

2010 No. 840

SOCIAL SECURITY

**The Social Security (Miscellaneous Amendments) (No. 3)
Regulations 2010**

<i>Made</i>	- - - -	<i>17th March 2010</i>
<i>Laid before Parliament</i>		<i>22nd March 2010</i>
<i>Coming into force</i>	- -	<i>28th June 2010</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 86A(1), 171A(2), 171D, 171G(2) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(a), sections 1(1), 5(1)(k) and (r), 7B(3), 189(1), (4) and (5) and 191 of the Social Security Administration Act 1992(b), sections 9(1), 10(3) and (6), 11(1), 17(2), 22(2), 79(1) and (4) to (6) and 84 of the Social Security Act 1998(c) and sections 2(4)(a), 4(2)(a) and (6)(a), 8(1), (4), (5), and (6), 11(2)(d) and (g), 12(2)(i), 17(3)(b), 24(1), (2)(b) and (3), 25(2), (3) and (5) and 28(2) of, and paragraph 3(2) of Schedule 1 and paragraphs 1(a), 6, 8, 9(a) and 10 of Schedule 2 to, the Welfare Reform Act 2007(d) makes the following Regulations:

In accordance with section 173(1)(b) of the Social Security Administration Act 1992, the Secretary of State has obtained the agreement of the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it.

Citation and commencement

1. These Regulations may be cited as the Social Security (Miscellaneous Amendments) (No. 3) Regulations 2010 and shall come into force on 28th June 2010.

Amendment of the Social Security (Claims and Payments) Regulations 1987

2. For regulation 3(j) of the Social Security (Claims and Payments) Regulations 1987(e) (claims not required for entitlement to benefit in certain cases) substitute—

“(j) in the case of an employment and support allowance where —

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- (a) 1992 c.4. Section 86A was inserted by section 2(5) of the Social Security (Incapacity for Work) Act 1994 (c.18) (“the 1994 Act”). Section 171A was inserted by section 5 of the 1994 Act. Sections 171D and 171G were inserted by section 6(1) of the 1994 Act. Section 171G(2) is cited because of the meaning given to the word “prescribed”. Sections 175(1) and (4) were amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).
- (b) 1992 c.5. Section 7B(3) was inserted by Section 41(1) of the Welfare Reform Act 2007 (c. 5). Section 189(1) was amended by the Social Security Act 1998 (c.14), Schedule 7, paragraph 109(a) and Schedule 8, by the Social Security Contributions (Transfer of Functions, etc.) Act 1999, Schedule 3, paragraph 57(1) and (2) by the Tax Credits Act 2002 (c.21), Schedule 6. Sections 189(4) and (5) were amended by the Social Security Act 1998, Schedule 7, paragraph 109(c) and (d) and Schedule 8. Section 191 is cited for the meaning of the word “prescribe”. The definition of “prescribe” was amended by paragraphs 2 and 10 of Schedule 5 to the Welfare Reform Act 2007.
- (c) 1998 c.14. Section 79(1) was amended by the Tax Credits Act 2002, Schedule 4, paragraph 13(1) and (2) and S.I. 2008/2833. Section 84 is cited for the definition of “prescribe”.
- (d) 2007 c.5.
- (e) S.I. 1987/1968. Paragraph (j) was inserted by S.I. 2008/1554.

- (i) the beneficiary has made and is pursuing an appeal against a decision of the Secretary of State that embodies a determination that the beneficiary does not have limited capability for work, and
- (ii) that appeal relates to a decision to terminate or not to award a benefit for which a claim was made.”.

Amendment of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988

3. In regulation 5(2) of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988(a) (offsetting prior payment against subsequent award), in sub-paragraphs (a) and (b) of case 3, after “severe disablement allowance” insert “, employment and support allowance for those persons with limited capability for work in relation to youth in accordance with paragraph 4 of Schedule 1 to the Welfare Reform Act 2007,”.

