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STATUTORY INSTRUMENTS

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**2010 No. 1907**

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

**PART 3**

**AFTER THE CONVERSION PHASE**

**Application of other enactments applying to employment and support allowances**

**16.**—(1) The enactments listed in paragraph (2) apply, subject to the modifications specified in Schedule 2, for the purposes of—

- (a) providing for the revision or supersession of any person's conversion decision at any time on or after that decision's effective date; and
- (b) enabling any other matter to be determined in connection with any person's entitlement or continuing entitlement to an award of an employment and support allowance by virtue of these Regulations.

[<sup>F1</sup>(1A) Where—

- (a) a person makes a claim for an employment and support allowance subsequent to the termination of that person's entitlement to an employment and support allowance by virtue of these Regulations; and
- (b) the period of limited capability for work in relation to that claim would link, by virtue of regulation 145(1) of the 2008 Regulations, to a period of limited capability for work in respect of which an award was made by virtue of these Regulations,

that person's entitlement to an award of an employment and support allowance shall be determined in accordance with these Regulations.]

(2) The listed enactments are—

- (a) Part 1 of the 2007 Act;
- (b) Chapter 2 of Part 1 of the Social Security Act 1998 <sup>M1</sup> (social security decisions and appeals);
- (c) any other Act which is amended by Schedule 3 to the 2007 Act;
- (d) the Social Security (Recovery of Benefits) Act 1997 <sup>M2</sup>; and
- (e) the following regulations—
  - (i) this Part of these Regulations,
  - (ii) the 2008 Regulations, and
  - (iii) the Regulations listed in Schedule 3 to these Regulations (being regulations consequentially amended by regulations made under Part 1 of the 2007 Act).

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(3) In the application of those enactments, the conversion decision is to be treated as if it were a decision as to a person's entitlement to an employment and support allowance which had been made on a claim.

**F1** Reg. 16(1A) inserted (1.5.2012) by [The Social Security \(Miscellaneous Amendments\) Regulations 2012 \(S.I. 2012/757\)](#), regs. 1(3), **21**

#### Marginal Citations

**M1** 1998 c. 14.

**M2** 1997 c. 27.

### Changes of circumstances before the effective date

17. Where, on or after the effective date of any person's conversion decision, the Secretary of State is notified of any change of circumstances or other relevant event which occurred before that date [<sup>F2</sup>and which would have been relevant to the existing award or awards], the Secretary of State—

[<sup>F3</sup>(a) must treat any award—

- (i) converted by virtue of regulation 14(2) (conversion decision that existing award qualifies for conversion), or
- (ii) terminated by virtue of regulation 14(2B)(a) (termination of an existing award of incapacity benefit or severe disablement allowance where entitlement to award of income support continues), regulation 14(3) (termination of award of an employment and support allowance where that entitlement already exists) or regulation 15(2) (termination of existing awards which do not qualify for conversion),

as if that award had not been converted or terminated;

- (b) must treat any entitlement to be credited with earnings terminated by virtue of regulation 14(5) or 15(3) as if it had not been terminated;
- (c) must treat any entitlement to a disability premium terminated by virtue of regulations 14(2B)(b), 15(2B) or 15(6) as if it had not been terminated;]

[<sup>F4</sup>(d)] must take account of the change of circumstances or other relevant event for the purposes of determining whether to revise or supersede a decision (“the earlier decision”) relating to the award or awards in respect of which the conversion decision was made;

[<sup>F4</sup>(e)] in an appropriate case, must revise or supersede the earlier decision;

[<sup>F4</sup>(f)] if any earlier decision is revised or superseded, must determine whether to revise [<sup>F5</sup>or supersede] the conversion decision made in relation to P; and

[<sup>F4</sup>(g)] in an appropriate case, must revise [<sup>F6</sup>or supersede] that conversion decision.

**F2** Words in reg. 17 inserted (1.11.2010) by [The Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) \(No. 2\) \(Amendment\) Regulations 2010 \(S.I. 2010/2430\)](#), regs. 1(2), **9(a)**

**F3** Reg. 17(a)(c) substituted for reg. 17(a) (1.11.2010) by [The Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) \(No. 2\) \(Amendment\) Regulations 2010 \(S.I. 2010/2430\)](#), regs. 1(2), **9(b)**

**F4** Reg. 17(d)(g): reg. 17(b)-(e) renumbered as reg. 17(d)-(g) (1.11.2010) by [The Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) \(No. 2\) \(Amendment\) Regulations 2010 \(S.I. 2010/2430\)](#), regs. 1(2), **9(c)**

**F5** Words in reg. 17(f) inserted (31.10.2011) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2011 \(S.I. 2011/2425\)](#), regs. 1(2), **27(3)**

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**Changes to legislation:** There are currently no known outstanding effects for the The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010, PART 3. (See end of Document for details)

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**F6** Words in reg. 17(g) inserted (31.10.2011) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 (S.I. 2011/2425), regs. 1(2), **27(3)**

### **Reducing the transitional addition: general rule**

**18.**—(1) The amount of any transitional addition to which a person is entitled by virtue of these Regulations shall be reduced (but not below nil) by a sum equal to the aggregate amount of all relevant increases which occur on or after the effective date in the amount payable to the person by way of an employment and support allowance.

