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STATUTORY INSTRUMENTS

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**2008 No. 794**

**The Employment and Support Allowance Regulations 2008**

**PART 11**

**SUPPLEMENTARY PROVISIONS**

**CHAPTER 1**

**Miscellaneous**

**[<sup>F1</sup>Claimants appealing a decision**

**147A.**—[<sup>F2</sup>(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.]

[  
<sup>F3</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

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Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, Section 147A. (See end of Document for details)

- (c) the claimant’s appeal is dismissed, withdrawn<sup>F4</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>F5</sup>with effect from the day specified in paragraph (5A).]

[  
<sup>F6</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>F7</sup>...—

- (a) receives the First-tier Tribunal’s notification that the appeal is dismissed, withdrawn or struck out, <sup>F8</sup>...

<sup>F8</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**

- F1** Reg. 147A inserted (28.6.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2010 \(S.I. 2010/840\)](#), regs. 1, **9(15)**
- F2** 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)**
- F3** 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)**
- F4** 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)**
- F5** 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)**
- F6** 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)**
- F7** 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))
- F8** 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:**

Point in time view as at 18/10/2022.

**Changes to legislation:**

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, Section 147A.