

**EXPLANATORY MEMORANDUM TO**  
**THE EMPLOYMENT AND SUPPORT ALLOWANCE (DURATION OF**  
**CONTRIBUTORY ALLOWANCE) (CONSEQUENTIAL AMENDMENTS)**  
**REGULATIONS 2012**

**2012 No. 913**

**1.** This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

This instrument amends various provisions of social security legislation by virtue of, or in consequence of, sections 1A and 1B of the Welfare Reform Act 2007 (“the 2007 Act”). Those sections introduce a time limit of 365 days on entitlement to contributory Employment and Support Allowance for claimants who are not in the support group, and provide for when further entitlement to Employment and Support Allowance may arise.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

None.

**4. Legislative Context**

4.1 Sections 51<sup>1</sup> and 52<sup>2</sup> of the Welfare Reform Act 2012 (which received Royal Assent on 8th March 2012) (“the 2012 Act”) insert new sections 1A and 1B, respectively, into the 2007 Act. Section 1A introduces a time limit on entitlement to contributory Employment and Support Allowance for claimants who are not in the support group, and provides that further entitlement may nevertheless arise on the basis of fresh national insurance contributions. Section 1B provides that further entitlement may also arise in the event that the claimant’s health deteriorates such that they now have (or are treated as having) limited capability for work-related activity.

4.2 This instrument modifies the application of the time-limiting provision in respect of claimants who become entitled to contributory Employment and Support Allowance not through the normal claims process, but by virtue of the reassessment exercise<sup>3</sup>. The legislative authority for doing this comes from paragraph 7(2)(f) of Schedule 4 to the 2007 Act, as inserted by section 51(4)<sup>4</sup> of the 2012 Act. These Regulations will be the first exercise of that regulation-making power.

4.3 This instrument also amends miscellaneous items of secondary legislation where other allowances and entitlements rely on entitlement to contributory Employment and

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2012/5/section/51/enacted>

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2012/5/section/52/enacted>

<sup>3</sup> The reassessment exercise is the exercise to determine whether claimants with an “existing award” of an incapacity benefit (i.e. incapacity benefit, severe disablement allowance or income support on grounds of disability) should have that award converted into an award of Employment and Support Allowance. For further details of the exercise, see the explanatory memoranda for S.I. 2010/1907 (<http://www.dwp.gov.uk/docs/a13-9401.pdf>) and S.I. 2010/2430 (<http://www.dwp.gov.uk/docs/a13-9481.pdf>)

<sup>4</sup> Link as per footnote 1

Support Allowance, to protect the position of those who would otherwise be unintentionally disadvantaged by the change.

4.4 The various amendments are detailed in full at paragraph 7.

## **5. Territorial Extent and Application**

This instrument applies to Great Britain only.

## **6. European Convention on Human Rights**

As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

*What is being done and why*

### Employment and Support Allowance - reassessment cases: modification of the time-limiting provisions

7.1 We are using the new regulation-making power in Schedule 4 to the 2007 Act to modify the application of the time-limiting provisions in respect of claimants who become entitled to contributory Employment and Support Allowance not through the normal claims process, but by virtue of the reassessment exercise.

### Employment and Support Allowance - reassessment: “dual entitlement” cases

7.2 Where, exceptionally, at the point of undergoing the reassessment exercise, the claimant is concurrently entitled to both Incapacity Benefit and Employment and Support Allowance – (“dual entitlement”) - the reassessment process is modified: by virtue of their pre-existing award of Employment and Support Allowance, the claimant is exempted from the requirement to undergo a further work capability assessment in connection with the reassessment, and, effectively, their awards are simply merged into a single award of Employment and Support Allowance from the effective date of the conversion decision.

7.3 The regulations providing for the reassessment exercise are being amended to provide that this easement can apply equally to a claimant who would have been a “dual entitlement” case had it not been for the operation of the time limit.

### Employment and Support Allowance - reassessment: termination of entitlement to transitional addition to be treated, instead, as a suspension of that entitlement

7.4 Any transitional addition<sup>5</sup> to which a claimant may be entitled following the reassessment exercise forms part and parcel of his entitlement to Employment and Support Allowance. It follows that any entitlement which a claimant may have to a transitional addition will automatically terminate when the claimant’s entitlement to ESA itself terminates under the time-limiting provisions.

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<sup>5</sup> Essentially, a sum representing any shortfall between a claimant’s entitlement under the existing award and their entitlement to ESA once the reassessment exercise is complete, so that where the claimant is reassessed and qualifies for ESA, they do not suffer a loss in benefit entitlement

7.5 Where, within 12 weeks of the termination of entitlement to contributory Employment and Support Allowance on account of the time-limit, a claimant makes a repeat claim and it is determined that he now has limited capability for work-related activity such that he is now exempted from the time-limiting provisions, the claimant will be able to re-qualify for contributory Employment and Support Allowance without having to satisfy any contribution conditions. The regulations provide that, in these circumstances, the earlier termination of entitlement to a transitional addition should have effect, instead, as a suspension of that entitlement, thereby allowing the claimant's previous entitlement to be resurrected.

