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STATUTORY INSTRUMENTS

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**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**

**Conversion decision that existing award does not qualify for conversion**

**15.**—(1) [<sup>F1</sup>Subject to paragraphs (2A) and (4), paragraphs (2), (3) and (6) 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.

[<sup>F2</sup>(2A) Where P—

- (a) has an existing award of income support, and
- (b) would, on the effective date of P's conversion decision, remain entitled to income support (by virtue of another provision of the Income Support (General) Regulations 1987) were P not a person to whom regulations 6(4)(a) or 13(2)(b) or (bb) of, or paragraph 7(a) or (b), 10, 12 or 13 of Schedule 1B to, those Regulations (persons incapable of work or disabled) applied,

P's existing award of income support shall only terminate under paragraph (2)(b) if P notifies the Secretary of State before the effective date of P's conversion decision that P does not wish to remain entitled to income support on that date.

(2B) Where paragraph (2A) applies, and P's existing award of income support does not terminate under paragraph (2)(b), any entitlement of P to a disability premium by virtue of paragraph 12(1)(b) of Schedule 2 to the Income Support (General) Regulations 1987 (additional condition for the higher pensioner and disability premiums) shall terminate immediately before the effective date of P's conversion decision.]

(3) Where, immediately before [<sup>F3</sup>the effective date of P's conversion decision], P is entitled to be credited with any earnings under regulation 8B(2)(a) of the Social Security (Credits) Regulations 1975 <sup>M1</sup> (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.
- [<sup>F4</sup>(6) Where—
- (a) paragraph (2) applies; and
  - (b) P is a member of a joint-claim couple,
- any entitlement of that couple to a disability premium by virtue of paragraph 20H(1)(b) or (d) of Schedule 1 to the Jobseeker’s Allowance Regulations 1996 (additional conditions for higher pensioner and disability premium: severe disablement allowance or incapacity benefit) shall terminate immediately before the effective date of P’s conversion decision.
- (7) In this regulation—
- (a) paragraphs (2), (2A), (3) and (6) are subject to regulation 17 (changes of circumstances before the effective date); and
  - (b) “joint-claim couple” has the same meaning as in section 1(4) of the Jobseekers Act 1995.]

#### Textual Amendments

- F1** Words in [reg. 15\(1\)](#) substituted (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\(2\)](#), **8(2)**

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**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, Section 15. (See end of Document for details)*

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- F2** Reg. 15(2A) - Reg. 15(2B) inserted (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), **8(3)**
- F3** Words in reg. 15(3) substituted (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), **8(4)**
- F4** Reg. 15(6)(7) substituted for reg. 15(6) (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), **8(5)**

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**Marginal Citations**

- M1** S.I. 1975/556. Regulation 8B was inserted by SI 1996/2367 and amended by S.I. 2008/1554.

**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, Section 15.