

**EXPLANATORY MEMORANDUM TO**  
**THE EMPLOYMENT AND SUPPORT ALLOWANCE (TRANSITIONAL**  
**PROVISIONS) (AMENDMENT) REGULATIONS 2008**  
**2008 No. 2783**

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 This instrument corrects an anomaly in the Employment and Support Allowance (Transitional Provisions) Regulations 2008, No. 795. The regulations currently prevent some claims for Income Support or Incapacity Benefit for any period after 27 October 2008. However, we have identified some circumstances where such claims will be necessary to prevent claimants losing benefit.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 This instrument breaches the 21 day rule. This is because the anomaly in the regulations was only very recently identified and we need to bring this instrument into force by 27 October 2008 to ensure that claimants are not financially disadvantaged. If this legislation is delayed, claimants who would have been entitled to claim Income Support, would need to be considered for extra-statutory payments.

4. **Legislative Context**

4.1 The Employment and Support Allowance (Transitional Provisions) Regulations 2008 make provision in relation to the introduction of ESA. In effect, they provide that no new claims for Incapacity Benefit, Severe Disablement Allowance or Income Support on the grounds of disability can be made for any period after 27 October 2008. Any such claim will be treated as a claim for ESA. However, the regulations do enable certain persons who were previously entitled to those benefits to make a further claim. The regulations in effect also prevent claims for Incapacity Benefit, Severe Disablement Allowance or Income Support being made where there is already an award of Employment and Support Allowance.

4.2 It has since come to light that the regulations also operate so as to prevent legitimate claims for Income Support from people currently in receipt of Incapacity Benefit or Severe Disablement Allowance but whose need for an income related benefit does not arise until a date after the introduction of Employment and Support Allowance. This means that in these limited circumstances, some claimants in receipt of Incapacity Benefit or Severe Disablement Allowance will not have access to any income related benefit.

4.3 The amending regulation operates so as to allow claims for Income Support from claimants who are entitled to Incapacity Benefit or Severe Disablement after the introduction of Employment and Support Allowance.

4.4 The amendment also allows for claims for Incapacity Benefit for a period after 27 October where Income Support is already in payment because of disability and a subsequent adjustment or correction to the claimant's National Insurance record means that there will be entitlement to Incapacity Benefit.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- *What is being done and why*

7.1 The policy intention is that claimants who are entitled to Incapacity Benefit or Severe Disablement Allowance should have access to an income-related benefit where their circumstances make this necessary. The policy also allows for entitlement to Incapacity Benefit to commence for a date after the implementation of Employment Support Allowance where Income Support is in payment because of disability. This approach separates those people who will claim Employment and Support Allowance and those who still have some existing entitlement to those benefits that it replaces.

- *Consolidation*

7.2 Informal consolidation will be included in due course in the Departments' "The Law Relating to Social Security" (the Blue Volumes) which are available on the internet at <http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/> at no cost to the public.

## **8. Consultation outcome**

8.1 No specific consultation was carried out prior to producing this instrument as its purpose is to make a correction to ensure that claimants affected do not lose statutory entitlement to benefit. Due to the urgency of this instrument, the Social Security Advisory Committee secretariat has agreed to an informal alternative to the urgency procedures. The timing of the submission does mean that it will come into force before consultation is complete.

## **9. Guidance**

9.1 The Income Support guidance will be amended and further guidance will be issued to benefit decision makers to explain how this amendment will work.

## **10. Impact**

10.1 An impact assessment has not been completed for these regulations as there is not impact on business.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 This instrument makes a minor amendment to legislation to support the introduction of Employment and Support Allowance. There will be a full evaluation of the outcomes that result from ESA legislation. This will consider both policy impacts and the wider performance of the ESA regime, including the experience for customers claiming the new allowance and the effect on their behaviour.

## **13. Contact**

Diane Mitchell at the Department for Work and Pensions Tel: 0113 232 4501 or email: [diane.s.mitchell@jobcentreplus.gsi.gov.uk](mailto:diane.s.mitchell@jobcentreplus.gsi.gov.uk) can answer any queries regarding the instrument.