(2) For the purposes of paragraph (1), a relevant increase is—

- (a) in relation to a person entitled to a contributory allowance, an increase in any amount applicable to the person under regulation 67(2)(a) or (3) of the 2008 Regulations <sup>M3</sup>; and
- (b) in relation to a person entitled to an income-related allowance, an increase in any amount applicable to the person under regulation 67(1)(a) or (b) or (3) or 68(1)(a), (b) or (c) of the 2008 Regulations,

which is not excluded by paragraph (3).

(3) In relation to any person, the excluded increases are—

- (a) any increase applicable to the benefit week the first day of which is the effective date of the person's conversion decision; and
- (b) any increase resulting from the reversal (on appeal or otherwise) of any decision made by the Secretary of State that a person who was previously entitled to the support component has become entitled to the work-related activity component.

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### **Marginal Citations**

**M3** The reference to regulation 67(2)(a) of the 2008 Regulations is to that regulation as modified by paragraph 52(b) of Schedule 2 to these Regulations.

### **Reducing the transitional addition: increases for dependent children**

**19.**—(1) Paragraphs (2) and (3) apply to any person (“T”) who—

[<sup>F7</sup>(a) on the day before the effective date of T’s conversion decision, was entitled in connection with an existing award of incapacity benefit or severe disablement allowance to an increase under—

- (i) in the case of incapacity benefit, section 80 of the Contributions and Benefits Act (beneficiary’s dependent children), or
- (ii) in the case of severe disablement allowance, section 90 of that Act (beneficiaries under sections 68 and 70),

as those sections have effect by virtue of article 3 of the Tax Credits (Commencement No. 3 and Transitional Provisions and Savings) Order 2003 <sup>M4</sup>; and]

(b) on and after the effective date, is entitled by virtue of these Regulations to an employment and support allowance which includes an amount by way of a transitional addition.

(2) The amount of the transitional addition shall be reduced in accordance with paragraph (3) on the termination, on or after the effective date, of T's entitlement to child benefit in respect of the child or qualifying young person—

- (a) for whom; or

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(b) for whose care by an adult dependant,

T was entitled to the increase referred to in paragraph (1)(a).

[<sup>F8</sup>(3) The amount of the transitional addition shall be reduced (but not below nil) by a sum equal to the amount of the increase referred to in paragraph (1)(a) payable to T on the day before the effective date, in respect of the child or qualifying young person in relation to whom child benefit terminated.]

- F7** Reg. 19(1)(a) substituted (1.11.2010) by [The Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) \(No. 2\) \(Amendment\) Regulations 2010 \(S.I. 2010/2430\)](#), regs. 1(2), **10(2)**
- F8** Reg. 19(3) substituted (1.11.2010) by [The Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) \(No. 2\) \(Amendment\) Regulations 2010 \(S.I. 2010/2430\)](#), regs. 1(2), **10(3)**

#### Marginal Citations

- M4** [S.I. 2003/938](#).

### Reducing the transitional addition: increases for adult dependants

**20.**—(1) Paragraphs (2) and (3) apply to any person (“T”) who—

- (a) on the day before the effective date of T's conversion decision, was entitled in connection with an existing award of incapacity benefit or severe disablement allowance to an increase under—
- (i) section 86A of the Contributions and Benefits Act <sup>M5</sup> (incapacity benefit: increases for adult dependants), or
- (ii) section 90 of the Contributions and Benefits Act (adult dependants of beneficiaries in receipt of severe disablement allowance); and
- (b) on and after the effective date, is entitled by virtue of these Regulations to an employment and support allowance which includes an amount by way of a transitional addition.

(2) The amount of the transitional addition shall be reduced in accordance with paragraph (3) on the occurrence, on or after the effective date, of any of the following events—

- (a) the death of the adult dependant in respect of whom T was entitled to the increase referred to in paragraph (1)(a);
- (b) the permanent separation of T and that adult dependant;
- (c) the termination of the entitlement of either T or that adult dependant to child benefit; or
- (d) the award to that adult dependant of a personal benefit (within the meaning of the Social Security (Overlapping Benefits) Regulations 1979 <sup>M6</sup>) which is equal to or more than the amount which, on the day before the effective date, was the amount of the increase referred to in paragraph (1)(a) to which T was entitled.

[<sup>F9</sup>(3) The amount of the transitional addition shall be reduced (but not below nil) by a sum equal to the amount which, on the day before the effective date, was the amount of the increase referred to in paragraph (1)(a) payable to T.]

- F9** Reg. 20(3) substituted (1.11.2010) by [The Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) \(No. 2\) \(Amendment\) Regulations 2010 \(S.I. 2010/2430\)](#), regs. 1(2), **11**

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**Marginal Citations**

- M5** Section 86A was inserted by section 2(5) of the Social Security (Incapacity for Work) Act 1994.
- M6** S.I. 1979/597.

