
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 regulation 21

12.—(1) Regulation 21 of the Migration Regulations (termination of transitional addition) is amended as follows.

(2) In paragraph (1)(b)—

- (a) for “paragraphs (2) and (3)”, substitute “paragraphs (2), (3) and (4)”; and
- (b) for “an employment and support allowance”, substitute “an employment and support allowance (entitlement to which arises from sections 1(2)(a) or 1(2)(b) of the 2007 Act), or to a contributory allowance or to an income-related allowance”.

(3) In paragraph (2), for “the termination of the person’s entitlement to an employment and support allowance” substitute “a termination of the person’s entitlement to which that provision refers”.

(4) For paragraphs (3) to (6), substitute—

“(3) Any termination by virtue of paragraph (1)(b) 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 1.

(4) Any termination by virtue of paragraph (1)(b) of T’s entitlement to a transitional addition under regulation 11(2)(a) (transitional addition: income support) shall instead have effect as a suspension of that entitlement in Case 1 or Case 2.

(5) 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;
- (b) T’s entitlement to an allowance which is referred to in paragraph (1)(b) (“T’s old entitlement”) was in respect of that earlier period; and
- (c) in a case to which regulation 145(1) of the 2008 Regulations applies (12 week linking rule), it is determined, in respect of that subsequent claim, that T has, or is treated as having, limited capability for work, other than under regulation 30 of the 2008 Regulations.

(6) Case 2 is where—

- (a) the reason for terminating T’s entitlement to an employment and support allowance arising from section 1(2)(b) of the 2007 Act (financial position), or to an income-related allowance, as the case may be, was that the condition set out in paragraph 6(1)(f) of Schedule 1 to the 2007 Act (no entitlement to income-related

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allowance where other member of a couple engages in remunerative work) had ceased to be satisfied in T's case;

- (b) the condition referred to in sub-paragraph (a) is subsequently satisfied;
- (c) T again becomes entitled to an allowance which is referred to in sub-paragraph (a); and
- (d) that entitlement commences before the end of the 12 week period which begins with the date of termination of T's old entitlement.

(7) In Cases 1 and 2, the amount of the transitional addition or additions, as the case may be, to which T becomes entitled from the commencement of T's subsequent entitlement to an allowance which is referred to in paragraph (1)(b) is to be determined by reference to the amount of the transitional addition or additions, as the case may be, to which T was entitled on the termination of T's old entitlement, subject to any subsequent adjustment of that amount that would have been made under this Part."