
STATUTORY INSTRUMENTS

2010 No. 1907

The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010

PART 2

CONVERSION DECISIONS

The notice commencing the conversion phase

4.—(1) Subject to paragraph (5), the Secretary of State may at any time issue a notice to any person who is entitled to an existing award.

(2) Any person to whom such a notice is issued is referred to in these Regulations as a notified person.

(3) The notice must inform the notified person—

- (a) that an existing award is to be converted into an award of an employment and support allowance if certain conditions are satisfied;
- (b) that, if those conditions are not satisfied, the existing award will not be converted and will terminate by virtue of these Regulations;
- (c) of the requirements that must be met in order to satisfy those conditions; and
- (d) of such other matters as the Secretary of State considers appropriate.

(4) The issue of the notice to a notified person begins the conversion phase in relation to that person, with effect from the date of issue.

(5) No notice may be issued to any person—

- (a) who reaches pensionable age at any time before 6th April 2014; or
- (b) at any time when payment of the existing award to the person is subject to adjustment under regulation 4 of the Social Security (Transitional Payments) Regulations 2009⁽¹⁾ (adjustment of subsequent payments following an adjusting payment of benefit).

(6) Where a person is entitled to—

- (a) an existing award of incapacity benefit or severe disablement allowance; and
- (b) an existing award of income support,

the notice issued to the person under this regulation shall have effect in relation to both such awards.

Deciding whether an existing award qualifies for conversion

5.—(1) In relation to the existing award or awards to which a notified person (“P”) is entitled, the Secretary of State must, except where paragraph (8)(a) applies, make a conversion decision in accordance with these Regulations.

(2) A conversion decision is—

- (a) a decision that P’s existing award or awards qualify for conversion into an award of an employment and support allowance in accordance with regulation 7 (qualifying for conversion); or
- (b) a decision that P’s existing award or awards do not qualify for conversion into an award of an employment and support allowance.

(3) A notice of a conversion decision under paragraph (2)(a) must specify the amount of an employment and support allowance to which P is entitled on the effective date (subject to any relevant deductions).

(4) The amount referred to in paragraph (3) is to be determined in accordance with regulation 8 (amount of an employment and support allowance on conversion).

(5) The Secretary of State must notify P of the Secretary of State’s conversion decision.

(6) The conversion phase ends in relation to P—

- (a) immediately before the effective date of the conversion decision notified to P; or
- (b) if earlier, when P’s entitlement to the award or awards to which the notice under regulation 4 (notice commencing the conversion phase) relates otherwise ceases to be subject to conversion (because entitlement to the award has terminated or for some other reason).

(7) The effective date of any conversion decision is to be determined in accordance with regulation 13 (effective date of a conversion decision).

(8) In the event that P’s entitlement to an existing award ceases to be subject to conversion (for example, because P’s entitlement to an award of income support has ceased to fall within paragraph (c) of the definition of “existing award” in paragraph 11 of Schedule 4 to the 2007 Act)—

- (a) before a conversion decision is made, the Secretary of State must notify P that the conversion phase has ended without a conversion decision being made; or
- (b) after the making of a conversion decision but before its effective date, the Secretary of State must notify P that the conversion decision shall not come into effect.

(9) On the giving of a notice under paragraph (8)(b), the conversion decision to which it relates shall lapse with immediate effect.

Application of certain enactments for purpose of making conversion decisions

6.—(1) The enactments listed in paragraph (2) apply, subject to the modifications specified in Schedule 1, for the purposes of—

- (a) enabling the Secretary of State to make in relation to any person a conversion decision under this Part; and
- (b) providing for the revision of such decisions at any time before the effective date.

(2) The listed enactments are—

- (a) Part 1 of the 2007 Act;
- (b) the 2008 Regulations;

- (c) regulation 32(1) and (1A) of the Social Security (Claims and Payments) Regulations 1987(2) (information to be given);
- (d) Chapter 2 of Part 1 of the Social Security Act 1998(3) (social security decisions and appeals); and
- (e) the Social Security and Child Support (Decisions and Appeals) Regulations 1999(4).

(3) In the application of the enactments listed in paragraph (2)(d) and (e), the conversion decision is to be treated as if it were a decision as to a person's entitlement to an employment and support allowance which had been made on a claim.

