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## STATUTORY INSTRUMENTS

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### 2010 No. 1907

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

## PART 1

### GENERAL

#### Citation and commencement

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010.

(2) Subject to paragraph (3), these Regulations come into force on 1st October 2010.

(3) Regulations 24 (revocation of transitional claims provisions) and 25(2) (amendment of the 2008 Regulations) and [F1 paragraphs 1A and 2] of Schedule 4 (consequential amendments to the 2008 Regulations) come into force on 31st January 2011.

#### Textual Amendments

F1 Words in [reg. 1\(3\)](#) substituted (1.11.2010) by [The Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) \(No. 2\) \(Amendment\) Regulations 2010 \(S.I. 2010/2430\)](#), regs. 1(2), 2

#### Interpretation

2.—(1) In these Regulations—

“the 2007 Act” means the Welfare Reform Act 2007;

“the 2008 Regulations” means the Employment and Support Allowance Regulations 2008 <sup>M1</sup>;

“benefit week” has the same meaning as in the 2008 Regulations;

“contributory allowance” means an employment and support allowance to which a person is entitled by virtue of these Regulations which was based on an award of incapacity benefit or severe disablement allowance to which the person was entitled <sup>M2</sup>;

“conversion decision”, in relation to a notified person, has the meaning given in regulation 5(2);

“effective date”, in relation to a conversion decision, is to be construed in accordance with regulation 13;

“enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978 <sup>M3</sup>);

“income-related allowance” means an employment and support allowance to which a person is entitled by virtue of these Regulations which was based on an award of income support to which the person was entitled <sup>M4</sup>;

“notified person” has the meaning given in regulation 4(2);

“pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995 <sup>M5</sup>;

“relevant deduction”, in relation to a person, includes such of the following deductions as fall to be made in relation to the person—

- (a) any deduction made under any of the following provisions of the Social Security (Claims and Payments) Regulations 1987 <sup>M6</sup>—
  - (i) regulation 34A (deductions of mortgage interest which shall be made from benefit and paid to qualified lenders),
  - (ii) regulation 34B (deductions of mortgage interest which may be made from benefits and paid to qualified lenders in other cases), or
  - (iii) regulation 35 (deductions which may be made from benefit and paid to third parties);
- (b) any deduction made under the Community Charges (Deductions from Income Support) (No.2) Regulations 1990 <sup>M7</sup> (deductions which may be made from benefit for meeting sums due in respect of community charges);
- (c) any deduction made under the Fines (Deductions from Income Support) Regulations 1992 <sup>M8</sup> (deductions which may be made from an offender's benefit);
- (d) any deduction made under the Council Tax (Deductions from Income Support) Regulations 1993 <sup>M9</sup> (deductions which may be made from benefit for meeting sums due in respect of council tax);
- (e) any deduction in respect of overpayment recovery or recovery of social fund loans made under any of the following provisions of the Administration Act <sup>M10</sup>—
  - (i) section 71 (overpayments-general),
  - (ii) section 74 (income support and other payments), or
  - (iii) section 78 (recovery of social fund awards).

(2) A requirement under these Regulations to give a notice (or to notify) is a requirement to give notice in writing; and for that purpose—

- (a) a message sent by electronic communication shall be treated as a notice given in writing; and
- (b) electronic communication has the meaning given in section 15(1) of the Electronic Communications Act 2000 <sup>M11</sup>.

(3) For the purposes of these Regulations, the conversion phase, in relation to any person entitled to an existing award or awards, is the period which—

- (a) begins in accordance with regulation 4(4); and
- (b) ends in accordance with regulation 5(6).

(4) In these Regulations, any reference to Step 1, 2 or 3, in relation to any person, is to be construed in accordance with regulation 8.

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**Changes to legislation:** There are currently no known outstanding effects for the *The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010, PART 1.* (See end of Document for details)

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### Marginal Citations

- M1** [S.I. 2008/794](#).
- M2** “Incapacity benefit” and “severe disablement allowance” are defined in paragraph 11 of Schedule 4 to the Welfare Reform Act 2007.
- M3** [1978 c. 30](#).
- M4** Awards of income support which are “existing awards” (being awards made to persons who are incapable of work or disabled) are specified in paragraph (c) of the definition of “existing award” in paragraph 11 of Schedule 4 to the Welfare Reform Act 2007.
- M5** [1995 c. 26](#). Paragraph 1 of Schedule 4 was amended by paragraph 39 of Schedule 2 to the [State Pension Credit Act 2002 \(c. 16\)](#), [paragraph 13](#) of Schedule 3 to the Welfare Reform Act 2007 and paragraph 4(2) to (6) of Schedule 3 to the [Pensions Act 2007 \(c. 22\)](#).
- M6** [S.I.1987/1968](#). Relevant amending instruments are [S.I. 1988/522](#), 1992/1026, 2001/18, 2002/2441, 2002/3019 and 2002/3197.
- M7** [S.I. 1990/545](#). These Regulations lapsed on the repeal of the enabling authority, as from 1st April 1993, except in relation to any community charge in respect of a day falling before that date or in relation to any financial year beginning before that date.
- M8** [S.I. 1992/2182](#).
- M9** [S.I. 1993/494](#).
- M10** The “Administration Act” is defined in section 65 of the Welfare Reform Act 2007.
- M11** [2000 c. 7](#). The definition of “electronic communication” in section 15(1) was amended by paragraph 158 of Schedule 17 to the [Communications Act 2003 \(c. 21\)](#).

### Persons to whom these Regulations apply

[<sup>F23</sup> In these Regulations, regulations 4 to 22 apply to any person who, on or after 1st October 2010, is entitled to an existing award.]

### Textual Amendments

- F2** [Reg. 3](#) substituted (1.11.2010) by [The Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) \(No. 2\) \(Amendment\) Regulations 2010 \(S.I. 2010/2430\)](#), [regs. 1\(2\), 3](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010, PART 1.