
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 14

7.—(1) Regulation 14 of the Migration Regulations (conversion decision that existing award qualifies for conversion) is amended as follows.

(2) In paragraph (1), for “Paragraphs (2) and (3)” substitute “Subject to paragraph (2A), paragraphs (2) to (6)”.

(3) After paragraph (2) insert—

“(2A) Where P—

- (a) has an existing award of income support;
- (b) would, on the effective date of P’s conversion decision, remain entitled to income support (by virtue of another provision of the Income Support (General) Regulations 1987⁽¹⁾ were P not a person to whom regulation 6(4)(a)(2) or 13(2)(b) or (bb) of, or paragraph 7(a) or (b), 10, 12 or 13 of Schedule 1B⁽³⁾ to, those Regulations (persons incapable of work or disabled) applied; and
- (c) notifies the Secretary of State before the effective date of P’s conversion decision that P wishes to remain entitled to income support on that date,

paragraph (2B) applies instead of paragraphs (2) and (4).

(2B) Where paragraph (2A) applies, any entitlement of P to one or both of—

- (a) an existing award of incapacity benefit or severe disablement allowance; or
- (b) a disability premium by virtue of paragraph 12(1)(b) of Schedule 2 to the Income Support (General) Regulations 1987 (additional condition for the higher pensioner and disability premiums),

shall terminate immediately before the effective date of P’s conversion decision.”.

(4) For paragraphs (3) and (4) substitute—

“(3) In a case to which regulation 7(2) applies (cases where a person is already entitled to an award of an employment and support allowance), any entitlement of P to an award of an employment and support allowance by virtue of the 2007 Act shall terminate immediately before the effective date of P’s conversion decision.

(4) Where, immediately before the effective date of the conversion decision, any relevant deduction was made from the existing award or awards, or from an award of an employment and support allowance which terminates in accordance with paragraph (3), an equivalent

(1) [S.I. 1987/1967](#).

(2) Regulation 6(4)(a) was revoked by regulation 4(1)(a)(i) of [S.I. 2009/3228](#), subject to savings in paragraphs (3), (4), (7) and (8) in that regulation.

(3) Regulation 13(2)(b) and (bb) of, and paragraphs 7(a) and (b), 10, 12 and 13 of Schedule 1B to, the Income Support (General) Regulations 1987 were revoked with savings by regulation 2 of [S.I. 2009/3152](#), with effect from 30th December 2009.

deduction shall be made from the award of an employment and support allowance to which P is entitled by virtue of these Regulations.

(5) Where, immediately before the effective date of the conversion decision, P is entitled to be credited with any earnings under regulation 8B(2)(a) of the Social Security (Credits) Regulations 1975(4) (credits for incapacity for work), P shall not be entitled to be so credited under that regulation on or after that date.

(6) Where—

- (a) paragraph (2) applies,
- (b) P is a member of a joint-claim couple, and
- (c) immediately before the effective date of that conversion decision that couple was entitled to a disability premium by virtue of paragraph 20H(1)(b) or (d) of Schedule 1 to the Jobseeker’s Allowance Regulations 1996(5) (additional conditions for higher pensioner and disability premium: severe disablement allowance or incapacity benefit),

paragraph 20H(1)(ee) of that Schedule (limited capability for work) shall be treated as satisfied in relation to that couple on the effective date of that conversion decision.

(7) In this regulation—

- (a) paragraphs (2) to (6) are subject to regulation 17 (changes of circumstances before the effective date); and
- (b) “joint-claim couple” has the same meaning as in section 1(4) of the Jobseekers Act 1995(6).”.

(4) S.I. 1975/556. Regulation 8B was inserted by S.I. 1996/2367 and amended by S.I. 2008/1554.
(5) S.I. 1996/507. Paragraph 20H of Schedule 1 was inserted by regulation 2(5) of, and paragraph 53 of Schedule 2 to, S.I. 2000/1978. It has been amended but not in a way material to these Regulations.
(6) 1995 c. 18.