
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supersede the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 (S.I. 2010/875) (“the original Regulations”), which were revoked by the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (Revocation) Regulations 2010 (S.I. 2010/1906). These Regulations remake the original Regulations with no change of substance from the original Regulations.

These Regulations make transitional provision in relation to the introduction of employment and support allowance and apply to persons entitled to any existing award (which is defined in Schedule 4 to the Welfare Reform Act 2007 in terms of incapacity benefit, severe disablement allowance and income support on grounds of disability). The Regulations set out the process for determining whether existing awards are to be converted into awards of an employment and support allowance. An award may be converted only if certain conditions are satisfied in relation to the person entitled to the award.

The Regulations also make related amendments to the Housing Benefit Regulations 2006, Council Tax Benefit Regulations 2006 and the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (“the Decisions and Appeals Regulations”).

Part 2 of, and Schedule 1 to, the Regulations set out the process for determining whether or not a person's existing award is to be converted into an award of an employment and support allowance. The conversion process operates on an individual basis and, in each case, begins when the Secretary of State sends a notice under regulation 4 to a particular person. Where the person is entitled to more than one existing award the notice and conversion process apply to both awards. Regulation 5 requires the Secretary of State to determine whether or not the existing award (or awards) qualify for conversion and to notify the person accordingly. There is also provision for notification to be given in the event that an existing award ceases to be subject to conversion. Regulation 6 and Schedule 1 establish the statutory machinery to facilitate this determination, by cross-applying certain enactments that already have effect in relation to persons who make a claim for an employment and support allowance. Schedule 1 modifies these enactments to take account of the differences that arise because a person is already entitled to an existing award and is not required to make a claim. There is also provision to enable the Secretary of State to obtain information in order to make conversion decisions and to provide for conversion decisions to be revised before they come into effect.

Under regulation 7, a person's existing award (or awards) qualify for conversion if the person satisfies the basic conditions for entitlement to an employment and support allowance, except for the condition that they are not entitled to income support. One of these basic conditions is that the person has limited capability for work. This will be determined on an individual basis, in accordance with the arrangements for work capability assessments set out in the Employment and Support Allowance Regulations 2008 (“the 2008 Regulations”) (as modified by Schedule 1 to these Regulations).

If an existing award (or awards) do qualify for conversion, the Secretary of State must determine in accordance with regulations 9 to 12 the amount to which the person is entitled. In broad terms, this is the aggregate of (a) the amount to which the person would have been entitled on a successful claim for an employment and support allowance, and (b) an additional amount, referred to in the Regulations as a “transitional addition”. The transitional addition is based on the difference between specified elements of the person's existing award and specified elements of the employment and support allowance into which it is to be converted.

Changes to legislation: *There are currently no known outstanding effects for the The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010. (See end of Document for details)*

The date on which the Secretary of State's decision about conversion comes into effect is provided for in regulation 13, and regulations 14 and 15 set out the consequences that follow from the decision. Where the decision is that a person's award (or awards) do qualify for conversion, regulation 14 converts them into a single award of employment and support allowance. Where the decision is that a person's existing award (or awards) do not qualify, regulation 15 provides that the award (or awards) terminate immediately before the effective date of the conversion decision. Part 3 of, and Schedules 2 and 3 to, the Regulations set out the framework which has effect in relation to any person with effect from the effective date of their conversion decision under Part 2 of the Regulations. In relation to any matter to be determined in connection with a person's entitlement to an employment and support allowance (including a decision not to convert an award), regulation 16 and Schedules 2 and 3 cross-apply the enactments that already have effect in relation to an employment and support allowance made on a claim. This includes provision for revision, supersession and appeals in connection with conversion decisions which have come into effect. There are modifications of these enactments in Schedule 2. Regulation 17 makes provision about where the Secretary of State is notified of any change of circumstances occurring before the effective date of a conversion decision. Regulations 18 to 20 set out the circumstances in which the amount is to be reduced. Regulation 21 provides for termination when the amount is reduced to nil, when the person ceases to be entitled to an employment and support allowance or 5th April 2020 (whichever occurs first).

Part 4 of the Regulations contains miscellaneous provisions, including provision in regulation 24 which revokes the saving in regulation 2(2)(a), (b) and (c) of the Employment and Support Allowance (Transitional Provisions) Regulations 2008. This saving enables a person previously entitled to incapacity benefit, severe disablement allowance or income support on grounds of disability to make a repeat (linked) claim for that benefit in certain circumstances, rather than having to make a new claim for employment and support allowance. The revocation of this saving comes into force on 31st January 2011.

Regulation 25 revokes regulation 31 of the 2008 Regulations which provides that a claimant who claims a jobseeker's allowance and is able to show a reasonable prospect of obtaining employment is throughout that claim to be treated as not having limited capability to work. Regulation 25 also amends regulation 144 of the 2008 Regulations so that a person does not have to serve a period of waiting days in relation to a new claim for employment and support allowance if that person would have benefited from the saving revoked by regulation 24 if they had made a claim before 31st January 2011.

Schedule 4 provides for consequential amendments to two pieces of secondary legislation. Schedule 5 provides for amendments to legislation relating to housing benefit and council tax benefit which complement the conversion process. Parts 1 and 2 make amendments to the Housing Benefit Regulations 2006 and the Council Tax Benefit Regulations 2006 respectively, providing for a transitional addition to a claimant's applicable amount where the claimant or the claimant's partner has had an award of benefit converted to an employment and support allowance in accordance with these Regulations or is appealing a decision not to convert an award to an employment and support allowance. Part 3 of Schedule 5 amends the Decisions and Appeals Regulations to make provision for the supersession of awards of housing benefit or council tax benefit to take account of conversion decisions.

These Regulations have no impact on the private or voluntary sectors. An assessment of the impact the original Regulations would have had on the public sector was made. As there has been no change of substance between these Regulations and the original Regulations, the assessment made for the original Regulations applies equally to these Regulations.

Copies of this impact assessment are available in the libraries of both Houses of Parliament, and may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 6B Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.

Changes to legislation:

There are currently no known outstanding effects for the The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010.