had ceased that P—

(22) Paragraph 21A was inserted by paragraph 2(5)(b) of Schedule 5 to S.I. 2010/1907.

(23) Paragraph 27(1)(a) was added by paragraph 2(5)(c) of Schedule 5 to S.I. 2010/1907.

(24) S.I. 2008/794.

(25) Regulation 7 was amended by regulation 12(2) of S.I. 2008/3051 and by regulation 9(6) of S.I. 2010/840.

(26) Section 1B was inserted by section 52 of the Welfare Reform Act 2012.

(27) Regulation 144 was amended by regulation 9(1)(a) and (b) of S.I. 2008/2428 and by regulation 25(2) of S.I. 2010/1907.

(28) Schedule 6 has been amended but not in a way material to these Regulations.

(29) S.I. 2010/1907, as amended by S.I. 2010/2430, regulation 27 of S.I. 2011/2425 and regulation 20 of S.I. 2012/757.

(30) Paragraph (2) was inserted by regulation 4(7) of S.I. 2010/2430.

(31) Section 1A was inserted by section 51(1) of the Welfare Reform Act 2012.

- (a) had limited capability for work; or
 - (b) was to be treated as having limited capability for work, other than by virtue of regulation 30 of the 2008 Regulations,
in relation to the conversion of P’s existing award, P is to be taken as having satisfied the condition set out in section 1(3)(a) of the 2007 Act (limited capability for work).”
- (3) In regulation 21(32) (termination of transitional addition)—
- (a) in paragraph (1)(b) after “(3)” insert “, (3A)”;
 - (b) after paragraph (3)(33) insert—
“3A) Any termination of T’s entitlement to a transitional addition under regulation 10(2)(a) (transitional addition: incapacity benefit or severe disablement allowance) shall instead have effect as a suspension of that entitlement in Case 1A.”;
 - (c) after paragraph (5) insert—
“(5A) Case 1A is where—
 - (a) T was previously entitled to a contributory allowance;
 - (b) entitlement to that previous allowance terminated by virtue of section 1A of the 2007 Act (duration of contributory allowance);
 - (c) 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) of the 2008 Regulations (linking rules) as a continuation of an earlier period of limited capability for work; and
 - (d) it is determined in relation to the subsequent claim that T has, or is treated as having, limited capability for work-related activity.”; and
 - (d) in paragraph (7) after “Cases 1” insert “, 1A”.
- (4) In Schedule 2 (modification of enactments: after the conversion phase) after paragraph 2(34) insert—
- “2A.—(1) In relation to awards of an employment and support allowance to persons previously entitled to existing awards, the application of section 1A (duration of contributory allowance) is modified in accordance with sub-paragraph (2).
- (2) Section 1A is to be read as if there were substituted—
- “1A.—(1) The period for which a person is entitled to a contributory allowance shall not exceed, in the aggregate, the relevant maximum number of days in any period for which his entitlement is established by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010.
- (2) In subsection (1) the “relevant maximum number of days” is—
 - (a) 365 days, or
 - (b) if the Secretary of State by order specifies a greater number of days, that number of days.
 - (3) The fact that a person’s entitlement to a contributory allowance has ceased as a result of subsection (1) does not prevent his being entitled to a further allowance if he satisfies the first and second conditions set out in Part 1 of Schedule 1.

(32) Regulation 21 was amended by regulation 12 of [S.I. 2010/2430](#).

(33) Paragraph (3) was substituted, along with paragraphs (4) to (7), by regulation 12(4) of [S.I. 2010/2430](#).

(34) Paragraph 2 was amended by regulation 17(2) of [S.I. 2010/2430](#).

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(4) In calculating for the purposes of subsection (1) the length of the period for which a person is entitled to a contributory allowance, the following are not to be counted–

- (a) days in which the person is a member of the support group, and
- (b) days not falling within paragraph (a) in respect of which the person is entitled to the support component referred to in section 2(1)(b).

(5) In calculating for the purposes of subsection (1) the length of the period for which a person is entitled to a contributory allowance, days occurring before the coming into force of this section are to be counted (as well as those occurring afterwards).”.”.

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

21st March 2012

Freud
Parliamentary Under-Secretary of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make a number of amendments to social security legislation consequential on sections 1A and 1B of the Welfare Reform Act 2007 (“the 2007 Act”). Those sections are inserted by sections 51 and 52 of the Welfare Reform Act 2012, respectively. Section 1A provides for the time-limiting of an award of contributory employment and support allowance (“ESA”) to 365 days (except where the claimant is in the support group). Section 1B provides for further entitlement to contributory ESA where a claimant’s entitlement to contributory ESA has ended as a result of section 1A, they satisfy the basic conditions of entitlement to ESA (contained in section 1(3) of the 2007 Act) and they have (or are treated as having) limited capability for work-related activity (i.e. they are in the support group).

Regulation 1 provides for the citation and commencement of these Regulations. In particular, these Regulations will come into force on 1st May 2012 to coincide with the commencement by order of sections 51 and 52 of the Welfare Reform Act 2012.

