STATUTORY INSTRUMENTS

2015 No. 437

SOCIAL SECURITY

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

Made - - - -	*2nd March 2015*
Laid before Parliament	*5th March 2015*
Coming into force - -	*30th March 2015*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 1(1), 189(1) and (4) and 191 of the Social Security Administration Act 1992(**1**), and sections 8(1), (5) and (6), 22, 25(2), (3) and (5), and 29 of, and paragraph 1 of Schedule 2 and paragraphs 1, 7 and 8 of Schedule 4 to, the Welfare Reform Act 2007(**2**).

In accordance with section 172(1) of the Social Security Administration Act 1992, the Secretary of State referred these proposals to the Social Security Advisory Committee(**3**).

Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance (Repeat Assessments and Pending Appeal Awards) (Amendment) Regulations 2015 and come into force on 30th March 2015.

Application

2.—(1) These Regulations apply to a person who falls within paragraph (2).

(2) A person falls within this paragraph where he or she—

(a) makes or is treated as making a claim for an employment and support allowance on or after 30th March 2015; or

(b) makes and is pursuing an appeal against a decision of the Secretary of State that embodies a determination that the person does not have limited capability for work, and that decision was made in respect of a claim made, or treated as made, on or after 30th March 2015.

(**1**) 1992 c. 5. Section 189(1) was amended by Schedule 7 to the Social Security Act 1998 (c. 14), Schedule 3 to the Transfer of Functions Act 1999 (c. 2), and Schedule 6 to the Tax Credits Act 2002 (c. 21). Section 191 is an interpretation provision and is cited for the definition of "prescribed" and was amended by paragraph 10 of Schedule 5 to the Welfare Reform Act 2007.

(**2**) 2007 c. 5.

(**3**) *See* sections 172(1) and 173(1)(b) of the Social Security Administration Act 1992 (c. 5).

(3) For the purposes of paragraph (2) "employment and support allowance" means an allowance under Part 1 of the Welfare Reform Act 2007.

Amendment of the Employment and Support Allowance Regulations 2008

3.—(1) The Employment and Support Allowance Regulations 2008(**4**) are amended as follows.

(2) In regulation 30 (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)(**5**) 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 22 or 23,

unless paragraph (4) applies;";

(b) for paragraph (3)(**6**) 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 147A(1)(**7**) (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 30.".

Amendment of the Employment and Support Allowance Regulations 2013

4.—(1) The Employment and Support Allowance Regulations 2013(**8**) are amended as follows.

(**4**) S.I. 2008/794 relevant amending instruments are S.I. 2010/840, 2011/674, 2011/2425, 2013/2380 and 2013/2536.
(**5**) Amended by the Social Security (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2536), regulation 13(1) and (14)(a).
(**6**) Amended by the Social Security (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/674), regulation 16(1) and (3).
(**7**) Inserted by the Social Security (Miscellaneous Amendments) (No. 3) Regulations 2010 (S.I. 2010/840), regulation 9(1) and (15).
(**8**) S.I. 2013/379 to which there are amendments not relevant to these Regulations.

(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.".

Amendment of the Social Security (Claims and Payments) Regulations 1987

5.—(1) The Social Security (Claims and Payments) Regulations 1987(**9**) are amended as follows.

(2) Regulation 3(**10**) (claims not required for entitlement to benefit in certain cases) becomes paragraph (1) of regulation 3.

(3) In paragraph (1) for sub-paragraph (j) substitute—

"(j) in the case of an employment and support allowance where—

(i) the beneficiary has made and is pursuing an appeal against a relevant decision of the Secretary of State, and

(ii) that appeal relates to a decision to terminate or not to award a benefit for which a claim was made.".

(4) After paragraph (1) insert—

(**9**) S.I. 1987/1968 amended by S.I. 2010/840; there are other amending instruments but none are relevant.

(**10**) Amended by the Social Security (Miscellaneous Amendments) (No. 3) Regulations 2010 (S.I. 2010/840), regulation 2. There are other amending instruments but none are relevant.