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STATUTORY INSTRUMENTS

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**2008 No. 794**

**The Employment and Support Allowance Regulations 2008**

**PART 2**

**THE ASSESSMENT PHASE**

**The end of the assessment phase**

4.—(1) Subject to [<sup>F1</sup>paragraphs (2) and (3)] and [<sup>F2</sup>regulation 5], the assessment phase in relation to a claimant ends on the last day of a period of 13 weeks beginning on the first day of the assessment phase as determined under section 24(2)(a) of the Act.

[<sup>F3</sup>(2) Where paragraph (3) applies, the assessment phase is to end when it is determined whether the claimant has limited capability for work.]

[<sup>F3</sup>(3) This paragraph applies where, at the end of the 13 week period referred to in paragraph (1)

- (a) the claimant has not been assessed in accordance with a limited capability for work assessment; and
- (b) the claimant has not been treated as having limited capability for work in accordance with regulations 20, 25, 26, 29 or 33(2) (persons to be treated as having limited capability for work).]

**Textual Amendments**

- F1** Words in [reg. 4\(1\)](#) substituted (29.10.2013) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2013 \(S.I. 2013/2536\)](#), regs. 1(1), **13(4)(a)**
- F2** Words in [reg. 4\(1\)](#) substituted (28.6.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2010 \(S.I. 2010/840\)](#), regs. 1, **9(3)**
- F3** [Reg. 4\(2\)\(3\)](#) substituted for [reg. 4\(2\)](#) (29.10.2013) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2013 \(S.I. 2013/2536\)](#), regs. 1(1), **13(4)(b)**

**The assessment phase – previous claimants**

5.—(1) Where the circumstances in paragraph (2) apply in relation to a claimant the assessment phase —

- (a) begins on the first day of the period for which the claimant was previously entitled to an employment and support allowance; and
  - (b) subject to [<sup>F4</sup>paragraphs (3), (3A) and (4)] , ends on the day when the sum of the period for which the claimant was previously entitled to an employment and support allowance and the period for which the claimant is currently entitled to such an allowance is 13 weeks.
- (2) The circumstances are that—

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- (a) (i) the claimant's current period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 145(1) <sup>F5</sup>...;
- (ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work; <sup>F6</sup>...
- (iii) the assessment phase had not ended in the previous period for which the claimant was entitled to an employment and support allowance; [<sup>F7</sup>and]
- [<sup>F8</sup>(iv) the period for which the claimant was previously entitled was no more than 13 weeks; or]
- [<sup>F9</sup>(b) (i) the claimant's current period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 145(1),
- (ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work,
- (iii) the previous period of limited capability for work was terminated by virtue of a determination that the claimant did not have limited capability for work,
- (iv) the period for which the claimant was previously entitled was no more than 13 weeks, and
- (v) a determination is made in relation to the current period of limited capability for work that the claimant has or is treated as having limited capability for work, other than under regulation 30; or]
- [<sup>F9</sup>(c) (i) the claimant's current period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 145(1),
- (ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work,
- (iii) in relation to the previous award of an employment and support allowance, a determination was made that the claimant had limited capability for work or was treated as having limited capability for work, other than under regulation 30, and
- (iv) the period for which the claimant was previously entitled was no more than 13 weeks.]
- [<sup>F10</sup>(3) Where paragraph (3A) applies, the assessment phase is to end when it is determined whether the claimant has limited capability for work.]
- [<sup>F10</sup>(3A) This paragraph applies where on the day referred to in paragraph (1)(b)—
- (a) the claimant has not been assessed in accordance with a limited capability for work assessment; and
- (b) the claimant has not been treated as having limited capability for work in accordance with regulations 20, 25, 26, 29 or 33(2) (persons to be treated as having limited capability for work).]
- [<sup>F11</sup>(4) Where a person has made and is pursuing an appeal against a decision of the Secretary of State that embodies a determination that the claimant does not have limited capability for work—
- (a) [<sup>F12</sup>paragraphs (3) and (3A) do] not apply; and
- (b) paragraph (1) does not apply to any period of limited capability for work to which regulation 147A(2) applies until a determination of limited capability for work has been made following the determination of the appeal by the First-tier Tribunal.]

#### Textual Amendments

- F4** Words in reg. 5(1)(b) substituted (29.10.2013) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2013 (S.I. 2013/2536), regs. 1(1), **13(5)(a)**
- F5** Words in reg. 5(2)(a)(i) omitted (1.5.2012) by virtue of The Employment and Support Allowance (Amendment of Linking Rules) Regulations 2012 (S.I. 2012/919), regs. 1(2), **5(3)(a)**
- F6** Word in reg. 5(2)(a)(ii) omitted (28.6.2010) by virtue of The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2010 (S.I. 2010/840), regs. 1, **9(4)(b)**
- F7** Word in reg. 5(2)(a)(iii) substituted (28.6.2010) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2010 (S.I. 2010/840), regs. 1, **9(4)(c)**
- F8** Reg. 5(2)(a)(iv) inserted (28.6.2010) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2010 (S.I. 2010/840), regs. 1, **9(4)(d)**
- F9** Reg. 5(2)(b)(c) substituted for reg. 5(2)(b) (1.5.2012) by The Employment and Support Allowance (Amendment of Linking Rules) Regulations 2012 (S.I. 2012/919), regs. 1(2), **5(3)(b)**
- F10** Reg. 5(3)(3A) substituted for reg. 5(3) (29.10.2013) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2013 (S.I. 2013/2536), regs. 1(1), **13(5)(b)**
- F11** Reg. 5(4) added (28.6.2010) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2010 (S.I. 2010/840), regs. 1, **9(4)(h)**
- F12** Words in reg. 5(4)(a) substituted (29.10.2013) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2013 (S.I. 2013/2536), regs. 1(1), **13(5)(c)**

#### The assessment phase – claimants appealing against a decision

<sup>F13</sup>6. ....

