

**EXPLANATORY MEMORANDUM TO**  
**THE HOUSING BENEFIT (TRANSITIONAL PROVISION) (AMENDMENT)**  
**REGULATIONS 2020**

**2020 No. 288**

**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 (ESA) transitional additions (TA) from the Housing Benefit Regulations 2006 (SI 2006/213<sup>1</sup>). This will maintain unity between the Housing Benefit (HB) and ESA regulations in relation to ESA TAs, and ensure claimants entitled to a TA who are in receipt of HB and have a TA included in their HB award will not lose this from 5 April 2020,
- 2.2 The Employment and Support Allowance (Transitional Provisions) (Amendment) Regulations 2020<sup>2</sup> (the “TP Regulations”) came into force on 27 February 2020. They made changes to ESA legislation to remove the end date of 5 April 2020 for the TA payable to claimants who were converted from incapacity benefits to ESA. The purpose of the TA is to compensate for any difference in award as a result of the conversion. These Regulations removed the TA end date, allowing the TA to continue until naturally eroded to nil, the ESA claim is closed or, in the case of income-related ESA, claimants are migrated to Universal Credit.
- 2.3 The HB regulations provide for a TA to be added to a claimant's applicable amount where the claimant or the claimant's partner has had an award of benefit converted to ESA in accordance with Regulations or is appealing a decision not to convert an award to ESA.
- 2.4 Contributory ESA (ESA(C)) is taken into account as income under HB regulations but to ensure that claimants do not see a decrease in their income, amounts equivalent to the ESA components are included in the HB award. Where an ESA claimant has a TA this is also reflected in their HB award. Those claiming income-related ESA are passported to maximum eligible HB.
- 2.5 These regulations ensure the HB Regulations align with the ESA Regulations to remove the ESA TA end date.

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

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

- 3.1 None.

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<sup>1</sup> <http://www.legislation.gov.uk/ukxi/2006/213/contents>

<sup>2</sup> <http://www.legislation.gov.uk/ukxi/2020/102/contents/made>

*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 Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No.2) Regulations 2010<sup>3</sup> (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 transitional additions (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 cease altogether on 5 April 2020.
- 6.2 The Housing Benefit Regulations 2006 (SI 2006/213) provide for a TA to be added to a claimant's applicable amount where the claimant or the claimant's partner has had an award of benefit converted to ESA in accordance with Regulations or is appealing a decision not to convert an award to ESA. This ensures that claimants do not see a decrease in their HB equivalent to the ESA TA.
- 6.3 The TP Regulations came into force on 27 February 2020. These Regulations made changes to ESA legislation to remove 5 April 2020 end date for TA. These Regulations allow the TA to continue until naturally eroded to nil, the ESA claim is closed or, in the case of income-related ESA, claimants are migrated to Universal Credit.
- 6.4 This amendment to the Housing Benefit Regulations 2006 (SI 2006/213) removes the stipulated end date for ESA 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.

**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 Employment and Support allowance (ESA) began in October 2010. Claimants whose award of ESA was lower than their previous award on incapacity benefits, were awarded a transitional addition (TA) equal to that difference.

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<sup>3</sup> <https://www.legislation.gov.uk/ukSI/2010/875/contents/made>

- 7.2 The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No.2) Regulations 2010 (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 ended them from 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. The TP Regulations which came into force on 27 February 2020 removed 5 April 2020 end date for TA. These Regulations allow the TA to continue until naturally eroded to nil, the ESA claim is closed or, in the case of income-related ESA, claimants are migrated to Universal Credit (UC).
- 7.4 Contributory ESA (ESA(C)) is taken into account as income under Housing Benefit (HB) Regulations but to ensure that claimants do not see a decrease in their income, amounts equivalent to the ESA components are included in the HB award. Where an ESA claimant has a TA this is also reflected in their HB award.
- 7.5 These Regulations remove the end date for ESA TAs in HB, 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 UC in line with ESA.
- 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 at their meeting on 4 March 2020. The Committee decided that under the powers conferred by Section 173(1)(b) of the Social Security Administration Act 1992<sup>4</sup>, it did not need to consider these regulations further or carry out a formal consultation.
- 10.2 The Department also consulted the Local Authority Associations<sup>5</sup> (LAAs) as the changes have an effect on Housing Benefit Regulations. The LAAs had no comments.
- 11. Guidance**
- 11.1 A guidance bulletin detailing these changes will be issued to Local Authority operational staff, in advance of this statutory instrument coming into force. The Department aims, where possible, to issue new guidance to HB processing staff in

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<sup>4</sup> <http://www.legislation.gov.uk/ukpga/1992/5>

<sup>5</sup> There are four LAAs representing local authorities’ interests: The Local Government Association, London Councils, Welsh Local Government Association and Convention of Scottish Local Authorities.

Local Authorities at least five weeks before a legislative change comes into effect.  
The guidance for this change will be issued as soon as the Regulations have been laid.

## **12. Impact**

- 12.1 This change does not negatively impact claimants.
- 12.2 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 Joanne Ward at the Department for Work and Pensions, Telephone: 020 7449 5039 or Email: [Joanne.Ward@dwp.gov.uk](mailto:Joanne.Ward@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 Will Quince Minister for Welfare Delivery at the Department for Work and Pensions can confirm that this explanatory memorandum meets the required standard.