Qualifying for conversion

7. For the purposes of regulation 5(2)(a) (deciding whether an existing award qualifies for conversion), an existing award or awards to which a notified person is entitled qualify for conversion into an award of an employment and support allowance only if the person satisfies the basic conditions set out in section 1(3)(a) to (d) and (f) of the 2007 Act.

Amount of an employment and support allowance on conversion

8. For the purposes of regulation 5(3), the amount of an employment and support allowance to which a notified person is entitled shall be determined as follows.

Step 1

Determine in accordance with Part 1 of the 2007 Act and the 2008 Regulations the amount (if any) of an employment and support allowance to which the notified person would be entitled if, on a claim made by that person—

- (a) it had been determined that the person was entitled to an award of an employment and support allowance; and
- (b) the assessment phase had ended.

Step 2

Determine in accordance with regulations 9 to 12—

- (c) whether the notified person is entitled to a transitional addition; and
- (d) if so, the amount of the transitional addition.

Step 3

Aggregate the amounts (if any) which result from Steps 1 and 2.

Determining entitlement to a transitional addition

9.—(1) In relation to any notified person whose existing award or awards qualify for conversion into an employment and support allowance—

- (a) the person's entitlement (if any) to a transitional addition; and
- (b) the amount of any such transitional addition,

are to be determined in accordance with regulation 10(2) (transitional addition: incapacity benefit or severe disablement allowance) or 11(2) (transitional addition: income support).

(2) The amount of transitional addition to which a notified person is entitled is subject to reduction in accordance with regulations 18 to 20.

(2) S.I. 1987/1968. Regulation 32(1) and (1A) were substituted by S.I. 2003/1050.

(3) 1998 c. 14.

(4) S.I. 1999/991.

(3) The entitlement of a notified person to any transitional addition terminates in accordance with regulation 21 (termination of transitional addition).

Transitional addition: incapacity benefit or severe disablement allowance

10.—(1) This regulation applies to any notified person who is entitled to an existing award of incapacity benefit or severe disablement allowance (and for these purposes it is irrelevant whether the person is also entitled to any existing award of income support).

(2) In any case falling within paragraph (1)—

- (a) the notified person shall be entitled to a transitional addition if Amount A exceeds Amount B; and
- (b) the amount of transitional addition to which the notified person is entitled under this paragraph shall be equal to the amount of any such excess.

(3) Amount A is the amount of the weekly rate of the existing award applicable to the notified person.

(4) To calculate Amount B—

- (a) take the amount prescribed under paragraph (2) of regulation 67 of the 2008 Regulations (prescribed amounts for purpose of calculating a contributory allowance) which is applicable to the notified person; and
- (b) add the amount of the applicable component determined in accordance with regulation 12(5).

(5) In paragraph (3), the reference to the weekly rate of an existing award applicable to the notified person is to—

- (a) in the case of incapacity benefit, the weekly rate payable—
 - (i) under section 30B(2), (6) or (7) of the Contributions and Benefits Act(5) (incapacity benefit: rate),
 - (ii) under section 40(5) or 41(4) of the Contributions and Benefits Act(6) (long-term incapacity benefit for widows and for widowers),
 - (iii) by virtue of regulation 11(4) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995(7) (former sickness benefit), or
 - (iv) by virtue of regulation 17(1) of those Regulations (former invalidity benefit); or
- (b) in the case of severe disablement allowance, the weekly rate payable under sections 68(7) and 69(1) of the Contributions and Benefits Act (as they have effect by virtue of article 4 of the Welfare Reform and Pensions Act 1999 (Commencement No.9 and Transitional and Savings Provisions) Order 2000(8)).

Transitional addition: income support

11.—(1) This regulation applies to any notified person who is entitled to an existing award of income support (and for these purposes it is irrelevant whether the person is also entitled to any existing award of incapacity benefit or severe disablement allowance).

(2) In any case falling within paragraph (1)—

(5) 1992 c. 4. “Contributions and Benefits Act” is defined in section 65 of the Welfare Reform Act 2007. Section 30B was inserted by section 2(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18) and is to be repealed by paragraph 9(5) of Schedule 3 to the Welfare Reform Act 2007.

(6) Sections 40 and 41 were substituted by paragraphs 8 and 9 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994. They are to be repealed by Schedule 8 to the Welfare Reform Act 2007.

(7) S.I. 1995/310.

(8) S.I. 2000/2958 (C. 89).