Amendment of the Social Security Contributions and Benefits Act 1992

4. In section 44A of the Social Security Contributions and Benefits Act 1992(b) (deemed earnings factors)—

- (a) in subsection (2)(d)(i)—
 - (i) for “paragraph 1” substitute “in paragraphs 1 and 2”, and
 - (ii) after “Welfare Reform Act” insert “2007”, and
- (b) in subsection (7)(b) after “Welfare Reform Act” insert “2007”.

Amendment of the Social Security (Incapacity Benefit – Increases for Dependants) Regulations 1994

5. In regulation 9(1)(a)(i) and (b) of the Social Security (Incapacity Benefit – Increases for Dependants) Regulations 1994(c) (increase of incapacity benefit for adult dependants and persons having the care of children or qualifying young persons) for “is aged at least 60” substitute “has reached the qualifying age referred to in section 1(6) of the State Pension Credit Act 2002(d)”.

Amendment of the Social Security (Incapacity for Work) (General) Regulations 1995

6.—(1) The Social Security (Incapacity for Work) (General) Regulations 1995(e) are amended as follows.

(2) In regulation 2 (interpretation) in the definition of “medical evidence” for “doctor” substitute “health care professional”.

(3) After regulation 16 (person who works to be treated as capable of work) insert—

“Persons to be treated as capable of work at the end of the period covered by medical evidence

16A. Where the Secretary of State is satisfied that it is appropriate in the circumstances of the case then a person may be treated as being capable of work if—

- (a) the person has supplied medical evidence in accordance with regulation 28(2)(a);
- (b) the period for which medical evidence was supplied has ended;
- (c) the Secretary of State has requested further medical evidence; and

(a) S.I. 1988/664. Regulation 5(2) was amended by S.I. 1999/3178, S.I. 2000/3120 and S.I. 2005/1551
 (b) 1992 c.4. Section 44A was inserted by section 30(3) of the Child Support, Pensions and Social Security Act 2000 (c.19).and subsection (2)(d) was amended by S.I. 2008/1554.
 (c) S.I. 1994/2945. Regulation 9(1) was amended by S.I. 2003/937, 2005/2877 and 2006/692.
 (d) 2002 c.16.
 (e) S.I. 1995/311. The definition of ‘medical evidence’ was inserted in regulation 2 by S.I. 1996/3207: Regulation 2(2)(b). Regulation 17 was substituted by S.I. 2006/757 and subsequently amended by S.I. 2008/2365 and S.I. 2009/2343.

- (d) the person has not, before whichever is the later of either the end of the period of six weeks beginning with the date of the Secretary of State’s request or the end of six weeks beginning with the day after the end of the period for which medical evidence was supplied—
 - (i) supplied further medical evidence, or
 - (ii) otherwise made contact with the Secretary of State to indicate a wish to have the question of incapacity for work determined.”
- (4) In regulation 17 (exempt work)—
 - (a) in paragraph (3)(b) before “voluntary” insert “by a” and after “organisation” insert “or community interest company(a)”;
 - (b) for paragraph (4)(a) substitute—
 - “(a) is done during a period of specified work, provided that—
 - (i) the person has not previously done specified work,
 - (ii) since the beginning of the last period of specified work, the person has ceased to be entitled to a relevant benefit for a continuous period exceeding 8 weeks, or
 - (iii) not less than 52 weeks have elapsed since the last period of specified work; or
 - (c) after paragraph (8) add—
 - “(9) For the purposes of this regulation, a period of specified work begins on the first day on which any specified work is undertaken and continues for a period of 52 weeks, whether or not any further specified work is undertaken during that period.”

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations 1999

7.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations 1999(b) are amended as follows.

