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STATUTORY INSTRUMENTS

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**2008 No. 1554**

**SOCIAL SECURITY**

**The Employment and Support Allowance  
(Consequential Provisions) (No. 2) Regulations 2008**

*Made - - - - 12th June 2008*  
*Laid before Parliament 19th June 2008*  
*Coming into force in accordance with regulation 1*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section 28(2) of the Welfare Reform Act 2007 <sup>M1</sup>.

This Instrument contains only regulations made consequential upon Part 1 of the Welfare Reform Act 2007 and is made before the end of the period of 6 months beginning with the coming into force of those provisions <sup>M2</sup>.

**Marginal Citations**

**M1** 2007 c. 5.

**M2** See section 173(5) of the Social Security Administration Act 1992. The requirement to refer Regulations to the Social Security Advisory Committee does not apply where Regulations are contained in a statutory instrument made before the end of the period of six months beginning with the coming into force of the enactment under which the regulations were made.

**PART 1**

**GENERAL**

**Citation and commencement**

**1.—(1)** These Regulations may be cited as the Employment and Support Allowance (Consequential Provisions) (No. 2) Regulations 2008.

**(2)** These Regulations come into force—

- (a)** for the purposes of this Part and Part 4, except for regulation 21, on 27th July 2008; and
- (b)** for all other purposes on 27th October 2008.

## PART 2

### INCOME-RELATED BENEFITS

#### Amendment of the Income Support (General) Regulations 1987

- 2.—(1) The Income Support (General) Regulations 1987<sup>M3</sup> are amended as follows.
- (2) In regulation 2(1) (interpretation)—
- (a) in the definition of “the benefit Acts”<sup>M4</sup> for “and the Jobseekers Act 1995”<sup>M5</sup> substitute “, the Jobseekers Act 1995 and Part 1 of the Welfare Reform Act ”;
  - (b) after the definition of “the Contributions and Benefits Act”<sup>M6</sup> insert—  
““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act (employment and support allowance);”;
  - (c) after the definition of “employment”<sup>M7</sup> insert—  
““the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008<sup>M8</sup>;”;
  - (d) after the definition of “Immigration and Asylum Act”<sup>M9</sup> insert—  
““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act (employment and support allowance);”;
  - (e) after the definition of “water charges”<sup>M10</sup> insert—  
““the Welfare Reform Act” means the Welfare Reform Act 2007;”.
- (3) In regulation 6(5)<sup>M11</sup> (persons not treated as engaged in remunerative work)—
- (a) in sub-paragraph (b) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance ”; and
  - (b) in sub-paragraph (c)—
    - (i) after (i) omit “or”; and
    - (ii) after (ii) for “and” substitute—  
“or
    - (iii) an amount determined in accordance with Schedule 6 to the Employment and Support Allowance Regulations (housing costs) as applicable to him in respect of housing costs which qualify under paragraphs 16 to 18 of that Schedule; and”.
- (4) In regulation 14(2)<sup>M12</sup> (persons of a prescribed description)—
- (a) after sub-paragraph (b) omit “or”; and
  - (b) after sub-paragraph (c) add—  
“or
  - (d) entitled to an employment and support allowance or would, but for paragraph 6(1) (d) of Schedule 1 to the Welfare Reform Act (conditions of entitlement to income-related employment and support allowance), be so entitled.”.
- (5) In regulation 31(2)<sup>M13</sup> (date on which income is treated as paid) for “or severe disablement allowance” substitute “ severe disablement allowance or employment and support allowance ”.

(6) In regulation 32(4)(b) <sup>M14</sup> (calculation of weekly amount of income) for “or jobseeker's allowance” substitute “, jobseeker's allowance or employment and support allowance”.

(7) In regulation 40 (calculation of income other than earnings) after paragraph (5) <sup>M15</sup> add—

“(6) Where the claimant—

- (a) is a member of a couple;
- (b) his partner is receiving a contributory employment and support allowance; and
- (c) that benefit has been reduced under regulation 63 of the Employment and Support Allowance Regulations,

the amount of that benefit to be taken into account is the amount as if it had not been so reduced.”.