- (a) the notified person shall be entitled to a transitional addition if Amount C exceeds Amount D; and
 - (b) the amount of transitional addition to which the notified person is entitled under this paragraph shall be equal to the amount of any such excess.
- (3) To calculate Amount C—
- (a) take the notified person’s weekly applicable amount under regulation 17 or 18 of, and Schedule 2 to, the Income Support (General) Regulations 1987⁽⁹⁾ (applicable amounts);
 - (b) disregard any amount determined in accordance with (as the case may be) regulation 17(1)(e) or 18(1)(f) of, and Schedule 3 to, those Regulations (housing costs); and
 - (c) disregard any amount included in the person’s applicable amount—
 - (i) under regulation 17(1)(b), (c) or (d) of those Regulations⁽¹⁰⁾ in respect of a child or young person who is a member of the notified person’s family, or
 - (ii) under regulation 18(1)(b), (c), (d) or (e) of those Regulations in respect of a child or young person who is a member of the same household as the notified person,as those provisions have effect by virtue of regulations 1 and 7 of the Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendment) Regulations 2003⁽¹¹⁾.
- (4) To calculate Amount D—
- (a) take the amount prescribed under regulation 67(1) or 68(1) of the 2008 Regulations (prescribed amounts for purpose of calculating an income-related allowance) which is applicable to the notified person;
 - (b) disregard any amount determined in accordance with (as the case may be) regulation 67(1)(c) or 68(1)(d) (housing costs) of the 2008 Regulations; and
 - (c) add the amount of the applicable component determined in accordance with regulation 12⁽⁵⁾ of these Regulations.

Regulations 10 and 11: supplementary

12.—(1) This regulation has effect for the purposes of applying regulations 10 and 11 in relation to any notified person.

- (2) Subject to paragraphs (3) and (4)—
- (a) Amounts A and C are to be calculated in respect of the benefit week which ends immediately before the effective date of the notified person’s conversion decision; and
 - (b) Amounts B and D are to be calculated in respect of the benefit week the first day of which is the effective date of the notified person’s conversion decision.
- (3) Where—
- (a) by virtue of an order made under section 150 of the Administration Act (annual up-rating of benefits), there is an increase in—

(9) S.I. 1987/1967. Regulation 17 was amended by S.I. 1988/910 and 1445, 1989/1678, 1991/387, 1992/3147, 1996/206, 2003/455 and 1121, 2005/2687 and 2006/588. Regulation 18 was amended by S.I. 1988/1228 and 1445, 1989/1034, 1992/3147, 1996/206, 2001/3767, 2003/455 and 1121 and 2006/588.

(10) Regulations 17(1)(b) and (c) and 18(1)(c) and (d) of, and paragraphs 2, 3 and 6(1)(c) of Schedule 2 to, the Income Support (General) Regulations 1987 (“the 1987 Regulations”) (amounts for child or young person, family premium and disabled child premium) were revoked by S.I. 2003/455. Paragraph 13A(b) and (2)(a) of the 1987 Regulations (which provide for enhanced disability premium) were also amended by S.I. 2003/455 so as to exclude children or young persons from the list of persons to whom such premiums may relate. The revocations and amendments are subject to savings in accordance with regulations 1 and 7 of S.I. 2003/455, as amended by regulation 2(2) of S.I. 2005/2294.

(11) S.I. 2003/455.

- (i) the weekly rate which, in accordance with regulation 10(3) (transitional addition: incapacity benefit or severe disablement allowance), is to be used to calculate Amount A, or
 - (ii) the applicable amount which, in accordance with regulation 11(3) (transitional addition: income support), is to be used to calculate Amount C; and
- (b) that increase takes effect from any day in the benefit week referred to in paragraph (2)(b), the calculation of Amount A or C is to be made using the increased weekly rate or applicable amount (as the case may be).

(4) Where—

- (a) there is a change of circumstances in relation to a notified person which, but for sub-paragraph (b), would have resulted in an increase or decrease of the weekly rate or applicable amount referred to in paragraph (3)(a)(i) or (ii); and
- (b) that increase or decrease would have taken effect from any day in the benefit week referred to in paragraph (2)(b),

the calculation of Amount A or C is to be made using the weekly rate or applicable amount (as the case may be) which would have been payable in respect of the existing award if it had not been subject to conversion under these Regulations.

