
STATUTORY INSTRUMENTS

2011 No. 2425

**The Social Security (Miscellaneous
Amendments) (No. 3) Regulations 2011**

PART 3

AMENDMENTS TO SECONDARY LEGISLATION

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

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

(2) In regulation 6(1)(b) (application of certain enactments for purpose of making conversion decisions) after “revision” insert “or supersession”.

(3) In each of paragraphs (f) and (g) of regulation 17⁽²⁾ (changes of circumstances before the effective date) after “revise” insert “or supersede”.

(4) Schedule 2 (modification of enactments: after the conversion phase) is amended as follows—

(a) in paragraph 15⁽³⁾, which modifies regulation 147A of the Employment and Support Allowance Regulations 2008 (claimants appealing a decision)—

(i) in paragraph (5) of the modified regulation 147A—

(aa) in sub-paragraph (c), for “or struck out,” substitute “, struck out or has been discontinued in accordance with the provisions of regulation 33(10) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (notice of appeal)⁽⁴⁾,”; and

(bb) after the words “is to be treated as not having limited capability for work”, for the remainder of paragraph (5) substitute “with effect from the day specified in paragraph (5A).”.

(ii) after paragraph (5) of the modified regulation 147A insert—

“(5A) The day specified for the purposes of paragraph (5) is the first day of the benefit week following the date on which the Secretary of State either—

(a) receives the First-tier Tribunal’s notification that the appeal is dismissed, withdrawn or struck out, or

(b) discontinues action on an appeal in the circumstances to which regulation 33(10) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (notice of appeal) applies.”, and

(1) [S.I. 2010/1907](#), as amended by [S.I. 2010/2430](#).

(2) Regulation 17 was amended by regulation 9 of [S.I. 2010/2430](#).

(3) Paragraph 15 was amended by regulation 17(6) and (7) of [S.I. 2010/2430](#).

(4) Regulation 33(10) was inserted by [S.I. 2000/1596](#), substituted by [S.I. 2002/1379](#) and then amended by [S.I. 2008/2683](#).

- (iii) in paragraph (6) of the modified regulation 147A, for “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” substitute “from the first day of the benefit week following the date on which the Secretary of State receives the First-tier Tribunal’s notification of that decision”; and
- (b) after paragraph 26 (modification of the Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2001) insert—
“Social Security (Habitual Residence) Amendment Regulations 2004

27. Regulation 6 of the Social Security (Habitual Residence) Amendment Regulations 2004⁽⁵⁾ (transitional arrangements and savings) is to be read as if—

- (a) in paragraph (1)—
 - (i) sub-paragraphs (a), (b) and (d) were omitted, and
 - (ii) for sub-paragraph (c) there were substituted—
 - “(c) is entitled to an employment and support allowance by virtue of—
 - (i) the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010, or
 - (ii) regulation 30 of the Employment and Support Allowance Regulations (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made) in the circumstances where the person has made and is pursuing an appeal against a conversion decision made under the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 which embodies a determination that the person does not have limited capability for work,
and immediately before the effective date of the conversion decision made in respect of that person, was entitled to a specified benefit in respect of a period which was continuous with a period of entitlement to the same or another specified benefit which included 30th April 2004;”;
- (b) in paragraph (4), before sub-paragraph (a) there were inserted—
 - “(za) “conversion decision” and “effective date” have the same meanings as in regulation 2(1) of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010;”.

(5) In Schedule 3 (list of regulations that apply after the conversion phase) after “The Social Security (Jobcentre Plus Interviews for Partners) Regulations 2003” insert—
“The Social Security (Habitual Residence) Amendment Regulations 2004”.

(5) The transitional arrangements and savings in regulation 6 continue in force (with the exception of paragraph (2)(a)) following the partial revocation of the instrument by S.I. 2006/217. S.I. 2004/1232 was then revoked by S.I. 2006/1026 but those transitional arrangements and savings continue in force by virtue of regulation 11(2)(b) of S.I. 2006/1026.