(8) In regulation 72 (assessment of income and capital in urgent cases)—

- (a) in paragraph (1)(a)(ii) <sup>M16</sup> after “1996” insert “ or of employment and support allowance under regulation 164 of the Employment and Support Allowance Regulations ”; and
- (b) in paragraph (2) <sup>M17</sup> after “these Regulations” insert “, regulation 164 of the Employment and Support Allowance Regulations”.

(9) In regulation 73(3) <sup>M18</sup> (amount of income support payable) in the definition of “B” for “or severe disablement allowance” substitute “ severe disablement allowance or employment and support allowance ”.

(10) In regulation 75 <sup>M19</sup> (modifications in the calculation of income)—

- (a) in sub-paragraph (b) for “or severe disablement allowance” substitute “ severe disablement allowance or employment and support allowance ”;
- (b) in sub-paragraph (e) for “or severe disablement allowance” substitute “, severe disablement allowance or employment and support allowance ”; and
- (c) in sub-paragraph (f) for “or severe disablement allowance” substitute “ severe disablement allowance or employment and support allowance ”.

(11) In Schedule 3 (housing costs)—

(a) in paragraph 1 (housing costs)—

(i) in sub-paragraph (3) <sup>M20</sup> after (c) add—

“(d) who is in receipt of an employment and support allowance which includes an amount under section 2(2) or (3) or 4(4) or (5) of the Welfare Reform Act (components).”; and

(ii) in sub-paragraph (4) after “disqualification etc)” add “ or disqualified for receiving employment and support allowance or treated as not having limited capability for work in accordance with regulations made under section 18 of the Welfare Reform Act (disqualification) ”;

(b) in paragraph 1A <sup>M21</sup> (previous entitlement to income-based jobseeker's allowance or state pension credit)—

(i) in the heading after “allowance” insert “, income-related employment and support allowance ”;

(ii) after “income-based jobseeker's allowance” each time it occurs insert “ or income-related employment and support allowance ”; and

(iii) in sub-paragraph (1)(a) after “1996” add “ or paragraphs 16 to 18 of Schedule 6 to the Employment and Support Allowance Regulations ”;

- (c) in paragraph 4(4) (housing costs not met) after “income support” each time it occurs insert “ or income-related employment and support allowance ”;
  - (d) in paragraph 6(1B) <sup>M22</sup> (existing housing costs) for “or state pension credit” substitute “ , state pension credit or income-related employment and support allowance ”;
  - (e) in paragraph 8(1B) <sup>M23</sup> (new housing costs) for “or state pension credit” substitute “ , state pension credit or income-related employment and support allowance ”;
  - (f) in paragraph 14 (linking rule)—
    - (i) in sub-paragraph (5)(a) for “or incapacity benefit” substitute “ , incapacity benefit or contributory employment and support allowance ”; and
    - (ii) after sub-paragraph (14) add—
 

“(15) For the purpose of determining whether the linking rules set out in this paragraph apply in a case where [<sup>F1</sup>a claimant, a claimant’s partner or] a claimant’s former partner was entitled to income-related employment and support allowance, any reference to income support in this Schedule shall be taken to include also a reference to income-related employment and support allowance.”; and
  - (g) in paragraph 18(7) (non-dependant deductions) after paragraph (h) add—
    - (i) he is aged less than 25 and is in receipt of employment and support allowance which does not include an amount under section <sup>F2</sup>... 4(4) or (5) of the Welfare Reform Act (components).”.
- (12) In Schedule 7 (applicable amounts in special cases) in paragraph 19A <sup>M24</sup> (persons who have commenced remunerative work) in column 2—
- (a) in sub-paragraph (1)—
    - (i) in paragraph (a)—
      - (aa) after (i) omit “or”; and
      - (bb) after (ii) add—
 

