
STATUTORY INSTRUMENTS

2013 No. 1511

**The Welfare Reform Act 2012 (Commencement
No. 11 and Transitional and Transitory Provisions
and Commencement No. 9 and Transitional and
Transitory Provisions (Amendment)) Order 2013**

Amendment of the No. 9 Order – transition from old style ESA to new style ESA

- 8.—**(1) Paragraph (2) applies in relation to a case where—
- (a) (i) a person makes, or is treated as making, a claim for an employment and support allowance;
 - (ii) under article 4 of the No. 9 Order, Part 1 of the 2007 Act, as amended by the provisions of Schedule 3, and Part 1 of Schedule 14, to the Act that remove references to an income-related allowance, applies in relation to the claim; and
 - (iii) the claim is made or treated as made on or after 1st July 2013; or
- (b) (i) a person has an old style ESA award immediately before the appointed day in relation to a case of a claim for universal credit referred to in article 4(2)(a) to (d) of the No. 9 Order (and any award made in respect of the claim), or an award of universal credit referred to in article 4(2)(e) or (f) of the No. 9 Order;
- (ii) the old style ESA award consists of or includes a contributory employment and support allowance (which allowance therefore continues as a new style ESA award); and
- (iii) the first day on which the person is entitled to an employment and support allowance under the new style ESA award occurs on or after 1st July 2013.
- (2) Where this paragraph applies, article 10 of the No. 9 Order is amended as follows—
- (a) for the title substitute “Transition from old style ESA”;
 - (b) for paragraph (1) substitute—
 - “(1) This article applies where a person—
 - (a) makes, or is treated as making, a claim for an employment and support allowance and, under article 4, Part 1 of the 2007 Act, as amended by the provisions of Schedule 3, and Part 1 of Schedule 14, to the Act that remove references to an income-related allowance, applies in relation to the claim; or
 - (b) (i) has an old style ESA award immediately before the appointed day in relation to a case of a claim for universal credit referred to in article 4(2)(a) to (d) (and any award made in respect of the claim), or an award of universal credit referred to in article 4(2)(e) or (f); and
 - (ii) the old style ESA award consists of or includes a contributory employment and support allowance (which allowance therefore continues as a new style ESA award),

and, in the case of sub-paragraph (a), the condition referred to in paragraph (1A) is satisfied.

(1A) The condition is that—

- (a) the person previously made, or was treated as having made, a claim for an employment and support allowance and Part 1 of the 2007 Act, as it has effect apart from the provisions of Schedule 3, and Part 1 of Schedule 14, to the Act that remove references to an income-related allowance, applied in relation to the claim;
- (b) a notice was issued to the person under regulation 4 of the 2010 Transitional Regulations and Part 1 of the 2007 Act, as that Part has effect apart from the provisions of Schedule 3, and Part 1 of Schedule 14, to the Act that remove references to an income-related allowance, applied in relation to the notice; or
- (c) the person previously had a new style ESA award and article 6(2) applied in relation to the award (which award therefore continued as an old style ESA award).”;

(c) after paragraph (2)(g) omit “and” and insert—

“(ga) in regulation 39(6) (exempt work), the reference to an employment and support allowance included a reference to an old style ESA award;

(gb) in regulation 85(2)(a) (waiting days), where a claimant was entitled to an old style ESA award with effect from the first day of a period of limited capability for work by virtue of regulation 144(2)(a) of the ESA Regulations 2008⁽¹⁾ and, with effect from the second or third day of that period, that award continued as a new style ESA award in the circumstances referred to in paragraph (1)(b) of this article, the reference to an employment and support allowance included a reference to the old style ESA award.”;

(d) after paragraph (2)(h) insert—

“(i) in regulation 89 (short absence), where—

- (i) a claimant had an old style ESA award in the circumstances referred to in paragraph (1)(b) of this article;
- (ii) a temporary absence from Great Britain commenced when regulation 152 of the ESA Regulations 2008 applied to the claimant; and
- (iii) the first 4 weeks of the temporary absence had not ended immediately before the first day of entitlement to the new style ESA award,

the initial words of regulation 89 included a reference to the claimant being entitled to the new style ESA award during the remainder of the first 4 weeks of the temporary absence that commenced when regulation 152 of the ESA Regulations 2008 applied to the claimant;

(j) in regulation 90 (absence to receive medical treatment), where—

- (i) a claimant had an old style ESA award in the circumstances referred to in paragraph (1)(b) of this article;
- (ii) a temporary absence from Great Britain commenced when regulation 153 of the ESA Regulations 2008⁽²⁾ applied to the claimant; and
- (iii) the first 26 weeks of the temporary absence had not ended immediately before the first day of entitlement to the new style ESA award,

(1) [S.I. 2008/794](#). Regulation 144(2) was amended by [2008/2848](#), [2010/1907](#) and [2012/913](#).

