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STATUTORY INSTRUMENTS

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**2013 No. 1511**

**The Welfare Reform Act 2012 (Commencement No. 11 and Transitional and Transitory Provisions and Commencement No. 9 and Transitional and Transitory Provisions (Amendment)) Order 2013**

**Transition from new style ESA to old style ESA**

- 9.—(1) Paragraph (2) applies in relation to a case where—
- (a) (i) a person makes, or is treated as making, a claim for an employment and support allowance;
  - (ii) Part 1 of the 2007 Act as it has effect apart from the provisions of Schedule 3, and Part 1 of Schedule 14, to the Act that remove references to an income-related allowance, applies in relation to the claim; and
  - (iii) the claim is made or treated as made on or after 1st July 2013; or
- (b) (i) a person has a new style ESA award and article 6(2) of the No. 9 Order applies in relation to the award (which award therefore continues as an old style ESA award); and
- (ii) the first day on which the person in question is entitled to an employment and support allowance under the old style ESA award occurs on or after 1st July 2013.
- (2) Where this paragraph applies, article 11 of the No. 9 Order is amended as follows—
- (a) for the title substitute “Transition from new style ESA”;
  - (b) for paragraph (1) substitute—
    - “(1) This article applies where a person—
      - (a) makes, or is treated as making, a claim for an employment and support allowance and Part 1 of the 2007 Act, as it has effect apart from the provisions of Schedule 3, and Part 1 of Schedule 14, to the Act that remove references to an income-related allowance, applies in relation to the claim; or
      - (b) has a new style ESA award and article 6(2) applies in relation to the award (which award therefore continues as an old style ESA award),
- and, in the case of sub-paragraph (a), the condition referred to in paragraph (1A) is satisfied.
- (1A) The condition is that—
- (a) the person previously made, or was treated as having made, a claim for an employment and support allowance and, under article 4, Part 1 of the 2007 Act, as amended by the provisions of Schedule 3, and Part 1 of Schedule 14, to the Act that remove references to an income-related allowance, applied in relation to the claim;
  - (b) a notice was issued to the person under regulation 4 of the 2010 Transitional Regulations and, under article 4, Part 1 of the 2007 Act, as amended by the

provisions of Schedule 3, and Part 1 of Schedule 14, to the Act that remove references to an income-related allowance, applied in relation to the notice; or

(c) the person previously—

(i) had an old style ESA award immediately before the appointed day in relation to a case of a claim for universal credit referred to in article 4(2) (a) to (d) (and any award made in respect of the claim), or an award of universal credit referred to in article 4(2)(e) or (f); and

(ii) the old style ESA award consisted of or included a contributory employment and support allowance (which allowance therefore continued as a new style ESA award).”;

(c) after paragraph (2)(g), omit “and” and insert—

“(ga) in regulation 45(10) (exempt work), the reference to an employment and support allowance included a reference to a new style ESA award;

(gb) in regulation 144(2)(a) (waiting days), where the claimant was entitled to a new style ESA award with effect from the first day of a period of limited capability for work by virtue of regulation 85(2)(a) of the ESA Regulations 2013 and, with effect from the second or third day of that period, that award continued as an old style ESA award in the circumstances referred to in paragraph (1)(c) of this article, the reference to an employment and support allowance included a reference to the new style ESA award.”;

(d) after paragraph (2)(h), insert—

“(i) in regulation 152 (short absence), where—

(i) a claimant had a new style ESA award in the circumstances referred to in paragraph (1)(b) of this article;

(ii) a temporary absence from Great Britain commenced when regulation 89 of the ESA Regulations 2013 applied to the claimant; and

(iii) the first 4 weeks of the temporary absence had not ended immediately before the first day of entitlement to the old style ESA award,

the initial words of regulation 152 included a reference to the claimant being entitled to the old style ESA award during the remainder of the first 4 weeks of the temporary absence that commenced when regulation 89 of the ESA Regulations 2013 applied to the claimant;

(j) in regulation 153 (absence to receive medical treatment)—

(i) a claimant had a new style ESA award in the circumstances referred to in paragraph (1)(b) of this article;