- (2) In regulation 3 (revision of decisions) before paragraph (6) insert—
 - “(5E) A decision under section 8 or 10 awarding an employment and support allowance may be revised if—
 - (a) the decision of the Secretary of State awarding an employment and support allowance was made on the basis that the claimant had made and was pursuing an appeal against a decision of the Secretary of State that the claimant did not have limited capability for work (“the original decision”); and
 - (b) the appeal to the First-tier Tribunal in relation to the original decision is successful.
 - (5F) A decision under section 8 or 10 awarding an employment and support allowance may be revised if—
 - (a) the person’s current period of limited capability for work is treated as a continuation of another such period under regulation 145(1) and (2) of the Employment and Support Allowance Regulations; and
 - (b) regulation 7(1)(b) of those Regulations applies.”
- (3) In regulation 6 (supersession of decisions) for paragraph (2)(r) substitute—
 - “(r) is an employment and support allowance decision where, since the decision was made, the Secretary of State has—
 - (i) received medical evidence from a health care professional approved by the Secretary of State, or

(a) As established under the Companies (Audit, Investigations and Community Enterprise) Act 2004 c.27.

(b) S.I. 1999/991. Regulation 3 was most recently amended by S.I. 2008/1554, 2008/2683 and 2009/1490. Regulation 7A was inserted by S.I. 1999/1623. Paragraph (1) was amended by S.I. 2000/1596, 2007/2470 and 2008/1554.

- (ii) made a determination that the claimant is to be treated as having limited capability for work in accordance with regulation 20, 25, 26 or 33(2) of the Employment and Support Allowance Regulations.”.

(4) In regulation 7 (date from which a decision superseded under section 10 takes effect)—

(a) for paragraph (38) substitute—

“(38) A decision made in accordance with regulation 6(2)(r) that embodies a determination that the claimant has—

- (a) limited capability for work; or
- (b) limited capability for work-related activity; or
- (c) limited capability for work and limited capability for work-related activity

which is the first such determination shall take effect from the beginning of the 14th week of entitlement.”; and

(b) after paragraph (39) add—

“(40) A decision made in accordance with regulation 6(2)(r) that embodies a determination that the claimant has—

- (a) limited capability for work; or
- (b) limited capability for work-related activity; or
- (c) limited capability for work and limited capability for work-related activity

where regulation 5 of the Employment and Support Allowance Regulations (assessment phase – previous claimants) applies shall take effect from the beginning of the 14th week of the person’s continuous period of limited capability for work.”.

(5) In regulation 7A(1) (definitions for the purposes of Chapters I and II) after “6(2)(g)” insert “, 6(2)(r)”.

(6) In regulation 17(5) (provision of information or evidence) for “(e)” substitute “(f)”.

Amendment of the Social Security (Claims and Information) Regulations 2007

8. In regulation 1(3) of the Social Security (Claims and Information) Regulations 2007(a) (citation, commencement and interpretation) after “disability living allowance;” insert—

“(ee) employment and support allowance;”.

Amendment of the Employment and Support Allowance Regulations 2008

9.—(1) The Employment and Support Allowance Regulations 2008(b) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

- (i) omit the definition of “medical examination centre”;
- (ii) in the definition of “period of limited capability for work” for “a period throughout which a person has, or is treated as having, limited capability for work” substitute “except in paragraph (5), a period throughout which a person has, or is treated as having, limited capability for work, and does not include a period which is outside the prescribed time for claiming as specified in regulation 19 of the Social Security (Claims and Payments) Regulations 1987(c)”;

(b) after paragraph (4) insert—

(a) S.I. 2007/2911.

(b) S.I. 2008/794. Regulation 2 was amended by S.I. 2008/2428, 2009/583 and 2009/2655. The amounts specified in regulation 45 and paragraphs 5, 6 and 7 of Schedule 7 were most recently amended by S.I. 2008/2428. Regulation 61 was amended by S.I.2009/2655.

(c) S.I. 1987/1968.

“(5) For the purposes of paragraph 4 of Schedule 1 to the Act (condition relating to youth) “period of limited capability for work” means a period throughout which a person has, or is treated as having, limited capability for work.”.