#### Textual Amendments

- F13** Reg. 6 omitted (28.6.2010) by virtue of The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2010 (S.I. 2010/840), regs. 1, **9(5)**

#### Circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work-related activity component arises does not apply

7.—(1) Subject to paragraph (2), sections 2(2)(a), 2(3)(a), 4(4)(a) and 4(5)(a) of the Act do not apply where—

- (a) a claimant is terminally ill and has either—
  - (i) made a claim expressly on the ground of being terminally ill; or
  - (ii) made an application for supersession or revision in accordance with the Social Security and Child Support (Decisions and Appeals) Regulations 1999 <sup>F14</sup> which contains an express statement that the claimant is terminally ill; <sup>F15</sup>...

[<sup>F16</sup>(b) the case is a relevant linked case;]

- [<sup>F17</sup>(c) (i) the claimant’s entitlement to an employment and support allowance commences within 12 weeks of the claimant’s entitlement to income support coming to an end;
- (ii) in relation to that entitlement to income support, immediately before it ended the claimant’s applicable amount included the disability premium by virtue of satisfying the conditions in paragraphs 11 and 12 of Schedule 2 to the Income Support Regulations; and

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(iii) that entitlement to income support ended solely by virtue of the coming into force, in relation to the claimant, of the Social Security (Lone Parents and Miscellaneous Amendments) Regulations [<sup>F18</sup>2012]] [<sup>F19</sup>; or]

[<sup>F19</sup>(d) a claimant is entitled to an employment and support allowance by virtue of section 1B of the Act (further entitlement after time-limiting).]

[<sup>F20</sup>(1A) For the purposes of paragraph (1)(b) a relevant linked case is a case mentioned in paragraph (1B) where a period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 145(1).

(1B) Paragraph (1A) applies to the following cases—

(a) case 1 is where—

- (i) the claimant was entitled to an employment and support allowance (including entitlement to a component under sections 2(2), 2(3), 4(4) or 4(5) of the Act) in the earlier period of limited capability for work, and
- (ii) the previous period for which the claimant was entitled to an employment and support allowance was terminated other than by virtue of a determination that the claimant did not have limited capability for work;

(b) case 2 is where—

- (i) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work,
- (ii) the previous period for which the claimant was entitled to an employment and support allowance was 13 weeks or longer,
- (iii) the previous period for which the claimant was entitled to an employment and support allowance was terminated by virtue of a determination that the claimant did not have, or was treated as not having, limited capability for work, and
- (iv) it is determined in relation to the current period of limited capability for work that the claimant has limited capability for work or is treated as having limited capability for work, other than under regulation 30;

(c) case 3 is where—

- (i) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work,
- (ii) the previous period for which the claimant was entitled to an employment and support allowance was 13 weeks or longer,
- (iii) the previous period for which the claimant was entitled to an employment and support allowance was terminated before it could be determined whether the claimant had limited capability for work or was treated as having limited capability for work, other than under regulation 30, and
- (iv) it is determined in relation to the current period of limited capability for work that the claimant has limited capability for work or is treated as having limited capability for work, other than under regulation 30; and

(d) case 4 is where—

- (i) the claimant was entitled to an employment and support allowance (including entitlement to a component under sections 2(2), 2(3), 4(4) or 4(5) of the Act) in the earlier period of limited capability for work,
- (ii) the previous period for which the claimant was entitled to an employment and support allowance was terminated because it was determined that the claimant did

not have limited capability for work or was treated as not having limited capability for work, and

- (iii) it is determined in relation to the current period of limited capability for work that the claimant has limited capability for work or is treated as having limited capability for work, other than under regulation 30.]

(2) Paragraph (1)(b) does not apply [<sup>F21</sup>to any period of limited capability for work to which regulation 147A(2) applies until the determination of limited capability for work has been made following the determination of the appeal by the First-tier Tribunal].

#### Textual Amendments

- F14** S.I. 1999/991.
- F15** Word in reg. 7(1)(a) omitted (24.11.2008) by virtue of The Social Security (Lone Parents and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/3051), regs. 1(2), **12(2)(a)** (with reg. 13)
- F16** Reg. 7(1)(b) substituted (1.5.2012) by The Employment and Support Allowance (Amendment of Linking Rules) Regulations 2012 (S.I. 2012/919), regs. 1(2), **5(4)(a)**
- F17** Reg. 7(1)(c) and word inserted (24.11.2008) by The Social Security (Lone Parents and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/3051), regs. 1(2), **12(2)(b)** (with reg. 13)
- F18** Word in reg. 7(1)(c)(iii) substituted (21.5.2012) by The Social Security (Lone Parents and Miscellaneous Amendments) Regulations 2012 (S.I. 2012/874), regs. 1(2), **6(2)**
- F19** Reg. 7(1)(d) and words added (1.5.2012) by The Employment and Support Allowance (Duration of Contributory Allowance) (Consequential Amendments) Regulations 2012 (S.I. 2012/913), regs. 1(2), **9(2)(b)**
- F20** Reg. 7(1A)(1B) inserted (1.5.2012) by The Employment and Support Allowance (Amendment of Linking Rules) Regulations 2012 (S.I. 2012/919), regs. 1(2), **5(4)(b)**
- F21** Words in reg. 7(2) substituted (28.6.2010) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2010 (S.I. 2010/840), regs. 1, **9(6)(b)**

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**Changes to legislation:**

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