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STATUTORY INSTRUMENTS

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**2013 No. 983**

**The Welfare Reform Act 2012 (Commencement  
No. 9 and Transitional and Transitory Provisions  
and Commencement No. 8 and Savings and  
Transitional Provisions (Amendment)) Order 2013**

**Limited capability for work or work-related activity: transition from old style ESA**

**10.**—(1) This article applies where—

- (a) a person is entitled to a new style ESA award and they were previously entitled to an old style ESA award that was not in existence immediately before the first day on which the person in question is entitled to the new style ESA award; or
- (b) (i) the amending provisions have come into force under article 4(1) in relation to the case of a claim for universal credit referred to in article 4(2)(b) to (d) (and any award that is made in respect of the claim) or an award of universal credit referred to in article 4(2)(e) or (f); and  
(ii) the person in question had an old style ESA award immediately before the appointed day, which consisted of or included a contributory employment and support allowance (which allowance therefore continues as a new style ESA award).

(2) Where this article applies, the ESA Regulations 2013 are to be read as if—

- (a) (i) in the definitions of “period of limited capability for work” in regulations 2 (interpretation) and 3 (further interpretation), the reference to a period throughout which a person has, or is treated as having, limited capability for work included a reference to a period throughout which the person in question had, or was treated as having, limited capability for work under the ESA Regulations 2008; and  
(ii) the reference, in the definition in regulation 2, to regulation 28 of the Claims and Payments Regulations 2013 (time within which a claim for employment and support allowance is to be made) included a reference to regulation 19 of, and Schedule 4 to, the Claims and Payments Regulations 1987 (prescribed times for claiming benefit);
- (b) in regulation 6 (the assessment phase—previous claimants)—
  - (i) any reference to an employment and support allowance included a reference to an old style ESA award; and
  - (ii) in paragraph (2)(b)(v) and (c)(iii), the reference to regulation 26 (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made) included a reference to regulation 30 of the ESA Regulations 2008 (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made)(1);

- (c) in regulation 7 (circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work-related activity component arises does not apply)—
- (i) any reference to an employment and support allowance included a reference to an old style ESA award; and
  - (ii) in paragraph (3)(b)(iv), (c)(iii), (c)(iv) and (d)(iii), the reference to regulation 26 included a reference to regulation 30 of the ESA Regulations 2008;
- (d) in regulation 11 (condition relating to youth—previous claimants), any reference to an employment and support allowance included a reference to an old style ESA award;
- (e) in regulation 15 (determination of limited capability for work)—
- (i) the reference in paragraph (7)(a) to a claimant having been determined to have limited capability for work included a reference to such a determination made under Part 5 of the ESA Regulations 2008; and
  - (ii) the reference in paragraph (7)(b) to a person being treated as having limited capability for work included a reference to a person being so treated under regulation 20 (certain claimants to be treated as having limited capability for work)(**2**), 25 (hospital patients)(**3**), 26 (claimants receiving certain regular treatment)(**4**) or 29 (exceptional circumstances)(**5**) of the ESA Regulations 2008 ;
- (f) in regulation 26 (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made)—
- (i) in paragraph (2)(b), the reference to regulation 18 (failure to provide information in relation to limited capability for work) and 19 (claimant may be called for a medical examination to determine whether the claimant has limited capability for work) included a reference to regulation 22 (failure to provide information in relation to limited capability for work)(**6**) and 23 (claimant may be called for a medical examination to determine whether the claimant has limited capability for work) of the ESA Regulations 2008; and
  - (ii) in paragraph (4)(c), the reference to regulation 18 included a reference to regulation 22 of the ESA Regulations 2008;
- (g) in regulation 30(4) (determination of limited capability for work-related activity), the reference to a determination about whether a claimant has, or is to be treated as having or not having, limited capability for work-related activity included such a determination that was made under Part 6 of the ESA Regulations 2008; and
- (h) in regulation 87(1) (claimants appealing a decision), the reference to a determination that the claimant does not have limited capability for work under the ESA Regulations 2013 included a reference to such a determination under the ESA Regulations 2008.

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(2) Regulation 20 was amended by [S.I. 2011/228](#), [2011/2425](#) and [2012/3096](#).

(3) Regulation 25 was substituted by [S.I. 2012/3096](#).

(4) Regulation 26 was amended by [S.I. 2008/2428](#) and [2012/3096](#).

(5) Regulation 29 was amended by [S.I. 2012/3096](#).

(6) Regulation 22 was amended by [S.I. 2011/2425](#).