(3) In regulation 4(1) (end of assessment phase) for “regulations 5 and 6” substitute “regulation 5”.

(4) In regulation 5 (the assessment phase-previous claimants)—

(a) in paragraph (1)(b) for “regulation 6” substitute “and (4)”;

(b) in paragraph (2)(a)(ii) omit “and” where it is mentioned on the second occasion;

(c) in paragraph (2)(a)(iii) for “or” substitute “and”;

(d) after paragraph (2)(a)(iii) insert—

“(iv) the period for which the claimant was previously entitled was no more than 13 weeks; or”;

(e) in paragraph (2)(b)(i) omit “and”;

(f) at the end of paragraph (2)(b)(ii) add “and”;

(g) after paragraph (2)(b)(ii) insert—

“(iii) the period for which the claimant was previously entitled was no more than 13 weeks;”;

(h) after paragraph (3) add—

“(4) Where a person has made and is pursuing an appeal against a decision of the Secretary of State that embodies a determination that the claimant does not have limited capability for work—

(a) paragraph (3) does not apply; and

(b) paragraph (1) does not apply to any period of limited capability for work to which regulation 147A(2) applies until a determination of limited capability for work has been made following the determination of the appeal by the First-tier Tribunal.”.

(5) Omit regulation 6 (the assessment phase – claimants appealing against a decision).

(6) In regulation 7 (circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work-related activity component arises does not apply)—

(a) in paragraph (1)(b)(iii), after “allowance” insert “or that period was more than 13 weeks;”; and

(b) in paragraph (2) for “where a claimant is appealing a decision which embodies a determination that the claimant does not have limited capability for work” substitute “to any period of limited capability for work to which regulation 147A(2) applies until the determination of limited capability for work has been made following the determination of the appeal by the First-tier Tribunal”.

(7) For regulation 13 (modification of the relevant benefit year) substitute—

“Modification of the relevant benefit year

13.—(1) Where paragraph (2) applies, sub-paragraph (1)(f) of paragraph 3 of Schedule 1 to the Act has effect as if “relevant benefit year” is any benefit year which includes all or part of the period of limited capability for work which includes the relevant benefit week.

(2) This paragraph applies where a claimant has made a claim to employment and support allowance but does not satisfy—

(a) the first contribution condition;

(b) the second contribution condition; or

(c) both contribution conditions,

but would satisfy those conditions if the modified definition of “relevant benefit year” provided in paragraph (1) applied.”.

(8) In regulation 30 (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made) at the end of paragraph (2)(b) insert “; or” and the following sub-paragraph—

“(c) that it has not, within the 6 months preceding the date of claim, been determined, in relation to the claimant’s entitlement to any benefit, allowance or advantage, which is dependent upon the claimant being incapable of work, that the claimant is capable of work, or is to be treated as capable of work under regulation 7 or 8 of the Social Security (Incapacity for Work) (General) Regulations 1995 (“the 1995 Regulations”)(a), unless—

- (i) the claimant is suffering from some specific disease or bodily or mental disablement from which the claimant was not suffering at the time of that determination,
- (ii) a disease or bodily or mental disablement from which the claimant was suffering at the time of that determination has significantly worsened, or
- (iii) in the case of a claimant who was treated as capable of work under regulation 7 of the 1995 Regulations (failure to provide information), the claimant has since provided the information requested by the Secretary of State under that regulation.”.

(9) After regulation 32 (certain claimants to be treated as not having limited capability for work) insert—

“Claimants to be treated as not having limited capability for work at the end of the period covered by medical evidence

32A. Where the Secretary of State is satisfied that it is appropriate in the circumstances of the case then a claimant may be treated as not having limited capability for work if—

- (a) the claimant has supplied medical evidence in accordance with regulation 30(2)(a);
- (b) the period for which medical evidence was supplied has ended;
- (c) the Secretary of State has requested further medical evidence; and
- (d) the claimant has not, before whichever is the later of either the end of the period of 6 weeks beginning with the date of the Secretary of State’s request or the end of 6 weeks beginning with the day after the end of the period for which medical evidence was supplied—
 - (i) supplied further medical evidence, or
 - (ii) otherwise made contact with the Secretary of State to indicate that they wish to have the question of limited capability for work determined.”.

