

**EXPLANATORY MEMORANDUM TO**  
**THE EMPLOYMENT AND SUPPORT ALLOWANCE (TRANSITIONAL**  
**PROVISIONS) (AMENDMENT) REGULATIONS 2020**

**2020 No. 102**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This Statutory Instrument removes the 5 April 2020 end date for Employment and Support Allowance transitional additions from the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No.2) Regulations 2010 (the “TEA Regulations”).

2.2 The TEA Regulations ensure that no-one sees a cash loss at the point that their award is converted from an incapacity benefit to Employment and Support Allowance (ESA) by awarding a transitional addition (TA) to compensate for any difference in award as a result of the conversion. The regulations also provide for the TA to be eroded by increases in the claimant’s ESA, and stipulate that TAs will cease altogether on 5 April 2020.

2.3 This amendment removes the stipulated end date for TAs, allowing them to continue until naturally eroded to nil, the ESA claim is closed or in the case of income-related ESA, claimants’ awards are migrated to Universal Credit.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

4.1 The territorial extent of this instrument is Great Britain.

4.2 The territorial application of this instrument is Great Britain.

**5. European Convention on Human Rights**

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **6. Legislative Context**

- 6.1 The current Employment and Support Allowance transitional additions from the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No.2) Regulations 2010 (the “TEA Regulations” ensure that no-one sees a cash loss at the point their award is converted from an incapacity benefit to Employment and Support Allowance (ESA) by awarding a transitional addition (TA) to compensate for any difference in award as a result of the conversion. They also provide for the TA to be eroded by increases in the claimant’s ESA, and stipulate that TAs will cease altogether on 5 April 2020.
- 6.2 This amendment to the TEA Regulations removes the stipulated end date for TAs, allowing them to continue until naturally eroded to nil, the ESA claim is closed or in the case of income-related ESA, claimants’ awards are migrated to Universal Credit (UC).

## **7. Policy background**

### *What is being done and why?*

- 7.1 Migration of the existing awards of incapacity benefits (Incapacity Benefit, Severe Disablement Allowance and Income Support on incapacity grounds) to ESA began in October 2010. Claimants whose award of ESA was lower than their previous award when converted to ESA, were awarded a TA equal to that difference.
- 7.2 The TEA Regulations allowed for TAs to be eroded by increases in the claimant’s benefit, most commonly at the annual up-rating, or if a change in circumstances meant their benefit increased, and stipulated the protection in ESA would cease completely on 5 April 2020. Eroding a TA by any increase in their ESA applicable amounts means that claimants may see no change in their benefit income, until the value of the TA has been reduced to nil.
- 7.3 Subsequent to the TEA Regulations coming into force TAs did not erode as much as forecast. As the number estimated to be receiving a TA in 2020 is higher than forecast, the end date of April 2020 is no longer appropriate. This amendment allows the protection of TAs to continue until naturally eroded to nil, the ESA claim is closed or claims are migrated to UC.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 Informal consolidation of new instruments is available to the public free of charge via the National Archives website: <http://www.legislation.gov.uk/>.

## **10. Consultation outcome**

- 10.1 The Department consulted the Social Security Advisory Committee on this regulation change. The Committee decided at their meeting on the 24 July 2019 that under the powers conferred by Section 173(1)(b) of the Social Security Administration Act 1992, it did not need to consider these regulations further or carry out a formal consultation.

10.2 The Department has not consulted stakeholders on this minor amendment which is being made to ensure that the original Employment and Support Allowance (ESA) policy intent is met.

## **11. Guidance**

11.1 A guidance bulletin detailing these changes will be issued to decision makers in the Department for Work and Pensions in advance of this statutory instrument coming into force.

## **12. Impact**

12.1 This change does not negatively impact claimants. A full Impact Assessment has not been produced for this instrument as no, or no significant, impact on business, or the private, voluntary or public sector, is foreseen.

## **13. Regulating small business**

13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

14.1 No specific monitoring and review of ESA transitional additions will be carried out above and beyond that which is already in place as part of the Department's routine data collection.

## **15. Contact**

15.1 Kim Jones at the Department for Work and Pensions, Telephone: 020 7449 4810 or Email: [kim.jones@dwp.gov.uk](mailto:kim.jones@dwp.gov.uk) can answer any queries regarding this instrument.

15.2 James Wolfe at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Justin Tomlinson Minister for Disabled People, Health and Work at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.