

2012 No. 919

SOCIAL SECURITY

The Employment and Support Allowance
(Amendment of Linking Rules) Regulations 2012

Made - - - - 21st March 2012
Laid before Parliament 26th March 2012
Coming into force in accordance with regulation 1(2)

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(d) and (e), 135(1) and 137(1) of the Social Security Contributions and Benefits Act 1992(a), sections 9(1)(a) and 84 of the Social Security Act 1998(b) and sections 2(4), 4(2)(a) and (6), 24(1) and (2)(b) and 25(2) of, and paragraphs 1, 4 and 9 of Schedule 2 and paragraphs 1(1), 7(1) and 8(1) of Schedule 4 to, the Welfare Reform Act 2007(c).

The Social Security Advisory Committee has agreed that the proposals in these Regulations should not be referred to it(d).

In respect of the provisions in these Regulations relating to housing benefit and council tax benefit, the Secretary of State has consulted with organisations appearing to the Secretary of State to be representative of the authorities concerned(e).

Citation and commencement

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Amendment of Linking Rules) Regulations 2012.

(2) These Regulations come into force on 1st May 2012 immediately after the commencement of the Employment and Support Allowance (Duration of Contributory Allowance) (Consequential Amendments) Regulations 2012(f).

[Regulation 2 amends regulation 3(5F)(a) of S.I. 1999/991.]

[Regulation 3 amends Schedule 3 of S.I. 2006/213.]

[Regulation 4 amends Schedule 1 of S.I. 2006/215.]

[Regulation 5 makes amendments to various regulations of S.I. 2008/794.]

[Regulation 6 amends regulation 21(5) of S.I. 2010/1907.]

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- (a) 1992 c. 4. Section 123(1)(e) is substituted by paragraph 1(1) of Schedule 9 to the Local Government Finance Act 1992 (c. 14) in relation to council tax benefit. Section 137(1) is an interpretation provision and is cited because of the meaning given to the word “prescribed”.
 - (b) 1998 c. 14. Section 84 is cited because of the meaning given to the word “prescribed”.
 - (c) 2007 c. 5. Section 24(1) is an interpretation provision and is cited because of the meaning given to the words “prescribed” and “regulations”.
 - (d) See sections 172(1) and (2) and 173(1)(b) of the Social Security Administration Act 1992 (c. 5).
 - (e) See section 176(1) of the Social Security Administration Act 1992.
 - (f) S.I. 2012/913.

Signed by authority of the Secretary of State for Work and Pensions.

21st March 2012

Freud
Parliamentary Under-Secretary of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend a number of provisions relating to employment and support allowance (“ESA”).

They clarify the operation of the linking rule in regulation 145(1) of the Employment and Support Allowance Regulations 2008 (S.I. 2008/794) (“the Employment and Support Allowance Regulations”) applying in relation to claims for ESA. They also make amendments which relate to, or are consequential upon, the revocation of the linking rule in regulation 145(2) of those Regulations (“the old linking rule”). That rule had provided that where a claimant is a work or training beneficiary, any period of limited capability for work which is separated from another such period by not more than 104 weeks is to be treated as a continuation of the earlier period.

Regulation 2 amends the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I. 1999/991) (“the Decisions and Appeals Regulations”) by removing the reference to the old linking rule from regulation 3(5F) of the Decisions and Appeals Regulations. Regulation 3(5F) as amended enables the Secretary of State to revise a decision where (i) a person’s current period of limited capability for work is treated as a continuation of another such period under the linking rule in regulation 145(1) of the Employment and Support Allowance Regulations and (ii) regulation 7(1)(b) of the Employment and Support Allowance Regulations applies. Regulation 7(1)(b) is substituted by regulation 5(4)(a) of these Regulations and, with regulation 7(1A) and (1B) of the Employment and Support Allowance Regulations, provides for a number of exceptions to the general rule that the assessment phase must have ended before entitlement arises to the work-related activity or support components of ESA.

Regulation 3 amends Schedule 3 to the Housing Benefit Regulations 2006 (S.I. 2006/213) to make consequential amendments removing references to the old linking rule. Regulation 4 makes similar amendments to the corresponding provisions in the Council Tax Benefit Regulations 2006 (S.I. 2006/215).

Regulation 5 amends the Employment and Support Allowance Regulations.

Paragraph (2) omits the definition of “work or training beneficiary” from regulation 2(1).

Paragraph (3) amends regulation 5, principally to provide for two specific circumstances in which the assessment phase for ESA ends.

Paragraph (4) amends regulation 7 in order to provide for four specific exceptions to the rule that the assessment phase has to have ended before entitlement arises to the work-related activity or support components of ESA.

Paragraph (5) inserts a new regulation 35A to provide that where a claimant falls into one of those specific exceptions (case 1) and they had previously been entitled to a support component, they are to be treated as having limited capability for work-related activity.

Paragraph (6) revokes the old linking rule along with the associated linking rules in regulation 145(3) to (5).

Paragraph (7) revokes regulations 148, 149 and 150. Regulation 148 defines “work or training beneficiary” and regulations 149 and 150 provide for the treatment of work or training beneficiaries as having limited capability for work or limited capability for work-related activity respectively.

Paragraph (8) inserts a definition of “work or training beneficiary” into paragraph 1(3) of Schedule 6 as a definition of that term is still necessary for the purposes of that Schedule (which relates to housing costs).

Regulation 6 amends regulation 21(5) of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (S.I. 2010/1907) (“the Reassessment Regulations”), consequential on the revocation of the old linking rule. Regulation 21 provides for the circumstances in which a transitional addition is terminated. A transitional addition is based on the difference between specified elements of a person’s existing award (of incapacity benefit, severe disablement allowance or income support on disability grounds) and specified elements of the ESA for which a claimant is entitled following their reassessment. Paragraph (b) substitutes a new sub-paragraph (c) which provides, with the rest of regulation 21(5) of the Reassessment Regulations, for a termination of the transitional addition to take effect as a suspension instead where a subsequent claim for ESA links to an earlier period of limited capability for work under regulation 145(1) of the Employment and Support Allowance Regulations.

A full impact assessment has not been published for this instrument as it has no direct impact on the private sector or civil society organisations.

