
STATUTORY INSTRUMENTS

2008 No. 1554

The Employment and Support Allowance
(Consequential Provisions) (No. 2) Regulations 2008

PART 4

Administrative Provisions

CHAPTER 2

The Social Security and Child Support (Decisions and Appeals) Regulations 1999

Amendment of regulation 7

33.—(1) Regulation 7 (date from which a decision superseded under section 10 takes effect) is amended as follows.

(2) In paragraph (1)(a) ^{M1}—

- (a) after “(2)(b)” insert “ or (be) ”; and
- (b) for “and 3B” substitute “ , 3B and 3C ”.

(3) In paragraph (2) ^{M2}—

- (a) in sub-paragraph (b)(i) for “or state pension credit” substitute “ , state pension credit or an employment and support allowance ”; and
- (b) after paragraph (bc) ^{M3} insert—

“(be) in the case of a claimant who is in receipt of an employment and support allowance and the claimant makes an application which contains an express statement that he is terminally ill within the meaning of regulation 2(1) of the Employment and Support Allowance Regulations, from the date the claimant became terminally ill;”.

(4) For paragraph (3) ^{M4} substitute—

“(3) For the purposes of paragraphs (2) and (8) “benefit week” has the same meaning, as the case may be, as in—

- (a) regulation 2(1) of the Income Support Regulations;
- (b) regulation 1(3) of the Jobseeker's Allowance Regulations;
- (c) regulation 1(2) of the State Pension Credit Regulations; or
- (d) regulation 2(1) of the Employment and Support Allowance Regulations.”.

(5) In paragraph (7)(b) ^{M5}—

- (a) in paragraph (i) after “(guarantee credit)” add “ or paragraph 6 of Schedule 4 to the Employment and Support Allowance Regulations; ”; and

- (b) in paragraph (ii)(aa) after “Income Support Regulations” add “ or regulation 71 of the Employment and Support Allowance Regulations ”.
- (6) In paragraph (13)(a) ^{M6}—
- (a) in paragraph (iii) for “and” substitute “ or ”; and
- (b) after paragraph (iii) insert—
- “(iv) paragraph 16 or 17 of Schedule 6 to the Employment and Support Allowance Regulations; and”.
- (7) After paragraph (17C) ^{M7} insert—
- “(17D) Except in a case where paragraph (23) applies, where a claimant is in receipt of an employment and support allowance and his applicable amount includes an amount determined in accordance with Schedule 6 to the Employment and Support Allowance Regulations (housing costs), and there is a reduction in the amount of eligible capital owing in connection with a loan which qualifies under paragraph 16 or 17 of that Schedule, a decision made under section 10 shall take effect—
- (a) on the first anniversary of the date on which the claimant's housing costs were first met under that Schedule; or
- (b) where the reduction in eligible capital occurred after the first anniversary of the date referred to in sub-paragraph (a), on the next anniversary of that date following the date of the reduction.
- (17E) Where a claimant is in receipt of an employment and support allowance and payments made to that claimant which fall within paragraph 31 or 32(1)(a) to (c) of Schedule 8 to the Employment and Support Allowance Regulations have been disregarded in relation to any decision under section 8 or 10 and there is a change in the amount of interest payable—
- (a) on a loan qualifying under paragraph 16 or 17 of Schedule 6 to those Regulations to which those payments relate; or
- (b) on a loan not so qualifying which is secured on the dwelling occupied as the home to which those payments relate,
- a decision under section 10 which is made as a result of that change in the amount of interest payable shall take effect on whichever of the dates referred to in paragraph (17F) is appropriate in the claimant's case.
- (17F) The date on which a decision under section 10 takes effect for the purposes of paragraph (17E) is—
- (a) the date on which the claimant's housing costs are first met under paragraph 8(1)(a), 9(1)(a) or 10(2)(a) of Schedule 6 to the Employment and Support Allowance Regulations; or
- (b) where the change in the amount of interest payable occurred after the date referred to in sub-paragraph (a), on the date of the next alteration in the standard rate following the date of that change.
- (17G) In paragraph (17F) “standard rate” has the same meaning as it has in paragraph 13(2) of Schedule 6 to the Employment and Support Allowance Regulations.
- (17H) Where the decision is superseded in accordance with regulation 6(2)(a)(i) and the relevant circumstances are that the claimant has a non-dependant who has become entitled to main phase employment and support allowance, the superseding decision shall take effect from the date the main phase employment and support allowance is first paid to the non-dependant.”.

- (8) In paragraph (23) ^{M8}—
- (a) after “(17A)” insert “, (17D)”;
 - (b) after “a jobseeker's allowance” the first time it occurs insert “, an employment and support allowance”; and
 - (c) in sub-paragraph (a) for “or jobseeker's allowance” substitute “, jobseeker's allowance or employment and support allowance”.
- (9) After paragraph (34) ^{M9} add—
- “(35) A decision made in accordance with regulation 6(2)(p), where the failure determination was made before the 13th week of entitlement, shall take effect from the first day of the benefit week following that week.
- (36) A decision made in accordance with regulation 6(2)(p) where paragraph (35) does not apply shall take effect from the first day of the benefit week in which the failure determination was made.
- (37) A decision made in accordance with regulation 6(2)(q) shall take effect from the first day of the benefit week in which the reduction mentioned in that sub-paragraph ceased to have effect.
- (38) A decision made in accordance with regulation 6(2)(r) that embodies a determination that the claimant has limited capability for work which is the first such determination shall take effect from the beginning of the 14th week of entitlement.
- (39) A decision made in accordance with regulation 6(2)(r), following an application by the claimant, that embodies a determination that the claimant has limited capability for work-related activity shall take effect from the date of the application.”.

Marginal Citations

- M1** Paragraph (1) was substituted by [S.I. 1999/3178](#) and sub-paragraph (a) was substituted by [S.I. 2002/3019](#) and amended by [S.I. 2003/1050](#).
- M2** Paragraph (2) was amended by [S.I. 1999/3178](#), [2000/1596](#), [2002/3019](#), [2003/1050](#), [2005/337](#), [2006/832](#) and [2006/2377](#) and [2007/2470](#).
- M3** Sub-paragraph (bc) was inserted by [S.I. 2006/2377](#). Sub-paragraph (bd) was inserted by [S.I. 2007/2470](#) and omitted by [S.I. 2008/1042](#).
- M4** Paragraph (3) was amended by [S.I. 2002/3019](#).
- M5** Paragraph (7) was substituted by [S.I. 2006/832](#).
- M6** Paragraph (3)(a) was amended by [S.I. 2002/3019](#).
- M7** Paragraph (17C) was inserted by [S.I. 2002/3197](#) and substituted by [S.I. 2004/647](#).
- M8** Paragraph (23) was substituted by [S.I. 2002/3197](#) and amended by [S.I. 2004/647](#).
- M9** Paragraph (34) was inserted by [S.I. 2005/337](#).

Changes to legislation:

There are currently no known outstanding effects for the The Employment and Support Allowance (Consequential Provisions) (No. 2) Regulations 2008, Section 33.