“or
      - (iii) as the case may be, Schedule 6 to the Employment and Support Allowance Regulations (housing costs),”
    - (ii) in paragraph (b) after “income support” the first time it occurs, insert “ , income-related employment and support allowance ”.
- (13) In paragraph 4(7) <sup>M25</sup> of Schedule 8 (sums to be disregarded in the calculation of earnings) after “income support” each time it occurs insert “ or employment and support allowance ”.
- (14) In Schedule 9 (sums to be disregarded in the calculation of income other than earnings)—
- (a) in paragraph 7(b) <sup>M26</sup> for “or jobseeker’s allowance” substitute “ , jobseeker’s allowance or employment and support allowance. ”; and
  - (b) in paragraph 13(1)(a) <sup>M27</sup> for “or severe disablement allowance” substitute “ , severe disablement allowance or an employment and support allowance ”.
- (15) In paragraph 7 <sup>M28</sup> of Schedule 10 (capital to be disregarded)—
- (a) in sub-paragraph (1)(b) after “income-related benefit” insert “ , an income-related employment and support allowance ”; and
  - (b) in sub-paragraph (3)—
    - (i) in paragraph (a) after “income support” insert “ , an income-related employment and support allowance ”; and

- (ii) in paragraph (b) after “income support” insert “, an income-related employment and support allowance”.

- F1** Words in [reg. 2\(11\)\(f\)\(ii\)](#) inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **41(2)(a)**
- F2** Words in [reg. 2\(11\)\(g\)](#) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **41(2)(b)**

#### Marginal Citations

- M3** [S.I. 1987/1967](#).
- M4** Definition was inserted by [S.I. 1996/206](#).
- M5** [1995 c. 18](#).
- M6** Definition was inserted by [S.I. 1993/315](#).
- M7** Definition inserted by [S.I. 1988/1445](#).
- M8** [S.I. 2008/794](#).
- M9** Definition was inserted by [S.I. 2000/636](#).
- M10** Definition was inserted by [S.I. 1990/547](#) and amended by [S.I. 1990/1776](#) and [1993/315](#).
- M11** Paragraph (5) was inserted by [S.I. 2001/488](#) and amended by [S.I. 2007/3183](#).
- M12** Paragraph (2) was amended by [S.I. 2001/3070](#) and [2006/718](#).
- M13** Paragraph (2) was amended by [S.I. 1988/663](#) and [1445](#), [1995/482](#) and [1996/206](#).
- M14** Paragraph (4) was amended by [S.I. 1988/663](#) and [1445](#), [1995/482](#), [1996/206](#).
- M15** Paragraph (5) was inserted by [S.I. 2000/636](#).
- M16** Sub-paragraph (a) was substituted by [S.I. 1998/563](#).
- M17** Paragraph (2) was amended by [S.I. 1988/1445](#) and [2022](#) and [S.I. 2008/698](#).
- M18** Regulation 73 was inserted by [S.I. 1988/663](#) and amended by [S.I. 1988/1445](#), [1995/482](#), [1996/206](#) and [2001/3767](#).
- M19** Regulation 75 was inserted by [S.I. 1988/663](#) and amended by [S.I. 1988/1445](#), [1995/482](#) and [1996/206](#).
- M20** Sub-paragraph (3) was amended by [S.I. 1995/2927](#) and [2006/2378](#).
- M21** Paragraph 1A was inserted by [S.I. 1997/2305](#) and amended by [S.I. 2007/3183](#).
- M22** Sub-paragraph (1B) was inserted by [S.I. 1997/2305](#) and amended by [S.I. 2002/3019](#).
- M23** Sub-paragraph (1B) was inserted by [S.I. 1997/2305](#) and amended by [S.I. 2002/3019](#).
- M24** Paragraph 19A was inserted by [S.I. 2001/488](#) and amended by [S.I. 2001/3767](#) and [2002/398](#).
- M25** Paragraph 4 was substituted by [S.I. 1989/534](#) and sub-paragraph (7) was substituted by [S.I. 1989/1678](#) and amended by [S.I. 1991/387](#) and [2002/3019](#).
- M26** Paragraph 7(b) was amended by [S.I. 1998/563](#).
- M27** Paragraph 13 was substituted by [S.I. 2004/565](#).
- M28** Paragraph 7 was amended by [S.I. 1991/2742](#), [1996/206](#), [2001/2333](#), [2002/2380](#), [2003/455](#) and [2005/574](#).