(ii) a temporary absence from Great Britain commenced when regulation 90 of the ESA Regulations 2013 applied to the claimant; and

(iii) the first 26 weeks of the temporary absence had not ended immediately before the first day of entitlement to the old style ESA award,

the initial words of paragraph (1) of regulation 153 included a reference to the claimant being entitled to the old style ESA award during the remainder of the first 26 weeks of the temporary absence that commenced when regulation 90 of the ESA Regulations 2013 applied to the claimant;

(k) in regulation 157 (disqualification for misconduct etc)—

(i) in paragraph (3), for “Paragraph (2) does” there were substituted “Paragraphs (2) and (4) do”; and

(ii) after paragraph (3) there were inserted—

“(4) Subject to paragraph (3), a claimant is to be disqualified for receiving an employment and support allowance for any period determined by the Secretary of State under regulation 93(2) of the Employment and Support Allowance Regulations 2013 less any days during that period on which those Regulations applied to the claimant.

(5) Where paragraph (4) applies to a claimant, paragraph (2) is not to apply to that claimant with respect to any matter referred to in paragraph (1) that formed the basis for the claimant’s disqualification under regulation 93(2) of the Employment and Support Allowance Regulations 2013.”; and

(l) in regulation 159 (treating a claimant as not having limited capability for work), the existing words became paragraph (1) and—

(i) at the beginning of paragraph (1), there were inserted “Subject to paragraph (2),”; and

(ii) after paragraph (1), there were inserted—

“(2) A claimant is to be treated as not having limited capability for work if—

(a) under Part 1 of the Act as amended by the provisions of Schedule 3, and Part 1 of Schedule 14, to the Welfare Reform Act 2012 that remove references to an income-related allowance (“the former law”), the claimant was disqualified for receiving an employment and support allowance during a period of imprisonment or detention in legal custody;

(b) Part 1 of the Act as it has effect apart from the amendments made by Schedule 3, and Part 1 of Schedule 14, to the Welfare Reform Act 2012 that remove references to an income-related allowance (“the current law”) applied to the claimant with effect from a day that occurred during the period of imprisonment or detention in legal custody referred to in sub-paragraph (a) and during the period of six weeks with effect from the day on which the claimant was first disqualified as referred to in sub-paragraph (a); and

(c) the total of—

(i) the period for which the claimant was disqualified for receiving an employment and support allowance during the period of imprisonment or detention in legal custody when the former law applied to the claimant; and

(ii) the period for which the claimant was disqualified for receiving a contributory employment and support allowance during the period of imprisonment or detention in legal custody when the current law applied to the claimant,

amounts to more than six weeks.”; and

(e) after paragraph (2) insert—

“(3) Subject to paragraph (4), where this article applies, the 2007 Act is to be read as though—

(a) the reference to a contributory allowance in section (1A)(1) and (4) to (6);

(b) the first reference to a contributory allowance in section (1A)(3); and

(c) the first reference to a contributory allowance in section 1B, included a reference to a new style ESA award.

(4) Where this article applies and the 2010 Transitional Regulations<sup>(1)</sup> apply to a person, paragraph (3)(c) becomes paragraph (3)(b) and, for paragraph (3)(a) and (b), there is substituted—

“(a) in section 1A as substituted by the 2010 Transitional Regulations—

(i) the reference to a contributory allowance in section 1A(1), (4) and (5); and

(ii) the first reference to a contributory allowance in section 1A(3); and”.

(5) Where this article applies and a claimant—

(a) had a new style ESA award in the circumstances referred to in paragraph (1)(b); and

(b) the new style ESA award had not been preceded by an old style ESA award in the circumstances referred to in paragraph (1A)(c),

section 24(2) of the 2007 Act is to be read as if the beginning of the assessment phase (subject to section 24(3)) was the first day of the period for which the claimant was entitled to the new style ESA award.”.

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<sup>(1)</sup> Section 1A is substituted for the purposes of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit)(Existing Awards)(No.2) Regulations 2010 (S.I. 2010/1907) (referred to in the No. 9 Order as “the 2010 Transitional Regulations”) by paragraph 2A of Schedule 2 to those Regulations.