(10) In regulation 45 (exempt work)—

(a) in paragraph (3)(b) before “voluntary” insert “by a” and after “organisation” insert “or community interest company(b)”;

(b) for paragraph (4)(a) substitute—

“(a) is done during a period of specified work, provided that—

- (i) the claimant has not previously done specified work,
- (ii) since the beginning of the last period of specified work, the claimant has ceased to be entitled to a relevant benefit for a continuous period exceeding 12 weeks, or

(a) S.I. 1995/311.

(b) As established under the Companies (Audit, Investigations and Community Enterprise) Act 2004 c.27.

- (iii) not less than 52 weeks have elapsed since the last period of specified work; or”; and
- (c) after sub-paragraph (b) insert—
 - “(c) for the purposes of this regulation, a period of specified work begins on the first day on which any specified work is undertaken and continues for a period of 52 weeks, whether or not any further specified work is undertaken during that period.”.
- (11) In regulation 49 (notification of the assessment) after paragraph (2) insert—
 - “(3) A claimant may be required to take part in a work-focused health-related assessment either by attendance in person or by telephone.”.
- (12) Omit regulation 50 (determination of the place of the work-focused health-related assessment).
- (13) In regulation 53(3) (failure to take part in a work-focused health-related assessment)—
 - (a) for sub-paragraph (b) substitute—
 - “(b) that the physical or mental health or condition of the claimant made it impracticable for the claimant to take part in a work-focused health-related assessment;”;
 - (b) in sub-paragraph (c) omit “and”; and
 - (c) after sub-paragraph (c) insert—
 - “(ca) that the claimant had caring responsibilities in relation to a child and childcare was not reasonably available or was unsuitable due to the particular needs of the claimant or the child; and”.
- (14) In regulation 61(3) (failure to take part in a work-focused interview) —
 - (a) for sub-paragraph (i) substitute—
 - “(i) that the physical or mental health or condition of the claimant made it impracticable for the claimant to attend at the time and place fixed for the interview;”; and
 - (b) after sub-paragraph (j) insert—
 - “(ja)that the claimant had caring responsibilities in relation to a child and child care was not reasonably available or was unsuitable due to the particular needs of the claimant or the child; and”.
- (15) After regulation 147 insert—

“Claimants appealing a decision

147A.—(1) This regulation applies where a claimant has made and is pursuing an appeal against a decision of the Secretary of State that embodies a determination that the claimant does not have limited capability for work.

(2) Subject to paragraph (3), where this regulation applies, a determination of limited capability for work by the Secretary of State under regulation 19 shall not be made until the appeal is determined by the First-tier Tribunal.

(3) Paragraph (2) does not apply where either—

- (a) the claimant suffers from some specific disease or bodily or mental disablement from which the claimant was not suffering when entitlement began; or
- (b) a disease or bodily or mental disablement from which the claimant was suffering at that date has significantly worsened.

(4) Where this regulation applies and the Secretary of State makes a determination—

- (a) in a case to which paragraph (3) applies (including where the determination is not the first such determination) that the claimant does not have or, by virtue of regulation 22 or 23, is to be treated as not having limited capability for work; or

- (b) subsequent to a determination that the claimant is to be treated as having limited capability for work by virtue of a provision of these Regulations other than regulation 30, that the claimant is no longer to be so treated,

this regulation and regulation 30 apply as if that determination had not been made.