#### Amendment of the Jobseeker's Allowance Regulations 1996

- 3.—(1) The Jobseeker's Allowance Regulations 1996<sup>M29</sup> are amended as follows.
- (2) In regulation 1(3) (citation, commencement and interpretation)—
- (a) after the definition of “the Eileen Trust” insert—
- ““the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;”;
- and
- (b) after the definition of “week”<sup>M30</sup> insert—
- ““the Welfare Reform Act” means the Welfare Reform Act 2007;”.
- (3) In regulation 11(2) (part-time students) for “or incapacity benefit” each time it occurs substitute “, incapacity benefit or employment and support allowance”.

- (4) In regulation 14(1) (circumstances in which a person is to be treated as available)—
- (a) in paragraphs (I) and (II) <sup>M31</sup> after “capable of work” insert “ or as not having limited capability for work ”; and
  - (b) in paragraph (o)(ii) after “incapacity benefit” insert “ , employment and support allowance ”.
- (5) In regulation 19(1) <sup>M32</sup> (circumstances in which a person is to be treated as actively seeking employment) in sub-paragraphs (I) and (II) after “capable of work” insert “ or as not having limited capability for work ”.
- (6) In regulation 46(1) <sup>M33</sup> (waiting days)—
- (a) in sub-paragraph (a) after “incapacity benefit” insert “ , employment and support allowance ”; and
  - (b) in sub-paragraph (d) after “incapacity benefit” insert “ , employment and support allowance ”.
- (7) In regulation 48(2) <sup>M34</sup> (linking periods) after sub-paragraph (b) insert—
- “(bb) any period throughout which the claimant has, or is treated as having, limited capability for work for the purposes of Part 1 of the Welfare Reform Act;”.
- (8) In regulation 49 (persons approaching retirement and the jobseeking period)—
- (a) in paragraph (2) <sup>M35</sup> for “(3) and (4)” substitute “ (3), (4) and (4A) ”; and
  - (b) after paragraph (4) insert—
 

“(4A) Any day which, for the purposes of Part 1 of the Welfare Reform Act, is a day where the person has limited capability for work falling within a period of limited capability for work shall not be a day on which the person is treated as satisfying the conditions referred to in paragraph (2).”.
- (9) In regulation 55 (short periods of sickness)—
- (a) in paragraph (1) <sup>M36</sup>—
    - (i) in sub-paragraph (c) after “capable of work” insert “ or not having limited capability for work ”;
    - (ii) after “capable of work” the second time it occurs insert “ or as not having limited capability for work ”; and
    - (iii) after “incapacity benefit” insert “ , employment and support allowance, ”; and
  - (b) in paragraph (4) after “within” insert “ 12 weeks of an entitlement of his to employment and support allowance or ”.
- (10) In regulation 55A(1) <sup>M37</sup> (periods of sickness and persons receiving treatment outside Great Britain)—
- (a) in sub-paragraph (d) after “capable of work” insert “ or not having limited capability for work ”;
  - (b) after “capable of work” the second time it occurs insert “ or as not having limited capability for work ”; and
  - (c) after “incapacity benefit” insert “ , employment and support allowance ”.
- (11) In regulation 61 (other young persons in prescribed circumstances)—
- (a) in paragraph (1) <sup>M38</sup> after sub-paragraph (f) add—
 

“(g) who has limited capability for work for the purposes of Part 1 of the Welfare Reform Act.”; and

