

2008 No. 3270

SOCIAL SECURITY

**The Employment and Support Allowance (Up-rating
Modification) (Transitional) Regulations 2008**

<i>Made</i>	- - - -	<i>18th December 2008</i>
<i>Laid before Parliament</i>		<i>29th December 2008</i>
<i>Coming into force</i>	- -	<i>20th January 2009</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 24(1) and 25(2)(c), (3)(a) and (5) of, and paragraph 10 of Schedule 4 to, the Welfare Reform Act 2007(a).

This Instrument contains only regulations made by virtue of, or consequential upon, paragraph 10 of Schedule 4 to the Welfare Reform Act 2007 and is made before the end of the period of 6 months beginning with the coming into force of that paragraph(b).

Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance (Up-rating Modification) (Transitional) Regulations 2008 and come into force on 20th January 2009.

Modification of section 150 of the Administration Act

2.—(1) This regulation applies where a claimant is entitled to incapacity benefit or severe disablement allowance which includes an amount under one of the provisions referred to in paragraph (2).

(2) The provisions referred to in paragraph (1) are —

- (a) section 69(1)(c) of the Contributions and Benefits Act (severe disablement allowance: age related addition);
- (b) regulation 10 of the Social Security (Incapacity Benefit) Regulations 1994(d) (increase in rate of incapacity benefit etc.); and

(a) 2007 c. 5. Section 24(1) is cited for the meaning given to “prescribed” and “regulations”.

(b) See section 173(5) of the Social Security Administration Act 1992 (c. 5). The requirement to refer regulations to the Social Security Advisory Committee does not apply where regulations are contained in a statutory instrument before the end of the period of 6 months beginning with the coming into force of the enactment under which the regulations were made or consequential upon a specified enactment and made before the end of the period of 6 months beginning with the coming into force of that enactment.

(c) Section 69 was repealed by section 65 of the Welfare Reform and Pensions Act 1999 (c. 30) but saved for existing claimants by article 4 of the Welfare Reform and Pensions Act 1999 (Commencement No. 9, and Transitional and Savings Provisions) Order 2000 (S.I. 2000//2958).

(d) S.I. 1994/2946. The relevant amending Instrument is S.I. 2008/632.

(c) regulation 18(1)(c) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995(a) (rate of long-term incapacity benefit in transitional cases).

(3) Where this regulation applies, section 150 of the Administration Act(b) (annual up-rating of benefits) is to have effect as if the following were inserted after subsection (5)—

“(5A) The Secretary of State may, in respect of each of the tax years beginning with 2009-10 and ending with 2013-14, include in the draft of an uprating order a reduction in an amount under—

- (a) section 69(1) of the Contributions and Benefits Act (severe disablement allowance: age related addition);
- (b) regulation 10 of the Social Security (Incapacity Benefit) Regulations 1994 (increase in rate of incapacity benefit etc.); and
- (c) regulation 18(1)(c) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995 (rate of long-term incapacity benefit in transitional cases).”.

Signed by authority of the Secretary of State for Work and Pensions.

Tony McNulty
Minister of State,
Department for Work and Pensions

18th December 2008

(a) S.I. 1995/310. The relevant amending Instrument is S.I. 2008/632.

(b) 1992 c. 5. Section 150 was amended by paragraph 28 of Schedule 8 to the Pension Schemes Act 1993 (c. 48), sections 2(3) and 9(4) of the Social Security (Incapacity for Work) Act 1994 (c. 18) (“the 1994 Act”), paragraph 64 of Schedule 2 to the Jobseekers Act 1995 (c. 18), section 131(2) of the Pensions Act 1995 (c. 26), paragraph 24 of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c. 30), paragraph 16 of Schedule 2 to the State Pension Credit Act 2002 (c. 16), paragraph 35 of Schedule 3, and Schedule 6, to the Tax Credits Act 2002 (c. 21), paragraph 14 of Schedule 7 to the Employment Act 2002 (c. 22), paragraph 21 of Schedule 11 to the Pensions Act 2004 (c. 35), paragraph 10(21) of Schedule 3 to the Welfare Reform Act 2007 (c. 5), section 6(1) to (4) of, and paragraph 21 of Schedule 1 to, the Pensions Act 2007 (c. 22), paragraph 8 of the Schedule to S.I. 2005/2053 and by article 2 of S.I. 2006/2839. *See* also section 4(8) of the 1994 Act and regulation 18(3) of S.I. 1995/310.

EXPLANATORY NOTE

(This note is not part of these Regulations)

The regulations contained in this Instrument are either made by virtue of, or are consequential upon, provisions in Part 1 of the Welfare Reform Act 2007. This Instrument is made before the expiry of the period of 6 months beginning with the coming into force of those provisions; the regulations in it are therefore exempt in accordance with section 173(5) of the Social Security Administration Act 1992 from the requirement in section 172(1) of that Act to refer proposals to make Regulations to the Social Security Advisory Committee and are made without reference to that Committee.

Regulation 2 modifies the effect of section 150 of the Social Security Administration Act 1992 so that the up-rating order made under that section may reduce certain amounts.

These Regulations have no impact on the cost of business, charities or the voluntary sector and an Impact Assessment has not been published. However, an Impact Assessment has been completed for the wider set of rate alignment measures announced in the White Paper “Raising expectations and increasing support” (Cm 7506) and can be found at <http://www.dwp.gov.uk/welfarereform/raisingexpectations/impact-assessment.pdf>.

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