
STATUTORY INSTRUMENTS

2015 No. 437

SOCIAL SECURITY

The Employment and Support Allowance (Repeat Assessments and Pending Appeal Awards) (Amendment) Regulations 2015

<i>Made</i>	- - - -	<i>2nd March 2015</i>
<i>Laid before Parliament</i>		<i>5th March 2015</i>
<i>Coming into force</i>	- -	<i>30th March 2015</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 1(1), 189(1) and (4) and 191 of the Social Security Administration Act 1992⁽¹⁾, and sections 8(1), (5) and (6), 22, 25(2), (3) and (5), and 29 of, and paragraph 1 of Schedule 2 and paragraphs 1, 7 and 8 of Schedule 4 to, the Welfare Reform Act 2007⁽²⁾.

In accordance with section 172(1) of the Social Security Administration Act 1992, the Secretary of State referred these proposals to the Social Security Advisory Committee⁽³⁾.

Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance (Repeat Assessments and Pending Appeal Awards) (Amendment) Regulations 2015 and come into force on 30th March 2015.

Application

2.—(1) These Regulations apply to a person who falls within paragraph (2).

(2) A person falls within this paragraph where he or she—

- (a) makes or is treated as making a claim for an employment and support allowance on or after 30th March 2015; or
- (b) makes and is pursuing an appeal against a decision of the Secretary of State that embodies a determination that the person does not have limited capability for work, and that decision was made in respect of a claim made, or treated as made, on or after 30th March 2015.

(1) 1992 c. 5. Section 189(1) was amended by Schedule 7 to the Social Security Act 1998 (c. 14), Schedule 3 to the Transfer of Functions Act 1999 (c. 2), and Schedule 6 to the Tax Credits Act 2002 (c. 21). Section 191 is an interpretation provision and is cited for the definition of “prescribed” and was amended by paragraph 10 of Schedule 5 to the Welfare Reform Act 2007.

(2) 2007 c. 5.

(3) See sections 172(1) and 173(1)(b) of the Social Security Administration Act 1992 (c. 5).

(3) For the purposes of paragraph (2) “employment and support allowance” means an allowance under Part 1 of the Welfare Reform Act 2007.

Amendment of the Employment and Support Allowance Regulations 2008

3.—(1) The Employment and Support Allowance Regulations 2008⁽⁴⁾ are amended as follows.

(2) 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)—

(a) for paragraph (2)(b)⁽⁵⁾ substitute—

“(b) “(b) in relation to the claimant’s entitlement to any benefit, allowance or advantage which is dependent on the claimant having limited capability for work, it has not been determined—

(i) in the last determination preceding the date of claim for an employment and support allowance, that the claimant does not have limited capability for work; or

(ii) within the 6 months preceding the date of claim for an employment and support allowance, that the claimant is to be treated as not having limited capability for work under regulation 22 or 23, unless paragraph (4) applies;”;

(b) for paragraph (3)⁽⁶⁾ substitute—

“(3) Paragraph 2(b) does not apply where a claimant has made and is pursuing an appeal against a relevant decision of the Secretary of State, and that appeal has not yet been determined by the First-tier Tribunal.”; and

(c) after paragraph (4) insert—

“(5) In this regulation a “relevant decision” means—

(a) a decision that embodies the first determination by the Secretary of State that the claimant does not have limited capability for work; or

(b) a decision that embodies the first determination by the Secretary of State that the claimant does not have limited capability for work since a previous determination by the Secretary of State or appellate authority that the claimant does have limited capability for work.

(6) In this regulation, “appellate authority” means the First-tier Tribunal, the Upper Tribunal, the Court of Appeal, the Court of Session, or the Supreme Court.”.

(3) For regulation 147A(1)⁽⁷⁾ (claimants appealing a decision) substitute—

“(1) This regulation applies where a claimant has made and is pursuing an appeal against a relevant decision of the Secretary of State as defined in regulation 30.”.

Amendment of the Employment and Support Allowance Regulations 2013

4.—(1) The Employment and Support Allowance Regulations 2013⁽⁸⁾ are amended as follows.