(2) Regulation 153 was amended by [S.I. 2009/2655](#).

the initial words of paragraph (1) of regulation 90 included a reference to the claimant being entitled to the new style ESA award during the remainder of the first 26 weeks of the temporary absence that commenced when regulation 153 of the ESA Regulations 2008 applied to the claimant;

- (k) in regulation 93 (disqualification for misconduct etc)—
 - (i) in paragraph (3), for “Paragraph (2) does” there were substituted “Paragraphs (2) and (5) do”; and
 - (ii) after paragraph (4) there were inserted—
 - “(5) Subject to paragraph (3), a claimant is to be disqualified for receiving an employment and support allowance for any period determined by the Secretary of State under regulation 157(2) of the Employment and Support Allowance Regulations 2008(3) less any days during that period on which those Regulations applied to the claimant.
 - (6) Where paragraph (5) applies to a claimant, paragraph (2) is not to apply to that claimant with respect to any matter referred to in paragraph (1) that formed the basis for the claimant’s disqualification under regulation 157(2) of the Employment and Support Allowance Regulations 2008.”;
- (l) in regulation 95 (treating a claimant as not having limited capability for work), the existing words became paragraph (1) and—
 - (i) at the beginning of paragraph (1), there were inserted “Subject to paragraph (2).”; and
 - (ii) after paragraph (1), there were inserted—
 - “(2) A claimant is to be treated as not having limited capability for work if—
 - (a) under Part 1 of the Act as it has effect apart from the amendments made by Schedule 3, and Part 1 of Schedule 14, to the Welfare Reform Act 2012 that remove references to an income-related allowance (“the former law”), the claimant was disqualified for receiving a contributory employment and support allowance during a period of imprisonment or detention in legal custody;
 - (b) Part 1 of the Act as amended by the provisions of Schedule 3, and Part 1 of Schedule 14, to the Welfare Reform Act 2012 that remove references to an income-related allowance (“the current law”) applied to the claimant with effect from a day that occurred during the period of imprisonment or detention in legal custody referred to in sub-paragraph (a) and during the period of six weeks with effect from the day on which the claimant was first disqualified as referred to in sub-paragraph (a); and
 - (c) the total of—
 - (i) the period for which the claimant was disqualified for receiving a contributory employment and support allowance during the period of imprisonment or detention in legal custody when the former law applied to the claimant; and

(3) Regulation 157 was amended by [S.I. 2010/1160](#).

- (ii) the period for which the claimant was disqualified for receiving an employment and support allowance during the period of imprisonment or detention in legal custody when the current law applied to the claimant, amounts to more than six weeks.”; and
- (e) after paragraph (2) insert—
- “(3) Subject to paragraph (4), where this article applies, the 2007 Act is to be read as though—
- (a) the reference to an employment and support allowance in section 1A(1) and (4) to (6);
- (b) the first reference to an employment and support allowance in section 1A(3); and
- (c) the first reference to an employment and support allowance in section 1B(4), included a reference to a contributory employment and support allowance.
- (4) Where this article applies and the 2010 Transitional Regulations⁽⁵⁾ apply to a person, paragraph (3)(c) becomes paragraph (3)(b) and, for paragraph (3)(a) and (b), there is substituted—
- “(a) in section 1A as substituted by the 2010 Transitional Regulations—
- (i) the reference to an employment and support allowance in section 1A(1), (4) and (5); and
- (ii) the first reference to an employment and support allowance in section 1A(3); and”.
- (5) Where this article applies and a claimant—
- (a) had an old style ESA award in the circumstances referred to in paragraph (1) (b); and
- (b) the old style ESA award had not been preceded by a new style ESA award in the circumstances referred to in paragraph (1A)(c),
- the 2007 Act is to be read as if, in section 24(2), the beginning of the assessment phase (subject to section 24(3)) was the first day of the period for which the claimant was entitled to the old style ESA award.”.

(4) Section 1B was inserted by section 52(1) of the Act and amended by paragraph 26 of Schedule 3, and Part 1 of Schedule 14, to the Act. These amendments (which form part of the “amending provisions”) are commenced for certain cases by article 4 of the No. 9 Order and article 4 of this Order.

(5) Section 1A is substituted for the purposes of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit)(Existing Awards)(No.2) Regulations 2010 (S.I. 2010/1907) (referred to in the No. 9 Order as “the 2010 Transitional Regulations”) by paragraph 2A of Schedule 2 to those Regulations and further modified by article 7 of this Order.