(5) Where this regulation applies and—

- (a) the claimant is entitled to an employment and support allowance by virtue of being treated as having limited capability for work in accordance with regulation 30;
- (b) neither of the circumstances in paragraph (3) applies, or, subsequent to the application of either of those circumstances, the claimant has been determined not to have limited capability for work; and
- (c) the claimant's appeal is dismissed, withdrawn or struck out,

the claimant is to be treated as not having limited capability for work with effect from the beginning of the first day of the benefit week following the date on which the Secretary of State was notified by the First-tier Tribunal that the appeal is dismissed, withdrawn or struck out.

(6) Where a claimant's appeal is successful, subject to paragraph (7), any finding of fact or other determination embodied in or necessary to the decision of the First-tier Tribunal or on which the First-tier Tribunal's decision is based shall be conclusive for the purposes of the decision of the Secretary of State, in relation to an award made in a case to which this regulation applies, as to whether the claimant has limited capability for work or limited capability for work-related activity.

(7) Paragraph (6) does not apply where, due to a change of circumstances after entitlement to which this regulation applies began, the Secretary of State is satisfied that it is no longer appropriate to rely on such finding or determination.”.

(16) In regulation 154 (absence in order to receive NHS treatment) omit paragraph (c) and the word “and” immediately preceding it.

(17) In regulation 155(1) (absence of member of family of member of Her Majesty's forces) omit sub-paragraph (b) and the word “and” immediately preceding it.

(18) In paragraph 10(1)(a) of Schedule 6 (general exclusions from paragraphs 8 and 9) for “the claimant's partner” substitute “the claimant or the claimant's partner”.

(19) After paragraph 5 of Schedule 7 (sums to be disregarded in the calculation of earnings) insert—

“**5A.** In the case of a claimant who receives a payment to which regulation 92(2) applies, £20, except where regulation 45(2) to (4) applies to the claimant, in which case the amounts specified in paragraph 6 shall apply, but only up to a maximum of £20.”.

(20) In Schedule 8 (sums to be disregarded in the calculation of income other than earnings)—

(a) in paragraph 7, after sub-paragraph (2) add—

“(3) An increase under section 80 or 90 of the Contributions and Benefits Act(a).”; and

(b) in paragraph 15(1)(a) after “employment and support allowance” insert “or a jobseeker's allowance”.

Signed by authority of the Secretary of State for Work and Pensions.

William D. McKenzie
Parliamentary Under Secretary of State,
Department for Work and Pensions

17th March 2010

(a) Section 80 was repealed by section 60 of the Tax Credits Act 2002 (c. 21), subject to savings as set out in Article 3 of S.I. 2003/938. Section 90 was repealed by sections 15(1)(b), 58(1) and 2(a) of the Welfare Reform Act 2009 (c.24), subject to transitional provision in sections 15(2) and (3) thereof.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend—

- (i) the Social Security (Claims and Payments) Regulations 1987;
- (ii) the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988;
- (iii) the Social Security Contributions and Benefits Act 1992;
- (iv) the Social Security (Incapacity Benefit – Increases for Dependents) Regulations 1994;
- (v) the Social Security (Incapacity for Work) (General) Regulations 1995;
- (vi) the Social Security and Child Support (Decisions and Appeals) Regulations 1999;
- (vii) the Social Security (Claims and Information) Regulations 2007; and
- (viii) the Employment and Support Allowance Regulations 2008.

Regulation 2 amends regulation 3(j) of the Social Security (Claims and Payments) Regulations 1987 (claims not required for entitlement to benefit in certain cases) so that a claim will be required where the claimant is pursuing an Employment and Support Allowance appeal, if the determination against which the appeal is made was made following a previous unsuccessful appeal by the claimant.

Regulation 3 amends the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988 to ensure that, where employment and support allowance is awarded for a period for which child benefit is also in payment, the child benefit can be offset against the employment and support allowance due.

