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STATUTORY INSTRUMENTS

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**2015 No. 437**

**The Employment and Support Allowance (Repeat Assessments and Pending Appeal Awards) (Amendment) Regulations 2015**

**Amendment of the Employment and Support Allowance Regulations 2013**

4.—(1) The Employment and Support Allowance Regulations 2013(1) are amended as follows.

(2) 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)—

(a) for paragraph (2)(b) substitute—

“(b) in relation to the claimant’s entitlement to any benefit, allowance or advantage which is dependent on the claimant having limited capability for work, it has not been determined—

(i) in the last determination preceding the date of claim for an employment and support allowance, that the claimant does not have limited capability for work; or

(ii) within the 6 months preceding the date of claim for an employment and support allowance, that the claimant is to be treated as not having limited capability for work under regulation 18 or 19, unless paragraph (4) applies.”;

(b) for paragraph (3) substitute—

“(3) Paragraph 2(b) does not apply where a claimant has made and is pursuing an appeal against a relevant decision of the Secretary of State, and that appeal has not yet been determined by the First-tier Tribunal.”; and

(c) after paragraph (4) insert—

“(5) In this regulation a “relevant decision” means—

(a) a decision that embodies the first determination by the Secretary of State that the claimant does not have limited capability for work; or

(b) a decision that embodies the first determination by the Secretary of State that the claimant does not have limited capability for work since a previous determination by the Secretary of State or appellate authority that the claimant does have limited capability for work.

(6) In this regulation “appellate authority” means the First-tier Tribunal, the Upper Tribunal, the Court of Appeal, the Court of Session, or the Supreme Court.”.

(3) For regulation 87(1) (claimants appealing a decision) substitute—

“(1) This regulation applies where a claimant has made and is pursuing an appeal against a relevant decision of the Secretary of State as defined in regulation 26.”.

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**Status:** This is the original version (as it was originally made).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

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