**Termination of transitional addition**

**21.**—(1) Any entitlement to a transitional addition which a person (“T”) may have by virtue of these Regulations terminates on whichever is the earlier of—

- (a) the reduction in accordance with regulations 18 to 20 (reducing the transitional addition: general rule and increases for dependent children and adult dependants) of the amount of the transitional addition to nil; <sup>F10</sup>and]
- (b) subject to [<sup>F11</sup>paragraphs (2), (3)[<sup>F12</sup>, (3A)] and (4)], the termination in accordance with the enactments applied by regulation 16 of T’s entitlement to [<sup>F13</sup>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]; <sup>F14</sup>...

<sup>F15</sup>(c) .....

(2) Nothing in paragraph (1)(b) prevents reinstatement of a person’s entitlement to a transitional addition following the reversal on appeal of any determination which results in [<sup>F16</sup>a termination of the person’s entitlement to which that provision refers].

<sup>F17</sup>(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.

<sup>F18</sup>(3A) Any termination 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 1A.]

(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) <sup>F19</sup> ... 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) [<sup>F20</sup>in respect of that earlier period, it was terminated—
  - (i) other than by virtue of a determination that T did not have, or was treated as not having, limited capability for work, or
  - (ii) by virtue of a determination that the claimant did not have, or was treated as not having, limited capability for work, and, in respect of that subsequent claim, it is determined that T has, or is treated as having, limited capability for work, other than under regulation 30 of the 2008 Regulations.]

<sup>F21</sup>(5A) Case 1A is where—

- (a) T was previously entitled to a contributory allowance;
- (b) entitlement to that previous allowance terminated by virtue of section 1A of the 2007 Act (duration of contributory allowance);

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- (c) 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) of the 2008 Regulations (linking rules) as a continuation of an earlier period of limited capability for work; and
- (d) it is determined in relation to the subsequent claim that T has, or is treated as having, limited capability for work-related activity.]
- (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 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<sup>F22</sup>, 1A] 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.]

- F10** Word in reg. 21(1)(a) inserted (27.2.2020) by [The Employment and Support Allowance \(Transitional Provisions\) \(Amendment\) Regulations 2020 \(S.I. 2020/102\)](#), regs. 1, **2(a)**
- F11** Words in reg. 21(1)(b) substituted (1.11.2010) by [The Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) \(No. 2\) \(Amendment\) Regulations 2010 \(S.I. 2010/2430\)](#), regs. 1(2), **12(2)(a)**
- F12** Words in reg. 21(1)(b) inserted (1.5.2012) by [The Employment and Support Allowance \(Duration of Contributory Allowance\) \(Consequential Amendments\) Regulations 2012 \(S.I. 2012/913\)](#), regs. 1(2), **10(3)(a)**
- F13** Words in reg. 21(1)(b) substituted (1.11.2010) by [The Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) \(No. 2\) \(Amendment\) Regulations 2010 \(S.I. 2010/2430\)](#), regs. 1(2), **12(2)(b)**
- F14** Word in reg. 21(1)(b) omitted (27.2.2020) by virtue of [The Employment and Support Allowance \(Transitional Provisions\) \(Amendment\) Regulations 2020 \(S.I. 2020/102\)](#), regs. 1, **2(b)**
- F15** Reg. 21(1)(c) omitted (27.2.2020) by virtue of [The Employment and Support Allowance \(Transitional Provisions\) \(Amendment\) Regulations 2020 \(S.I. 2020/102\)](#), regs. 1, **2(c)**
- F16** Words in reg. 21(2) substituted (1.11.2010) by [The Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) \(No. 2\) \(Amendment\) Regulations 2010 \(S.I. 2010/2430\)](#), regs. 1(2), **12(3)**
- F17** Reg. 21(3) - (7) substituted for reg. 21(3) - (6) (1.11.2010) by [The Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) \(No. 2\) \(Amendment\) Regulations 2010 \(S.I. 2010/2430\)](#), regs. 1(2), **12(4)**
- F18** Reg. 21(3A) inserted (1.5.2012) by [The Employment and Support Allowance \(Duration of Contributory Allowance\) \(Consequential Amendments\) Regulations 2012 \(S.I. 2012/913\)](#), regs. 1(2), **10(3)(b)**
- F19** Words in reg. 21(5)(a) omitted (1.5.2012) by virtue of [The Employment and Support Allowance \(Amendment of Linking Rules\) Regulations 2012 \(S.I. 2012/919\)](#), regs. 1(2), **6(a)**
- F20** Reg. 21(5)(c) substituted (1.5.2012) by virtue of [The Employment and Support Allowance \(Amendment of Linking Rules\) Regulations 2012 \(S.I. 2012/919\)](#), regs. 1(2), **6(b)**

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- F21** Reg. 21(5A) inserted (1.5.2012) by [The Employment and Support Allowance \(Duration of Contributory Allowance\) \(Consequential Amendments\) Regulations 2012 \(S.I. 2012/913\)](#), regs. 1(2), **10(3)(c)**
- F22** Words in reg. 21(7) inserted (1.5.2012) by [The Employment and Support Allowance \(Duration of Contributory Allowance\) \(Consequential Amendments\) Regulations 2012 \(S.I. 2012/913\)](#), regs. 1(2), **10(3)(d)**

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