#### Employment and Support Allowance - assessment phase and waiting days

7.6 Where a claimant's entitlement to Employment and Support Allowance has terminated on account of the time limit and further entitlement arises because the claimant's health has subsequently deteriorated such that he would now be placed in the support group, the regulations provide that the claimant should not have to serve either the "assessment phase" (being the first 13 weeks of an Employment and Support Allowance award which is normally paid at a lower rate) or any "waiting days" (being the first three days of an Employment and Support Allowance award in respect of which no entitlement normally arises)

#### National Insurance credits – new condition of entitlement

7.7 Where a claimant has limited capability for work but does not qualify for an award of Employment and Support Allowance as such, he can nevertheless remain entitled to a National Insurance credit. The regulations are amended to allow entitlement to a credit to arise for a claimant who would still be entitled to Employment and Support Allowance had it not been for the operation of the time limit.

#### Decisions and appeals - new ground for revision

7.8 The regulations provide a new power in the Decisions and Appeals Regulations to allow for the revision of a decision to terminate an award of Employment and Support Allowance because of the time limit, in the circumstances where, following a subsequent determination, the claimant is placed in the support group for some or all of the period for which the terminated award was paid.

#### Amendment to definition of "chronically sick or mentally or physically disabled"

7.9 Access to Income Support is allowed to certain vulnerable youngsters who are living away from their parents because the parents (or person acting in their place) are unable to support them as the parents (or person acting in their place) are "chronically sick or mentally or physically disabled". The definition of "chronically sick or mentally or physically disabled" includes a person who is in receipt of main phase Employment and Support Allowance. As the Government does not want young people to be disadvantaged because a parent's Employment and Support Allowance has ceased as a result of time-limiting, the relevant definition is amended to include, also, people who would be entitled to main phase Employment and Support Allowance were it not for the operation of the time limit.

### Amendment to definition of “disabled person”

7.10 Within Income Support, Jobseeker’s Allowance, State Pension Credit and income-related Employment and Support Allowance, housing costs may be payable in respect of interest on a loan used in full, or in part, to adapt a dwelling for the special needs of a disabled person. This might be the claimant himself or any other person who lives with him eg a disabled partner or relative. The definition of "disabled person" for these purposes includes a person in respect of whom main phase Employment and Support Allowance is payable. This definition is amended to include, also, people who would still be entitled to main phase Employment and Support Allowance were it not for the operation of the time limit.

### Addition to references to “converted employment and support allowance”

7.11 For the purposes of Housing Benefit and Council Tax Benefit, an award of Employment and Support Allowance by virtue of the reassessment exercise is referred to as a “converted employment and support allowance”. Additions are made to the existing references to include cases where a person would have remained entitled to a converted award had it not been for the operation of the time limit.

### *Consolidation*

7.12 There are no immediate plans to consolidate the statutory instruments which these Regulations amend. However, in due course, the Department will make available informal consolidated versions of the legislation, as amended, on its website: <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

## **8. Consultation outcome**

8.1 The Department consulted extensively about the implications of these reforms as part of the Welfare Reform Bill consultation process. Stakeholders raised a number of concerns about the length of the time limit, the effects on people with degenerative diseases and those undergoing cancer treatment. As a result the Government made a number of changes to the Bill and is continuing to work with stakeholders to make sure that the work capability assessment is as effective as possible.

8.2 Local authorities have responsibility for the administration of Housing and Council Tax Benefits, and the Department has a statutory obligation to consult with the Local Authority Associations over all proposed changes that affect either benefit. On 20 February 2012, the Department wrote to representatives of the Local Authority Associations, and to the local authorities’ software suppliers, to advise them of the proposed changes to the Housing Benefit and Council Tax Benefit Regulations, and of the purpose and (wholly beneficial for claimants) consequences of those changes. The Department acknowledged that the notifications were late and that they did not allow for the normal timescales for consultation. Neither the Local Authority Associations nor software suppliers have raised any objections either on the substance of the changes or the length of time the Department gave them to respond.

## **9. Guidance**

Guidance is being developed for staff in the Jobcentre Plus offices who advise customers, for staff in benefit centres including decision makers, and for benefits service staff in local authorities who administer, and advise customers on, Housing Benefit and Council Tax Benefit. The relevant guidance will be available before this instrument comes into force. Welfare rights advisers have also been notified of the change.

## **10. Impact**

10.1 The impact on business and civil society organisations is nil.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been published for this instrument. However, an assessment of the impact of the provisions in these regulations is included in the impact assessment that accompanied the Welfare Reform Bill. A copy of the relevant extract from this impact assessment is attached to this memorandum and will be published alongside it on [www.legislation.gov.uk](http://www.legislation.gov.uk). The figures remain up to date.

## **11. Regulating small business**

The legislation does not apply to small business.

## **12. Monitoring & review**

The operation of the regulations will continue to be reviewed through the normal avenues of guidance enquiries received from Jobcentre Plus offices and correspondence from members of the public.

## **13. Contact**

Any queries regarding this instrument should be directed to David Crowther at the Department for Work and Pensions (Tel: 0114 294 8346 or email: [david.crowther@dwp.gsi.gov.uk](mailto:david.crowther@dwp.gsi.gov.uk))