
STATUTORY INSTRUMENTS

2011 No. 228

The Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-Related Activity) (Amendment) Regulations 2011

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-Related Activity) (Amendment) Regulations 2011 and shall come into force on 28th March 2011.

(2) In these Regulations:—

“the ESA Regulations” means the Employment and Support Allowance Regulations 2008(1);

“the Reassessment Regulations” means the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No.2) Regulations 2010(2).

Application

2.—(1) These Regulations apply to:—

- (a) a person who makes a claim for an employment and support allowance on or after 28 March 2011 (including a claim in respect of any period before that date);
- (b) subject to paragraphs (2) and (3), a person who made a claim for an employment and support allowance before 28 March 2011 in respect of whom a determination is made on or after that date as to whether that person has or is to be treated as having limited capability for work under Part 5 of the ESA Regulations or as to whether that person has or is to be treated as having limited capability for work-related activity under Part 6 of those Regulations;
- (c) subject to paragraphs (2) and (3), a person who is entitled to an employment and support allowance immediately before 28 March 2011 in respect of whom, on or after that date—
 - (i) the Secretary of State determines afresh under regulation 19(7) of the ESA Regulations whether the person has or is to be treated as having limited capability for work;
 - (ii) the Secretary of State determines afresh under regulation 34(4) of the ESA Regulations whether the person has or is to be treated as having limited capability for work-related activity; and
- (d) subject to paragraphs (2) and (3), a notified person as defined by regulation 4 of the Reassessment Regulations(3) in respect of whom a determination is made on or after 28

(1) [S.I. 2008/794](#).

(2) [S.I. 2010/1907](#).

(3) Regulation 4 of the Reassessment Regulations defines a notified person as a person to whom a notice is issued. A notice commences the conversion phase under the Reassessment Regulations for persons who are entitled to an existing award. An existing award is an award of incapacity benefit, severe disablement allowance, or income support on the grounds of incapacity (see paragraph 11 of Schedule 4 to the Welfare Reform Act 2007 ([2007 c.5](#))).

March 2011 as to whether that person has or is to be treated as having limited capability for work under Part 5 of the ESA Regulations⁽⁴⁾ or as to whether that person has or is to be treated as having limited capability for work-related activity under Part 6 of the ESA Regulations.

(2) Where, before 28 March 2011, a questionnaire relating to the previous version of Schedule 2 to the ESA Regulations was issued to a person in accordance with regulation 21(1)(b) of those Regulations (information required for determining capability for work), regulation 4(1) does not apply to that person for the purposes of making a determination as to limited capability for work under Part 5 of the ESA Regulations;

(3) Where, before 28 March 2011, a questionnaire relating to the previous version of Schedule 3 to the ESA Regulations was issued to a person in accordance with regulation 36(1)(a) of those Regulations (information required for determining capability for work-related activity) regulation 4(2) does not apply to that person for the purposes of making a determination as to limited capability for work-related activity under Part 6 of the ESA Regulations.

(4) In this regulation “the previous version of Schedule 2 to the ESA Regulations” and “the previous version of Schedule 3 to the ESA Regulations” mean those Schedules as they have effect immediately before the date on which these Regulations come into force.

(5) The provisions of paragraphs (2) to (4) do not apply to any determination made on or after 28 September 2011.

Amendment of the ESA Regulations

3.—(1) The ESA Regulations are amended as follows.

(2) In regulation 20 (certain claimants to be treated as having limited capability for work):—

(a) at the end of sub-paragraph (b)(i), after “chemotherapy”, insert “, or is likely to receive such treatment within 6 months after the date of the determination under this sub-paragraph”; and

(b) after paragraph (f) insert:—

“(g) any of the descriptors at paragraph 15 or 16 of Schedule 3 apply to the claimant.”.

(3) In regulation 25 (hospital in-patients), after paragraph (1) insert:—

“(1A) The circumstances in which a claimant is to be regarded as undergoing treatment falling within paragraph (1) include where the claimant is attending a residential programme of rehabilitation for the treatment of drug or alcohol addiction.”.

(4) In regulation 35(1) (certain claimants to be treated as having limited capability for work-related activity) at the end of sub-paragraph (b)(i), after “chemotherapy”, insert “, or is likely to receive such treatment within 6 months after the date of the determination under this sub-paragraph”.

Substitution of Schedules 2 and 3 to the ESA Regulations

4.—(1) For the provisions in Schedule 2 to the ESA Regulations (assessment of whether a claimant has limited capability for work) substitute the provisions in Schedule 1.

(2) For the provisions in Schedule 3 to the ESA Regulations (assessment of whether a claimant has limited capability for work-related activity) substitute the provisions in Schedule 2.

(4) Regulation 19(1) is applied by virtue of regulation 6 of the Reassessment Regulations (for pre-conversion purposes) and regulation 16 of those regulations (for post conversion purposes).

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

8th February 2011

C Grayling
Minister of State,
Department for Work and Pensions