
STATUTORY INSTRUMENTS

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 paragraph (2) and regulations 5 and 6, 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.

(2) If at the end of the period of 13 weeks referred to in paragraph (1), it has not yet been determined whether the claimant has limited capability for work—

- (a) the claimant having been assessed in accordance with a limited capability for work assessment; or
- (b) as a result of the claimant being treated as having limited capability for work in accordance with regulation 20, 25, 26, 29 or regulation 33(2) (persons to be treated as having limited capability for work),

the assessment phase will end when the limited capability for work determination is made.

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 paragraph (3) and regulation 6, 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—

- (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) or (2);
 - (ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work; and
 - (iii) the assessment phase had not ended in the previous period for which the claimant was entitled to an employment and support allowance; or
- (b)
 - (i) paragraph (3) or (5) of regulation 145 applies to the claimant; and
 - (ii) the assessment phase had not ended in the previous period for which the claimant was entitled to an employment and support allowance.

Status: Point in time view as at 01/10/2009.

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 2. (See end of Document for details)

(3) If, on the day referred to in paragraph (1)(b), it has not yet been determined whether the claimant has limited capability for work—

- (a) the claimant having been assessed in accordance with a limited capability for work assessment; or
- (b) as a result of the claimant being treated as having limited capability for work in accordance with regulation 20, 25, 26, 29 or regulation 33(2) (persons to be treated as having limited capability for work),

the assessment phase will end when the limited capability for work determination is made.

The assessment phase – claimants appealing against a decision

6. Where the period for which the claimant is entitled to an employment and support allowance commences and the claimant has made and is pursuing an appeal against a decision which embodies a determination that that claimant does not have limited capability for work, the assessment phase in relation to that claimant ends when the appeal is determined by an appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998 ^{F1}.

Textual Amendments

F1 1998 c. 14.

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 ^{F2} which contains an express statement that the claimant is terminally ill; ^{F3}...
- (b) (i) 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) or (2);
 - (ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work; and
 - (iii) the assessment phase had ended in the previous period for which the claimant was entitled to an employment and support allowance [^{F4}or
- (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
 - (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 2008.]

(2) Paragraph (1)(b) does not apply where the claimant is appealing a decision which embodies a determination that the claimant does not have limited capability for work.

Textual Amendments

- F2** S.I. 1999/991.
- F3** 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)
- F4** 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)

Status:

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Changes to legislation:

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