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STATUTORY INSTRUMENTS

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**2008 No. 794**

**The Employment and Support Allowance Regulations 2008**

**PART 11 E+W+S**

**SUPPLEMENTARY PROVISIONS**

**CHAPTER 1 E+W+S**

Miscellaneous

**Waiting days E+W+S**

**144.**—(1) A claimant is not entitled to an employment and support allowance in respect of [<sup>F1</sup>7] days at the beginning of a period of limited capability for work.

(2) Paragraph (1) does not apply where—

- (a) the claimant's entitlement to an employment and support allowance commences within 12 weeks of the claimant's entitlement to income support, [<sup>F2</sup>incapacity benefit, severe disablement allowance,] state pension credit, a jobseeker's allowance, a carer's allowance[<sup>F3</sup>, statutory sick pay or a maternity allowance] coming to an end;
- (b) the claimant is terminally ill and has—
  - (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>F4</sup> which contains an express statement of being terminally ill; or
- (c) the claimant has been discharged from being a member of Her Majesty's forces and 3 or more days immediately before that discharge were days of sickness absence from duty, which are recorded by the Secretary of State for Defence<sup>F5</sup>, or
- (d) the claimant is the other member of a couple to whom regulation 4I(2) of the Social Security (Claims and Payments) Regulations 1987 applies and the former claimant was not entitled to an employment and support allowance in respect of [<sup>F6</sup>7] days at the beginning of the period of limited capability for work which relates to the former claimant's entitlement][<sup>F7</sup>; or]
- [<sup>F7</sup>(e) the claimant is entitled to an employment and support allowance by virtue of section 1B of the Act (further entitlement after time-limiting).]

**Textual Amendments**

- F1** Word in reg. 144(1) substituted (27.10.2014) by [The Social Security \(Jobseeker's Allowance and Employment and Support Allowance\) \(Waiting Days\) Amendment Regulations 2014 \(S.I. 2014/2309\)](#), regs. 1, **2(2)** (with reg. 4(2))

**Status:** Point in time view as at 27/10/2023.

**Changes to legislation:** There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, CHAPTER 1. (See end of Document for details)

- F2** Words in reg. 144(2)(a) inserted (31.1.2011) by [The Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) \(No. 2\) Regulations 2010 \(S.I. 2010/1907\)](#), regs. 1(3), **25(2)** (with reg. 3)
- F3** Words in reg. 144(2)(a) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **9(1)(a)**
- F4** S.I. 1999/991.
- F5** Reg. 144(2)(d) and word added (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **9(1)(b)**
- F6** Word in reg. 144(2)(d) substituted (27.10.2014) by [The Social Security \(Jobseeker s Allowance and Employment and Support Allowance\) \(Waiting Days\) Amendment Regulations 2014 \(S.I. 2014/2309\)](#), regs. 1, **2(2)** (with reg. 4(2)(3))
- F7** Reg. 144(2)(e) 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(3)**

**Linking rules** E+W+S

**145.—(1)** Any period of limited capability for work which is separated from another such period by not more than 12 weeks is to be treated as a continuation of the earlier period.

- <sup>F8</sup>(2) . . . . .
- <sup>F8</sup>(3) . . . . .
- <sup>F8</sup>(4) . . . . .
- <sup>F8</sup>(5) . . . . .

**Textual Amendments**

**F8** Reg. 145(2)-(5) 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(6)**

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**Modifications etc. (not altering text)**

**C1** S. 145(1) applied by SSI 2012/303 Sch. 1 para. 27(1)(c) (as amended (S.) (18.3.2013) by [The Council Tax Reduction \(Scotland\) Amendment Regulations 2013 \(S.S.I. 2013/48\)](#), regs. 1, **14(1)(ii)**)

**C2** Reg. 145(1) applied by SI 2006/215 Sch. 1 para. 29(1)(c) (as substituted (1.5.2012) by [The Employment and Support Allowance \(Amendment of Linking Rules\) Regulations 2012 \(S.I. 2012/919\)](#), regs. 1(2), **4(d)**)