(4) S.I. 2008/794 relevant amending instruments are S.I. 2010/840, 2011/674, 2011/2425, 2013/2380 and 2013/2536.
 (5) Amended by the Social Security (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2536), regulation 13(1) and (14) (a).
 (6) Amended by the Social Security (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/674), regulation 16(1) and (3).
 (7) Inserted by the Social Security (Miscellaneous Amendments) (No. 3) Regulations 2010 (S.I. 2010/840), regulation 9(1) and (15).
 (8) S.I. 2013/379 to which there are amendments not relevant to these Regulations.

(2) In regulation 26 (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made)—

(a) for paragraph (2)(b) substitute—

“(b) “(b) in relation to the claimant’s entitlement to any benefit, allowance or advantage which is dependent on the claimant having limited capability for work, it has not been determined—

(i) in the last determination preceding the date of claim for an employment and support allowance, that the claimant does not have limited capability for work; or

(ii) within the 6 months preceding the date of claim for an employment and support allowance, that the claimant is to be treated as not having limited capability for work under regulation 18 or 19, unless paragraph (4) applies.”;

(b) for paragraph (3) substitute—

“(3) Paragraph 2(b) does not apply where a claimant has made and is pursuing an appeal against a relevant decision of the Secretary of State, and that appeal has not yet been determined by the First-tier Tribunal.”; and

(c) after paragraph (4) insert—

“(5) In this regulation a “relevant decision” means—

(a) a decision that embodies the first determination by the Secretary of State that the claimant does not have limited capability for work; or

(b) a decision that embodies the first determination by the Secretary of State that the claimant does not have limited capability for work since a previous determination by the Secretary of State or appellate authority that the claimant does have limited capability for work.

(6) In this regulation “appellate authority” means the First-tier Tribunal, the Upper Tribunal, the Court of Appeal, the Court of Session, or the Supreme Court.”.

(3) For regulation 87(1) (claimants appealing a decision) substitute—

“(1) This regulation applies where a claimant has made and is pursuing an appeal against a relevant decision of the Secretary of State as defined in regulation 26.”.

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

5.—(1) The Social Security (Claims and Payments) Regulations 1987⁽⁹⁾ are amended as follows.

(2) Regulation 3⁽¹⁰⁾ (claims not required for entitlement to benefit in certain cases) becomes paragraph (1) of regulation 3.

(3) In paragraph (1) for sub-paragraph (j) substitute—

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

(i) the beneficiary has made and is pursuing an appeal against a relevant decision of the Secretary of State, and

(ii) that appeal relates to a decision to terminate or not to award a benefit for which a claim was made.”.

(4) After paragraph (1) insert—

⁽⁹⁾ S.I. 1987/1968 amended by S.I. 2010/840; there are other amending instruments but none are relevant.

⁽¹⁰⁾ Amended by the Social Security (Miscellaneous Amendments) (No. 3) Regulations 2010 (S.I. 2010/840), regulation 2. There are other amending instruments but none are relevant.

“(2) In this regulation—

“appellate authority” means the First-tier Tribunal, the Upper Tribunal, the Court of Appeal, the Court of Session, or the Supreme Court; and

“relevant decision” means—

- (a) a decision that embodies the first determination by the Secretary of State that the claimant does not have limited capability for work; or
- (b) a decision that embodies the first determination by the Secretary of State that the claimant does not have limited capability for work since a previous determination by the Secretary of State or appellate authority that the claimant does have limited capability for work.”.

Amendment of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013

6.—(1) The Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013⁽¹¹⁾ are amended as follows.

(2) For regulation 7 (claims not required for entitlement to an employment and support allowance in certain cases) substitute—

“7.—(1) It is not to be a condition of entitlement to an employment and support allowance that a claim be made for it where—

- (a) the claimant has made and is pursuing an appeal against a relevant decision of the Secretary of State, and
- (b) the appeal relates to a decision to terminate or not to award an employment and support allowance for which a claim was made.