Regulation 2 amends the Social Security (Credits) Regulations 1975 ([S.I. 1975/556](#)) to add a new ground by which entitlement to national insurance credits on the grounds of limited capability for work is established, so as to include where a person would have been entitled to an award of contributory ESA but for the application of section 1A of the 2007 Act.

Regulation 3(2) amends the definition of “chronically sick or mentally or physically disabled” in regulation 13 of the Income Support (General) Regulations 1987 ([S.I. 1987/1967](#)) (“the Income Support Regulations”) so as to include a person who would be entitled to an award of contributory ESA but for the application of section 1A of the 2007 Act. (Under regulation 13 there is entitlement to income support for certain full-time students whose parents – or person acting in their place – are chronically sick or mentally or physically disabled.)

Regulation 3(3) amends the definition of “disabled person” in Schedule 3 to the Income Support Regulations so as to include a person who would be entitled to an award of contributory ESA but for the application of section 1A of the 2007 Act. (Under Schedule 3, particular housing costs rules apply to loans taken out for accommodation which is more suitable for the needs of a disabled person.) Similar changes are made in relation to jobseeker’s allowance, state pension credit and employment and support allowance by regulations 4, 6 and 9(4) of these Regulations respectively.

Regulation 5 amends the Social Security and Child Support (Decisions and Appeals) Regulations 1999 ([S.I. 1999/991](#)) to insert a new paragraph (5I) into regulation 3 of those Regulations. Regulation 3(5I) enables the Secretary of State to revise a decision terminating a person’s entitlement to an award of contributory ESA under section 1A of the 2007 Act where it is subsequently determined, in relation to the period of entitlement before that decision, that the person had or is treated as having had limited capability for work-related activity.

Regulations 7 and 8 amend the Housing Benefit Regulations 2006 ([S.I. 2006/213](#)) and the Council Tax Benefit Regulations 2006 ([S.I. 2006/215](#)) respectively, so as to provide that in relation to the determination of the applicable amount for those benefits, entitlement to an award of contributory ESA that would have existed but for the effect of time-limiting is also taken into account.

Regulation 9 amends the Employment and Support Allowance Regulations 2008 ([S.I. 2008/794](#)) so that where a claimant becomes entitled to a further award of ESA by virtue of section 1B of the 2007 Act (i) they are entitled to the support component of an ESA award without the assessment phase

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having to end first (paragraph (2)) and (ii) they do not have to serve 3 ‘waiting days’ at the beginning of the period of limited capability for work (paragraph (3)).

Regulation 10 makes amendments to the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (S.I. 2010/1907) (“the Reassessment Regulations”). Paragraph (2) amends regulation 7 of those Regulations to provide that an existing award (i.e. of incapacity benefit, severe disablement allowance or income support on the grounds of incapacity) qualifies for conversion into an award of ESA where (i) a person entitled to that existing award had also been entitled to an award of ESA not by virtue of the Reassessment Regulations (i.e. if the person had claimed ESA whilst appealing a negative outcome of a personal capability assessment) and (ii) that award of ESA had ended because of the application of section 1A of the 2007 Act. In such a case the person is treated as having satisfied the condition of entitlement to ESA of having a limited capability for work so does not have to go through any further assessment for the purpose of conversion.

Paragraph (3) amends regulation 21 of the Reassessment Regulations by providing for a new case where the termination of a transitional addition (by virtue of the termination of an award of ESA because of the application of section 1A of the 2007 Act) has effect as a suspension instead. This means that re-entitlement to a transitional addition will only arise where (i) there has been a subsequent claim made by a person within the 12 week linking period starting with the ending of the previous period of limited capability for work and (ii) it is determined in relation to the subsequent claim that the person has or is treated as having limited capability for work-related activity.

Paragraph (4) modifies the application of section 1A of the 2007 Act in relation to awards of ESA made to persons previously entitled to existing awards. In such cases, a person in receipt of an existing award of incapacity benefit or severe disablement allowance does not have to satisfy the contribution conditions in order to qualify for a contributory allowance. Accordingly the maximum period of entitlement is to be determined by reference to days of entitlement arising under the Reassessment Regulations, rather than by virtue of satisfying the contribution conditions. Modified section 1A(3) provides that, in order to be entitled to a further contributory allowance after the 365 day period has elapsed, that person will have to satisfy the first and second conditions for contributory ESA as set out in paragraphs 1 and 2 of Schedule 1 to the 2007 Act.

The regulations contained in this instrument are either made by virtue of, or are consequential upon, sections 51 and 52 of the Welfare Reform Act 2012. This instrument is made before the expiry of the period of 6 months beginning with the coming into force of those provisions. The regulations in it are therefore exempt in accordance with section 173(5) of the Social Security Administration Act 1992 from the requirement in section 172(1) of that Act to refer proposals to make Regulations to the Social Security Advisory Committee and are made without reference to that Committee.

A full impact assessment has not been published for this instrument as it has no impact on the private sector or civil society organisations.