Regulation 4 amends provisions in the Social Security Contributions and Benefits Act 1992 to allow satisfaction of the first or second National Insurance contribution conditions for employment and support allowance to establish entitlement to deemed earnings factors for pensioners.

Regulation 5 makes a minor amendment to regulation 9 of the Social Security (Incapacity Benefit - Increases for Dependents) Regulations 1994 (increase of incapacity benefit for adult dependants and persons having the care of children or qualifying young persons) so that that the appropriate definition of pensionable age is applied.

Regulation 6 makes four amendments to the Social Security (Incapacity for Work) (General) Regulations 1994—

- Regulation 2 is amended to update the definition of ‘medical evidence’ to reflect the fact that health care professionals, as well as doctors, may provide advice to decision-makers.
- A new regulation 16A is inserted so as to provide for persons to be treated as capable of work when the period covered by their medical evidence has expired. A person will only be so treated when the Secretary of State has sent a request for further evidence and at least six weeks has passed since that request was made. This applies where a person does not supply further evidence in that period, or does not otherwise make contact with the Secretary of State to indicate that they wish to have their incapacity for work determined.
- Regulation 17 (exempt work) is amended to include work carried out under the supervision of a person employed by a community interest company, as established under the Companies (Audit, Investigations and Community Enterprise) Act 2004.
- Regulation 17 is further amended to make it clear that a period of specified work is a continuous period of 52 weeks.

Regulation 7 makes minor amendments to the Social Security and Child Support (Decisions and Appeals) Regulations 1999.

Regulation 8 makes a minor amendment to the Social Security (Claims and Information) Regulations 2007.

Regulation 9 makes a number of amendments to the Employment and Support Allowance Regulations 2008;

- The definition of ‘period of limited capability for work’ in regulation 2 is amended to clarify the period for which entitlement to an employment and support allowance can be considered.
- Minor amendments are made to regulations 5 to 7, which provide for the beginning and end of the assessment phase, including for the purpose of reflecting the new regulation 147A.
- Regulation 13 is substituted by a new regulation. This clarifies the position where a claim for employment and support allowance has been made resulting in an award of National Insurance credits only. The definition of relevant benefit year is modified for claimants who then make a later claim which would be successful if the modified relevant benefit year is used when their claim is being considered.
- Regulation 30 is modified to create a link between an unsuccessful claim for incapacity benefit and an unsuccessful claim for employment and support allowance. The amendment means that a claimant will not generally be treated as having limited capability for work if a claim for ESA is made within six months of a determination that the claimant is capable of work or is to be treated as capable of work, under the regulations relating to incapacity benefit.
- A new regulation 32A is inserted to create the same position in Employment and Support Allowance as has been created in relation to incapacity benefit by the insertion of new regulation 16A of the Social Security (Incapacity for Work) (General) Regulations 1995 described above.
- Regulation 45 is amended to create the same position in employment and support allowance as is described in relation to regulation 17 of the Social Security (Incapacity for Work) (General) Regulations 1995 above.
- Regulations 53 and 61 are amended in respect of the matters which must be considered in determining whether a claimant has good cause for failure to undertake a work-focused interview or work-focused health related assessment.
- A new regulation 147A is inserted to make provision for claimants who appeal a decision of the Secretary of State which embodies a determination that they do not have limited capability for work. The amendment means that, unless there is an intervening change of circumstances, the determination whether the claimant has limited capability for work will be made when the appeal is determined and will reflect that determination.
- Paragraph 5 of Schedule 7 is amended to create a £20 income disregard where the claimant is in receipt of a royalty payment within the scope of regulation 92(2).
- Minor amendments are made to regulations 154, 155 and 163, and paragraph 10 of schedule 6.

A full impact assessment has not been published for this instrument as it has no impact on the costs of business, charities or voluntary sectors.

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STATUTORY INSTRUMENTS

2010 No. 840

SOCIAL SECURITY

The Social Security (Miscellaneous Amendments) (No. 3)
Regulations 2010

£5.50