
STATUTORY INSTRUMENTS

2012 No. 913

**The Employment and Support Allowance
(Duration of Contributory Allowance)
(Consequential Amendments) Regulations 2012**

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

10.—(1) The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010⁽¹⁾ are amended as follows.

(2) In regulation 7 (qualifying for conversion)—

- (a) in paragraph (1) for “paragraph (2)” substitute “paragraphs (2) and (3)”; and
- (b) after paragraph (2)⁽²⁾ add—

“(3) Where P would be entitled to an award of an employment and support allowance under the 2007 Act but for the application of section 1A of that Act⁽³⁾ (duration of contributory allowance) and it had been determined in respect of the entitlement that had ceased that P—

- (a) had limited capability for work; or
- (b) was to be treated as having limited capability for work, other than by virtue of regulation 30 of the 2008 Regulations,

in relation to the conversion of P’s existing award, P is to be taken as having satisfied the condition set out in section 1(3)(a) of the 2007 Act (limited capability for work).”.

(3) In regulation 21⁽⁴⁾ (termination of transitional addition)—

- (a) in paragraph (1)(b) after “(3)” insert “, (3A)”; and
- (b) after paragraph (3)⁽⁵⁾ insert—

“(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.”;

(c) after paragraph (5) insert—

“(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);
- (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

(1) [S.I. 2010/1907](#), as amended by [S.I. 2010/2430](#), regulation 27 of [S.I. 2011/2425](#) and regulation 20 of [S.I. 2012/757](#).

(2) Paragraph (2) was inserted by regulation 4(7) of [S.I. 2010/2430](#).

(3) Section 1A was inserted by section 51(1) of the Welfare Reform Act 2012.

(4) Regulation 21 was amended by regulation 12 of [S.I. 2010/2430](#).

(5) Paragraph (3) was substituted, along with paragraphs (4) to (7), by regulation 12(4) of [S.I. 2010/2430](#).

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.”; and

(d) in paragraph (7) after “Cases 1” insert “, 1A”.

(4) In Schedule 2 (modification of enactments: after the conversion phase) after paragraph 2(6) insert—

“**2A.**—(1) In relation to awards of an employment and support allowance to persons previously entitled to existing awards, the application of section 1A (duration of contributory allowance) is modified in accordance with sub-paragraph (2).

(2) Section 1A is to be read as if there were substituted—

“**1A.**—(1) The period for which a person is entitled to a contributory allowance shall not exceed, in the aggregate, the relevant maximum number of days in any period for which his entitlement is established by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010.

(2) In subsection (1) the “relevant maximum number of days” is—

(a) 365 days, or

(b) if the Secretary of State by order specifies a greater number of days, that number of days.

(3) The fact that a person’s entitlement to a contributory allowance has ceased as a result of subsection (1) does not prevent his being entitled to a further allowance if he satisfies the first and second conditions set out in Part 1 of Schedule 1.

(4) In calculating for the purposes of subsection (1) the length of the period for which a person is entitled to a contributory allowance, the following are not to be counted—

(a) days in which the person is a member of the support group, and

(b) days not falling within paragraph (a) in respect of which the person is entitled to the support component referred to in section 2(1)(b).

(5) In calculating for the purposes of subsection (1) the length of the period for which a person is entitled to a contributory allowance, days occurring before the coming into force of this section are to be counted (as well as those occurring afterwards).”.