**C3** Reg. 145(1) applied by SI 2006/213 Sch. 3 para. 29(1)(c) (as substituted (1.5.2012) by [The Employment and Support Allowance \(Amendment of Linking Rules\) Regulations 2012 \(S.I. 2012/919\)](#), regs. 1(2), **3(d)**)

**Advance awards** E+W+S

**146.—(1)** Where section 5 of the Act (advance award of income-related allowance) applies to a claim and the claimant satisfies the conditions in paragraph (3)—

- (a) the claim is to be treated as if made for a period from the relevant day; and
- (b) the Secretary of State may award an employment and support allowance from the relevant day.

(2) In this regulation the “relevant day” is the day after the end of a period of 13 weeks beginning on the first day on which the claimant would be entitled to an income-related allowance if the claimant satisfied the condition in paragraph 6(1)(a) of Schedule 1 to the Act.

- (3) The conditions are that—
- (a) the Secretary of State is of the opinion that unless there is a change of circumstances the claimant will satisfy the conditions set out in section 1(3)(b) to (f) of, and Part 2 of Schedule 1 to, the Act when an income-related allowance becomes payable under the award; and
  - (b) the claimant is treated as having limited capability for work under regulation 20, 25, 26, [F930] or 33(2) (conditions for treating a person as having limited capability for work) for the period before an income-related allowance becomes payable under the award.
- (4) Where an award is made under paragraph (1)—
- (a) the award for an employment and support allowance will become payable on the date on which the claimant would have been entitled to a main phase employment and support allowance if the claimant had satisfied the condition in paragraph 6(1)(a) of Schedule 1 to the Act before the relevant day;
  - (b) sections 4(4)(a) and 4(5)(a) of the Act do not apply to that award.

#### Textual Amendments

- F9** Word in reg. 146(3)(b) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **9(2)**

#### Recovery orders **E+W+S**

**147.**—(1) Where an award of income-related allowance has been made to a claimant, the Secretary of State may apply to the court for a recovery order against the claimant's partner.

(2) On making a recovery order the court may order the partner to pay such amount at such intervals as it considers appropriate, having regard to all the circumstances of the partner and, in particular, the partner's income.

(3) Except in Scotland, a recovery order is to be treated for all purposes as if it were a maintenance order within the meaning of section 150(1) of the Magistrates Courts Act 1980 <sup>F10</sup>.

(4) Where a recovery order requires the partner to make payments to the Secretary of State, the Secretary of State may, by giving notice in writing to the court which made the order, the liable person and the claimant, transfer to the claimant the right to receive payments under the order and to exercise the relevant rights in relation to the order.

(5) In paragraph 4, “the relevant rights” means, in relation to a recovery order, the right to bring any proceedings, take any steps or do any other thing under or in relation to the order.

#### Textual Amendments

- F10** 1980 c. 43. The definition in section 150(1) was inserted by the [Family Law Reform Act 1987 \(c. 42\)](#), [section 33\(1\)](#) and Schedule 2, paragraph 88.

#### [F11] Claimants appealing a decision **E+W+S**

**147A.**—[F12(1) This regulation applies where a claimant has made and is pursuing an appeal against a relevant decision of the Secretary of State as defined in regulation 30.]

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<sup>F13</sup>(1A) A person to whom this regulation applies who has made and is pursuing an appeal against a conversion decision in respect of an existing award of incapacity benefit or severe disablement allowance shall be treated as having satisfied the conditions in Part 1 of Schedule 1 to the Act (contributory allowance: conditions relating to national insurance).]

(2) Subject to paragraph (3), where this regulation applies, a determination of limited capability for work by the Secretary of State under regulation 19 shall not be made until the appeal is determined by the First-tier Tribunal.

(3) Paragraph (2) does not apply where either—

- (a) the claimant suffers from some specific disease or bodily or mental disablement from which the claimant was not suffering when entitlement began; or
- (b) a disease or bodily or mental disablement from which the claimant was suffering at that date has significantly worsened.