(2) In this regulation—

“appellate authority” means the First-tier Tribunal, the Upper Tribunal, the Court of Appeal, the Court of Session, or the Supreme Court; and

“relevant decision” means—

- (a) a decision that embodies the first determination by the Secretary of State that the claimant does not have limited capability for work; or
- (b) a decision that embodies the first determination by the Secretary of State that the claimant does not have limited capability for work since a previous determination by the Secretary of State or appellate authority that the claimant does have limited capability for work.”.

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

7. For paragraph 10 of Schedule 2 (modifications of the 2008 Regulations) to the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010⁽¹²⁾ substitute—

⁽¹¹⁾ S.I. 2013/380 to which there are amendments not relevant to these Regulations.

⁽¹²⁾ S.I. 2010/1907 to which there are amendments not relevant to these Regulations.

“(10) Regulation 30 (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made) is to be read as if, for paragraph (3), there was substituted—

“(3) Paragraph (2)(b) does not apply where a claimant has made and is pursuing an appeal against a conversion decision that embodies a determination that the claimant does not have limited capability for work and that appeal has not yet been determined by the First-tier Tribunal.”.””

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

2nd March 2015

Mark Harper
Minister of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Employment and Support Allowance Regulations 2008 (“ESA Regulations 2008”) and the Employment and Support Allowance Regulations 2013 (“ESA Regulations 2013”) concerning the circumstances when a claimant is treated as having limited capability for work pending an assessment of limited capability for work and the payment of pending appeal awards in respect of second or consecutive claims. Consequential amendments are also made to related provisions within the Social Security (Claims and Payments) Regulations 1987 (“Claims and Payments Regulations 1987”) and the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (“Claims and Payments Regulations 2013”) and the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (“Existing Awards Regulations 2010”).

Regulation 1 contains general provisions.

Regulation 2 sets out to whom these Regulations apply. The amendments apply to a person who falls within paragraph (2) of that regulation. Paragraph (2) provides that a person falls within that paragraph where they make, or are treated as making, a claim after these Regulations come into force, or have made and are pursuing an appeal against a decision that was made in respect of a claim made, or treated as made, after these Regulations come into force.

Regulation 3 amends regulation 30 of the ESA Regulations 2008 (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made). First, it extends the period which prevents a claimant who is making a new claim for ESA from being treated as having limited capability for work pending a work capability assessment where their last work capability assessment outcome (if indeed there was one) was that they did not have limited capability for work (they have been found fit for work). Second, for claimants who have been treated as not having limited capability for work following a failure to return information or attend for or submit to a medical examination the current rules remain the same (they are prevented from being treated as having limited capability for work pending a work capability assessment where within six months preceding the date of claim they have been treated as not having limited capability for work for a failure to return information or attend for or submit to a medical examination). On a second or consecutive claim, a claimant would still be treated as having limited capability for work pending an assessment of limited capability for work where since the last determination, the claimant is suffering from a new condition or their pre-existing condition has significantly worsened.

Regulation 4 amends the ESA Regulations 2013 in a similar fashion.

Regulation 5 makes consequential amendments to regulation 3 of the Claims and Payments Regulations 1987 (claims not required for entitlement to benefit in certain cases). It amends the circumstances in which claims are not required for an award of an employment and support allowance and limits that to circumstances where a claimant is pursuing an appeal against the first decision that embodies a determination that they do not have limited capability for work, or the first such decision following a period of limited capability for work.

Regulation 6 makes consequential amendments to the Claims and Payments Regulations 2013 in a similar fashion.

Regulation 7 amends the Existing Awards Regulations 2010 in so far as those Regulations make modifications to the ESA Regulations 2008. These amendments are necessary to ensure that the

modifications set out in the Existing Awards Regulations 2010 continue to work effectively in light of the amendments which are made to the ESA Regulations 2008 by regulation 3.

The report of the Social Security Advisory Committee dated 12th December 2014 in relation to the Secretary of State's proposals to make these Regulations, together with a statement showing the extent to which these Regulations give effect to the recommendations of the Committee and, in so far as they do not give effect to them, the reasons why not, are contained in an Act Paper published by The Stationary Office Ltd.

An impact assessment has not been produced for this instrument as it has no impact on business and only a negligible impact on civil society organisations and the public sector.