(5) The “applicable component”, in relation to the notified person, means—

- (a) the work-related activity component, if it has been determined in accordance with the enactments applied by regulation 6 (application of certain enactments for purpose of making conversion decisions) that the notified person does not have and is not to be treated as having limited capability for work-related activity; or
- (b) the support component, if it has been determined in accordance with those enactments that the notified person has or is to be treated as having limited capability for work-related activity.

The effective date of a conversion decision

13.—(1) For the purposes of determining the date on which a conversion decision takes effect in relation to any notified person—

- (a) take the date on which the person is notified of the conversion decision; and
- (b) unless paragraph (2) applies, determine the first complete fortnightly period in respect of which the person’s existing benefit is payable after that date,

and the effective date of the person’s conversion decision is the first day of the benefit week immediately following the end of the fortnightly period referred to in sub-paragraph (b).

(2) Where existing benefit is payable to the notified person in respect of a period other than a fortnight—

- (a) determine the second complete benefit week in respect of which the person’s existing benefit is payable after the date on which the person is notified of the conversion decision; and
- (b) the effective date of the person’s conversion decision is the first day of the benefit week immediately following the end of that second complete benefit week.

(3) “Existing benefit”, in relation to a notified person, means the benefit in respect of the person’s existing award or awards.

Conversion decision that existing award qualifies for conversion

14.—(1) Paragraphs (2) and (3) apply in any case where the conversion decision is a decision that a notified person’s (“P”) existing award or awards qualify for conversion into an employment and support allowance.

(2) On the effective date of the conversion decision—

- (a) P’s existing award; or
- (b) both of P’s existing awards (as the case may be),

are by virtue of this paragraph converted into, and shall have effect on and after that date as, a single award of an employment and support allowance of such amount as is specified in the conversion decision.

(3) Where immediately before the effective date of the conversion decision, any relevant deduction was made from the existing award or awards, an equivalent deduction shall be made from the employment and support allowance to which P is entitled by virtue of these Regulations.

(4) Paragraphs (2) and (3) are subject to regulation 17.

Conversion decision that existing award does not qualify for conversion

15.—(1) Subject to paragraph (4), paragraphs (2) and (3) apply in any case where the conversion decision is a decision that a notified person’s (“P”) existing award or awards do not qualify for conversion into an employment and support allowance.

(2) P’s entitlement to one or both of—

- (a) an existing award of incapacity benefit or severe disablement allowance; or
- (b) an existing award of income support (being an award made to a person incapable of work or disabled),

shall terminate by virtue of this paragraph immediately before the effective date of P’s conversion decision.

(3) Where, immediately before that date, P is entitled to be credited with any earnings under regulation 8B(2)(a) of the Social Security (Credits) Regulations 1975(12) (credits for incapacity for work), P shall not be entitled to be so credited under that regulation on or after that date.

(4) Paragraph (5) applies where—

- (a) a conversion decision within the meaning of regulation 5(2)(b) (“the earlier conversion decision”) is made by virtue of either of the following provisions of the 2008 Regulations (as they apply by virtue of regulation 6)—
 - (i) regulation 22(1) (failure to provide information or evidence requested in relation to limited capability for work), or
 - (ii) regulation 23(2) (failure to attend for a medical examination to determine whether the claimant has limited capability for work); and
- (b) after P is notified of the earlier conversion decision, the Secretary of State is satisfied (or where the conversion decision is appealed to the First-tier Tribunal, that tribunal determines) that P had good cause for failing to—
 - (i) provide the information requested, or
 - (ii) attend for or submit to the medical examination for which P was called.

(5) Where this paragraph applies—

- (a) the earlier conversion decision is treated as never having been made;

- (b) any entitlement of P–
 - (i) to an existing award which was terminated by virtue of paragraph (2), or
 - (ii) to be credited with earnings which was terminated by virtue of paragraph (3),shall be reinstated with effect from the effective date of the earlier conversion decision;
- (c) the Secretary of State must make a conversion decision (“the new conversion decision”) in accordance with regulation 5 (deciding whether an existing award qualifies for conversion) in relation to the existing award or awards to which P is entitled;
- (d) the notice issued under regulation 4 (notice commencing the conversion phase) has effect in relation to that existing award or those existing awards; and
- (e) with the exception of regulation 4 (notice commencing the conversion phase), the remaining provisions of this Part, including this regulation, apply to the new conversion decision.
- (6) Paragraphs (2) and (3) are subject to regulation 17 (changes of circumstances before the effective date).