
STATUTORY INSTRUMENTS

2010 No. 2430

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

Migration Regulations: amendment of regulation 10

6.—(1) Regulation 10 of the Migration Regulations (transitional addition: incapacity benefit or severe disablement allowance) is amended as follows.

(2) In paragraph (5)—

(a) for sub-paragraph (a), substitute—

“(a) in the case of incapacity benefit, the weekly rate payable—

- (i) under section 30B(2), (6) or (7) (subject to any deduction made in accordance with section 46(3) of the Pension Schemes Act 1993⁽¹⁾) of the Contributions and Benefits Act⁽²⁾ (incapacity benefit: rate),
- (ii) under section 40(5) or 41(4) of that Act⁽³⁾ (long-term incapacity benefit for widows and for widowers),
- (iii) under section 80, 81 or 86A of that Act⁽⁴⁾ (incapacity benefit: beneficiary’s dependent children; restrictions on increase – child not living with beneficiary etc; and increases for adult dependants),
- (iv) by virtue of regulation 11(4) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995⁽⁵⁾ (former sickness benefit), or
- (v) by virtue of regulations 17(1) (transitional awards of long-term incapacity benefit) or 17A (awards of incapacity benefit in cases where periods of interruption of employment and periods of incapacity for work link) of those Regulations⁽⁶⁾; or”;

(b) in sub-paragraph (b), for “sections 68(7) and 69(1)” substitute “sections 68(7), 69(1) and 90(7)”.

(3) After paragraph (5), add—

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- (1) 1993 c. 48. Section 46(3) was substituted by paragraph 56(4) of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 (c. 18) and is to be repealed by Schedule 8 to the Welfare Reform Act 2007
 - (2) 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 Section 30B was inserted by section 2(1) of the Social Security (Incapacity for Work) Act 1994 and is to be repealed by paragraph 9(5) of Schedule 3 to the Welfare Reform Act 2007.
 - (3) 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 They are to be repealed by Schedule 8 to the Welfare Reform Act 2007.
 - (4) Sections 80 and 81 were repealed by section 60 of, and Schedule 6 to, the Tax Credits Act 2002 (c. 21) but those sections were continued in force in certain cases by virtue of S.I. 2003/938, article 3. Section 86A was inserted by section 2(5) of the Social Security (Incapacity for Work) Act 1994. This section is to be repealed by Schedule 8 to the Welfare Reform Act 2007.
 - (5) S.I. 1995/310.
 - (6) Regulation 17A was inserted by S.I. 1995/987, regulation 3(3).
 - (7) Section 90 was repealed but continued with savings by virtue of article 4 of S.I. 2000/2958. The remaining provisions of section 90 (in relation to carer’s allowance) were repealed on 6th April 2010 with savings by section 15 of the Welfare Reform Act 2009.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“(6) Subject to paragraph (7), in determining the weekly rate of incapacity benefit or severe disablement allowance for the purposes of paragraph (5) the following amounts shall be disregarded—

- (a) any relevant deduction within the meaning of regulation 2(1) (interpretation); and
- (b) any other deduction relating to the existing award which is made by virtue of the Contributions and Benefits Act, the Administration Act or any other Act which is amended by Schedule 3 to the 2007 Act, the Social Security (Incapacity for Work) Act 1994 or by virtue of regulations made under those Acts.

(7) Where any of the enactments referred to in paragraph (6)(b) provide for an additional amount of incapacity benefit or severe disablement allowance to be payable in prescribed circumstances (such as an increase for an adult dependant) but that additional amount is reduced or not payable in relation to P (such as where the dependant has earnings in excess of the standard amount of an increase), in determining the weekly rate of incapacity benefit or severe disablement allowance, only the reduced additional amount (if any) is to be taken into account.”.