

2015 No. 000

SOCIAL SECURITY

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

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - ***

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 191 of the Social Security Administration Act 1992(a), and sections 8(5) and (6), 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(b).

The Social Security Advisory Committee has agreed that the proposals in respect of these Regulations should not be referred to it (c). OR 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.

Citation, commencement and interpretation

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

(2) In these Regulations—

“the Act” means the Welfare Reform Act 2007;

“the Claims and Payments Regulations 1987” means the Social Security (Claims and Payments) Regulations 1987(d);

“the Claims and Payments Regulations 2013” means the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013(e);

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

(a) 1992 c. 5. Section 189(1) was amended by schedule 7 of the Social Security Act 1998 (c. 14), schedule 3 of the Transfer of Functions Act 1999 (c. 2), and schedule 6 of 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.
(b) 2007 c.5.
(c) see section 173(1)(b) of the Social Security Administration Act 1992 (c.5).
(d) S.I. 1987/1968 amended by S.I. 2010/840.
(e) S.I. 2013/380.
(f) S.I. 2008/794 amended by S.I. 2013/2536; there is another amending instrument but it is not relevant.

“the ESA Regulations 2013” means the Employment and Support Allowance Regulations 2013(a); and

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

Application

2.—(1) These Regulations apply to a person who does not, or ceases to, fall within paragraph (2).

(2) A person falls within this paragraph where they—

- (a) have made a claim for an employment and support allowance before 30 March 2015; or
- (b) have made and are 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 before 30 March 2015.

(3) “Employment and support allowance” means an allowance under Part 1 of the Welfare Reform Act 2007.

Amendment of the ESA Regulations 2008

3.—(1) The ESA Regulations 2008 are amended as follows.

(2) In regulation 30 (conditions for treating a claimant as having limited capability for work) —

(a) for paragraph 30(2)(b)(c) substitute—

“(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 that the claimant—

- (i) does not have limited capability for work; or
- (ii) is to be treated as not having limited capability for work under regulation 22 or 23,

unless paragraph (4) applies.”;

(b) for paragraph (3)(d) 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)(a)(claimants appealing a decision) substitute—

(a) S.I. 2013/379.

(b) S.I. 2010/1907 amended 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), regulation 15.

(c) Amended by the Social Security (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2536), regulation 13(14)(a).

(d) Amended by the Social Security (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/674) regulation 16(3).

“(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 ESA Regulations 2013

4.—(1) The ESA Regulations 2013 are amended as follows.

(2) In regulation 26 (conditions for treating a claimant as having limited capability for work)—

(a) for paragraph (2)(b) substitute—

“(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 that the claimant—

(i) does not have limited capability for work; or

(ii) 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 Claims and Payments Regulations 1987

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

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

(3) In paragraph (1) for subparagraph (j) substitute—

“(j) in the case of an employment and support allowance where the beneficiary has made and is pursuing an appeal against a relevant decision of the Secretary of State.”.

(4) After paragraph (1) insert—

“(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

(a) Inserted by the Social Security (Miscellaneous Amendments) (No. 3) Regulations 2010 (S.I. 2010/840), regulation 9(15).

(b) Amended by the Social Security (Miscellaneous Amendments) (No. 3) Regulations 2010 (S.I. 2010/840), regulation 2.

“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 Claims and Payments Regulations 2013

6.—(1) The Claims and Payments Regulations 2013 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 the claimant has made, and is pursuing an appeal against a relevant decision of the Secretary of State.

(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 ESA Existing Awards Regulations 2010

7. For paragraph 10 of Schedule 2 (modifications of the 2008 Regulations) to the ESA Existing Awards Regulations 2010 substitute—

“(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

Date

Name
Parliamentary Under Secretary of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulation)

These Regulations make amendments to the provisions within the Employment and Support Allowance Regulations 2008 (“ESA Regulations 2008”) and the Employment and Support Allowance Regulations 2013 (“ESA Regulations 2013”) which deal with the treatment of repeat

claims and pending appeal awards. 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 covers general provisions including commencement and interpretation.

Regulation 2 sets out to whom these Regulations apply. The amendments apply to a person who does not fall within paragraph (2) of that regulation. Paragraph 2 provides that a person falls within that paragraph where they have made a claim before these Regulations come into force, or have made and are pursuing an appeal in respect of a decision which was made by the Secretary of State before these Regulations come into force.

Regulation 3 amends the ESA Regulations 2008. It removes the specific six month time limit which prevents a claimant who is making a new claim for ESA from being treated as having limited capability for work while going through the work capability assessment where there is a previous determination that the claimant does not have limited capability for work, or cannot be treated as having limited capability for work due to failure to comply with requirements. This applies where there is no evidence of significant worsening of the claimant’s existing condition or a new condition. Regulation 3 also removes the possibility of a claimant receiving a pending appeal award where they appeal against a second or further consecutive decision which embodies a determination that they do not have limited capability for work. This prevents a claimant who has been found not to have limited capability for work on consecutive occasions from receiving a second or further pending appeal award on making an appeal.

Regulation 4 amends the ESA Regulations 2013 in similar fashion.

Regulation 5 makes consequential amendments to the Claims and Payments Regulations 1987 in order to align it with the amendments made in Regulation 2. It amends the circumstances in which claims are not required for 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. This will prevent claimants who have been found not to have limited capability for work on consecutive occasions from receiving a second or further pending appeal award on making an appeal.

Regulation 6 makes consequential amendments to the Claims and Payments Regulations 2013 in 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 continue to work effectively in light of the amendments which are made to the ESA Regulations by regulation 3.