(4) Where this regulation applies and the Secretary of State makes a determination—

- (a) in a case to which paragraph (3) applies (including where the determination is not the first such determination) that the claimant does not have or, by virtue of regulation 22 or 23, is to be treated as not having limited capability for work; or
- (b) subsequent to a determination that the claimant is to be treated as having limited capability for work by virtue of a provision of these Regulations other than regulation 30, that the claimant is no longer to be so treated,

this regulation and regulation 30 apply as if that determination had not been made.

(5) Where this regulation applies and—

- (a) the claimant is entitled to an employment and support allowance by virtue of being treated as having limited capability for work in accordance with regulation 30;
- (b) neither of the circumstances in paragraph (3) applies, or, subsequent to the application of either of those circumstances, the claimant has been determined not to have limited capability for work; and
- (c) the claimant’s appeal is dismissed, withdrawn<sup>F14</sup>, struck out or has been discontinued in accordance with the provisions of regulation 33(10) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (notice of appeal)]

the claimant is to be treated as not having limited capability for work [<sup>F15</sup>with effect from the day specified in paragraph (5A).]

[  
<sup>F16</sup>(5A) The day specified for the purposes of paragraph (5) is the first day of the benefit week following the date on which the Secretary of State <sup>F17</sup>...—

- (a) receives the First-tier Tribunal’s notification that the appeal is dismissed, withdrawn or struck out, <sup>F18</sup>...

<sup>F18</sup>(b) .....]

(6) Where a claimant’s appeal is successful, subject to paragraph (7), any finding of fact or other determination embodied in or necessary to the decision of the First-tier Tribunal or on which the First-tier Tribunal’s decision is based shall be conclusive for the purposes of the decision of the Secretary of State, in relation to an award made in a case to which this regulation applies, as to whether the claimant has limited capability for work or limited capability for work-related activity.

(7) Paragraph (6) does not apply where, due to a change of circumstances after entitlement to which this regulation applies began, the Secretary of State is satisfied that it is no longer appropriate to rely on such finding or determination.]

### Textual Amendments

- F11** Reg. 147A inserted (28.6.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2010 \(S.I. 2010/840\)](#), regs. 1, **9(15)**
- F12** Reg. 147A(1) substituted (with application in accordance with reg. 2 of the amending S.I.) by [The Employment and Support Allowance \(Repeat Assessments and Pending Appeal Awards\) \(Amendment\) Regulations 2015 \(S.I. 2015/437\)](#), regs. 1, **3(3)**
- F13** Reg. 147A(1A) inserted by SI 2010/1907 Sch. 2 para. 15 (as amended) (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), **17(7)**
- F14** Words in reg. 147A(5)(c) substituted (31.10.2011) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2011 \(S.I. 2011/2425\)](#), regs. 1(2), **23(10)(a)**
- F15** Words in reg. 147A(5) substituted (31.10.2011) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2011 \(S.I. 2011/2425\)](#), regs. 1(2), **23(10)(b)**
- F16** Reg. 147A(5A) inserted (31.10.2011) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2011 \(S.I. 2011/2425\)](#), regs. 1(2), **23(11)**
- F17** Word in reg. 147A(5A) omitted (28.10.2013) by virtue of [The Social Security, Child Support, Vaccine Damage and Other Payments \(Decisions and Appeals\) \(Amendment\) Regulations 2013 \(S.I. 2013/2380\)](#), regs. 1(2), **7(2)(a)** (with reg. 8(1))
- F18** Reg. 147A(5A)(b) and word omitted (28.10.2013) by virtue of [The Social Security, Child Support, Vaccine Damage and Other Payments \(Decisions and Appeals\) \(Amendment\) Regulations 2013 \(S.I. 2013/2380\)](#), regs. 1(2), **7(2)(b)** (with reg. 8(1))

**Status:**

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**Changes to legislation:**

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