
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make a number of amendments to social security legislation consequential on sections 1A and 1B of the Welfare Reform Act 2007 (“the 2007 Act”). Those sections are inserted by sections 51 and 52 of the Welfare Reform Act 2012, respectively. Section 1A provides for the time-limiting of an award of contributory employment and support allowance (“ESA”) to 365 days (except where the claimant is in the support group). Section 1B provides for further entitlement to contributory ESA where a claimant’s entitlement to contributory ESA has ended as a result of section 1A, they satisfy the basic conditions of entitlement to ESA (contained in section 1(3) of the 2007 Act) and they have (or are treated as having) limited capability for work-related activity (i.e. they are in the support group).

Regulation 1 provides for the citation and commencement of these Regulations. In particular, these Regulations will come into force on 1st May 2012 to coincide with the commencement by order of sections 51 and 52 of the Welfare Reform Act 2012.

Regulation 2 amends the Social Security (Credits) Regulations 1975 (S.I. 1975/556) to add a new ground by which entitlement to national insurance credits on the grounds of limited capability for work is established, so as to include where a person would have been entitled to an award of contributory ESA but for the application of section 1A of the 2007 Act.

Regulation 3(2) amends the definition of “chronically sick or mentally or physically disabled” in regulation 13 of the Income Support (General) Regulations 1987 (S.I. 1987/1967) (“the Income Support Regulations”) so as to include a person who would be entitled to an award of contributory ESA but for the application of section 1A of the 2007 Act. (Under regulation 13 there is entitlement to income support for certain full-time students whose parents – or person acting in their place – are chronically sick or mentally or physically disabled.)

Regulation 3(3) amends the definition of “disabled person” in Schedule 3 to the Income Support Regulations so as to include a person who would be entitled to an award of contributory ESA but for the application of section 1A of the 2007 Act. (Under Schedule 3, particular housing costs rules apply to loans taken out for accommodation which is more suitable for the needs of a disabled person.) Similar changes are made in relation to jobseeker’s allowance, state pension credit and employment and support allowance by regulations 4, 6 and 9(4) of these Regulations respectively.

Regulation 5 amends the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I. 1999/991) to insert a new paragraph (5I) into regulation 3 of those Regulations. Regulation 3(5I) enables the Secretary of State to revise a decision terminating a person’s entitlement to an award of contributory ESA under section 1A of the 2007 Act where it is subsequently determined, in relation to the period of entitlement before that decision, that the person had or is treated as having had limited capability for work-related activity.

Regulations 7 and 8 amend the Housing Benefit Regulations 2006 (S.I. 2006/213) and the Council Tax Benefit Regulations 2006 (S.I. 2006/215) respectively, so as to provide that in relation to the determination of the applicable amount for those benefits, entitlement to an award of contributory ESA that would have existed but for the effect of time-limiting is also taken into account.

Regulation 9 amends the Employment and Support Allowance Regulations 2008 (S.I. 2008/794) so that where a claimant becomes entitled to a further award of ESA by virtue of section 1B of the 2007 Act (i) they are entitled to the support component of an ESA award without the assessment phase

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having to end first (paragraph (2)) and (ii) they do not have to serve 3 ‘waiting days’ at the beginning of the period of limited capability for work (paragraph (3)).

Regulation 10 makes amendments to the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (S.I. 2010/1907) (“the Reassessment Regulations”). Paragraph (2) amends regulation 7 of those Regulations to provide that an existing award (i.e. of incapacity benefit, severe disablement allowance or income support on the grounds of incapacity) qualifies for conversion into an award of ESA where (i) a person entitled to that existing award had also been entitled to an award of ESA not by virtue of the Reassessment Regulations (i.e. if the person had claimed ESA whilst appealing a negative outcome of a personal capability assessment) and (ii) that award of ESA had ended because of the application of section 1A of the 2007 Act. In such a case the person is treated as having satisfied the condition of entitlement to ESA of having a limited capability for work so does not have to go through any further assessment for the purpose of conversion.

Paragraph (3) amends regulation 21 of the Reassessment Regulations by providing for a new case where the termination of a transitional addition (by virtue of the termination of an award of ESA because of the application of section 1A of the 2007 Act) has effect as a suspension instead. This means that re-entitlement to a transitional addition will only arise where (i) there has been a subsequent claim made by a person within the 12 week linking period starting with the ending of the previous period of limited capability for work and (ii) it is determined in relation to the subsequent claim that the person has or is treated as having limited capability for work-related activity.

Paragraph (4) modifies the application of section 1A of the 2007 Act in relation to awards of ESA made to persons previously entitled to existing awards. In such cases, a person in receipt of an existing award of incapacity benefit or severe disablement allowance does not have to satisfy the contribution conditions in order to qualify for a contributory allowance. Accordingly the maximum period of entitlement is to be determined by reference to days of entitlement arising under the Reassessment Regulations, rather than by virtue of satisfying the contribution conditions. Modified section 1A(3) provides that, in order to be entitled to a further contributory allowance after the 365 day period has elapsed, that person will have to satisfy the first and second conditions for contributory ESA as set out in paragraphs 1 and 2 of Schedule 1 to the 2007 Act.

The regulations contained in this instrument are either made by virtue of, or are consequential upon, sections 51 and 52 of the Welfare Reform Act 2012. This instrument is made before the expiry of the period of 6 months beginning with the coming into force of those provisions. The regulations in it are therefore exempt in accordance with section 173(5) of the Social Security Administration Act 1992 from the requirement in section 172(1) of that Act to refer proposals to make Regulations to the Social Security Advisory Committee and are made without reference to that Committee.

A full impact assessment has not been published for this instrument as it has no impact on the private sector or civil society organisations.