

# Freedom of Information request 811/2013

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## Information request

*I recently received a letter from John Oliver responding to my enquiry about the payment of ESA.*

*I was awarded the benefit on the 29th of September 2012. However when I spoke the office dealing with my claim I was told that it would not be paid for several weeks to allow time for the paperwork to be transferred between offices.*

*I was under the impression that as with IS, benefit is paid and indeed backdated, to the date it was awarded.*

*I understand that the so called "migrated" claims come under "guidelines issued by your dept.*

*I would be obliged if you would forward the details of the Act of Parliament that specifically prevents the backdating of claims and a copy of the guidelines which also prevent backdating of claims and their legality.*

## DWP response

First of all, it may be helpful to give you some background to the current reassessment exercise.

Whenever the Government introduces a new benefit which is intended to replace an existing benefit or benefits, it has to decide whether, and, if so, how and when, to move the claimants who are on the existing benefit or benefits to the new one. The Government also needs to decide whether or not the claimants in question will have to make a claim for the new benefit. For the current exercise, the Government has adopted the approach of conducting it on a rolling basis over a pre-determined period, applying the Work Capability Assessment (WCA) (this being the process by which people with health conditions or disabilities are assessed for Employment and Support Allowance (ESA)) as part of the conversion process, and moving the claimant to ESA only if they meet the qualifying criteria. The conversion exercise began in October 2010 and is expected to be completed by spring 2014. For those claimants whose awards qualify for conversion, no claim to ESA is required.

Your Freedom of Information request

Schedule 4 to the Welfare Reform Act 2007 provides the regulation-making powers for the transition of existing awards of incapacity benefit (being Incapacity Benefit (IB), Severe Disablement Allowance (SDA), and Income Support (IS) where paid on the grounds of illness or incapacity) to Employment and Support Allowance (ESA).

<http://www.dwp.gov.uk/docs/a13-0101.pdf>

The secondary legislation itself, which provided for the transition process and outcomes are the ESA (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (Statutory Instrument 2010/1907.) The conversion process is begun by notification – see regulation 4. The conversion decision is treated as a decision on a claim for the purposes of decision making and appeal – see regulation 6(3).

<http://www.dwp.gov.uk/docs/a13-9401.pdf>

“Backdating”, as in the Claims and Payments Regulations, applies only where a claim to benefit is required. And, as described above, no claim for ESA is required as part of the transition exercise – see the amendment to regulation 3 of the Claims and Payments Regulations as introduced by paragraph 18(b) of Schedule 2 to the No. 2 Regulations. In any event, however, we have never applied backdating where an old benefit has been replaced with a new one.

However, the current transition exercise is the first such exercise which provides that all individual conversion decisions - regardless of whether the claimant’s existing award qualifies for conversion - will take effect from a future date (the “effective date”). This date is designed to fall in line with the claimant’s existing benefit payment cycle and thereby ensure continuity of payment.

Where the claimant receives payment of an existing award at fortnightly intervals, the effective date is the first day of the benefit week immediately following the period covered by the first full fortnightly payment of the existing award after the date of issue of the conversion decision – see regulation 13(1) of the No.2 Regulations.

Where the claimant receives payment of an existing award at other than fortnightly intervals (e.g. weekly, quarterly or annually), the effective date is the first day of the benefit week immediately following the end of the second complete benefit week after the date of issue of the conversion decision – see regulation 13(2) of the No.2 Regulations

Each claimant’s entitlement to their incapacity benefit terminates with effect from the effective date (i.e. the last payment of the existing award is in respect

of the day before the effective date) – see regulations 14(2) and 15(2) of the No. 2 Regulations. This is wholly unlike the existing system where an award of an incapacity benefit ends on the day of the decision relating to the outcome of the Personal Capability Assessment – the medical assessment which preceded the WCA.

In practice, under the “delayed effective date” approach, the incapacity benefit will continue to be paid for a minimum of a further 15 days and a maximum of a further 28 days, from the date on which the conversion decision is issued. In particular, this allows the claimant whose incapacity benefit does not qualify for conversion to ESA sufficient time to make a claim for Jobseeker’s Allowance, where appropriate, and for that claim to be processed.

On the above basis, it might, therefore, be anything up to four weeks after a decision is made (that a claimant’s existing award qualifies for conversion to ESA), before the ESA award itself begins. However, the “delayed affective date” approach delivers a straightforward, consistent approach for all, aids a seamless transition between awards (as appropriate), and avoids all the complications which would flow from setting different effective dates.

The Decision Makers Guidance (DMG) on the removal of the requirement to make a claim can be found at:

<http://www.dwp.gov.uk/docs/dmgch45.pdf>

The relevant chapter is 45 starting at DMG 45300. The paragraph about the removal of the requirement to claim is 45355, and the effective date of the conversion decision starts at paragraph 45500.

If you have any queries about this letter please contact me quoting the reference number above.