- (b) in paragraph (2)(b)<sup>M39</sup> for “1(b) or (c)” each time it occurs substitute “ 1(b), (c) or (g) ”.
- (12) In regulation 76(2)<sup>M40</sup> (persons of a prescribed description)—
- (a) in sub-paragraph (d) after “applies” add—
- “or
- (e) entitled to an income-related employment and support allowance or would, but for paragraph 6(1)(d) of Schedule 1 to the Welfare Reform Act (conditions of entitlement to income-related employment and support allowance), be so entitled.”.
- (13) In regulation 78(6)<sup>M41</sup> (circumstances in which a person is to be treated as being or not being a member of the household) after “income support” insert “ or an income-related employment and support allowance ”.
- (14) In regulation 96(2) (date on which income is treated as paid) for “or jobseeker's allowance” substitute “ , jobseeker's allowance or employment and support allowance ”.
- (15) In regulation 97(4)(b) (calculation of weekly amount of income) for “or income support” substitute “ , income support or employment and support allowance ”.
- (16) In regulation 103 (calculation of income other than earnings) after paragraph (5A)<sup>M42</sup> insert—
- “(5B) Where the claimant—
- (a) is a member of a couple;
- (b) his partner is receiving a contributory employment and support allowance; and
- (c) that benefit has been reduced under regulation 63 of the Employment and Support Allowance Regulations,
- the amount of that benefit to be taken into account is the amount as if it had not been reduced.”.
- (17) In regulation 140(3)<sup>M43</sup> (meaning of “person in hardship”) after “income support” insert “ or an income-related employment and support allowance ”.
- (18) In regulation 146A(3)<sup>M44</sup> (meaning of “couple in hardship”) after “income support” add “ or an employment and support allowance ”.
- (19) In regulation 149(1)(a)(ii) (assessment of income and capital in urgent cases) after “Income Support Regulations” insert “ or of employment and support allowance under regulation 164 of the Employment and Support Allowance Regulations ”.
- (20) In regulation 150(1)(b) (amount of jobseeker's allowance payable) in the definition of “B” for “or severe disablement allowance” substitute “ , severe disablement allowance or employment and support allowance ”.
- (21) In regulation 153(b)<sup>M45</sup> (modification in the calculation of income) after “Benefits Act” insert “ or employment and support allowance ”.
- (22) In regulation 171(b)<sup>M46</sup> (trade disputes: exemptions from section 15 of the Act)—
- (a) after paragraph (i) omit “or”; and
- (b) after paragraph (ii) add—
- “or
- (iii) has limited capability for work.”.
- (23) In Schedule A1<sup>M47</sup> (categories of members of a joint-claim couple etc.)—
- (a) after paragraph 6 (member incapable of work) insert—

**“Member has limited capability for work**

**6A.** A person who—

- (a) has limited capability for work under section 8 of the Welfare Reform Act; or
  - (b) is treated as having limited capability for work under regulations made under paragraph 1 of Schedule 2 to that Act; or
  - (c) is treated as not having limited capability for work under regulations made under section 18(1) of that Act (disqualification).”; and
- (b) in paragraph 12 (pregnancy) after “incapable of work” insert “ or who has limited capability for work ”.
- (24) In Schedule 1 (applicable amounts) in paragraph 1(3)—
- (a) in paragraph (a)—
    - (i) in sub-paragraph (iii) after “income support” insert “ or an income-related employment and support allowance ”; and
    - (ii) in sub-paragraph (vii) after “income support” insert “ or an income-related employment and support allowance ”;
  - (b) in paragraph (f)(iii) after “income support” insert “ or an income-related employment and support allowance ”;
  - (c) in paragraph (g)(iii) after “income support” insert “ or an income-related employment and support allowance ”;
  - (d) in paragraph (h)(iii) after “income support” insert “ or an income-related employment and support allowance ”; and
  - (e) in paragraph 20H(1) <sup>M48</sup> (additional conditions for higher pensioner and disability premium) after sub-paragraph (e) insert—
    - “(ee) has had limited capability for work or has been treated as having limited capability for work for a continuous period of not less than—
      - (i) 196 days in the case of a member of a joint-claim couple who is terminally ill within the meaning of regulation 2(1) of the Employment and Support Allowance Regulations; or
      - (ii) 364 days in any other case,
 and for these purposes any two or more periods of limited capability for work separated by a break of not more than 12 weeks is to be treated as one continuous period.”.
- (25) In Schedule 2 (housing costs)—
- (a) in paragraph 1 (housing costs)—
    - (i) in sub-paragraph (3)—
      - (aa) after (c) omit “or”; and
      - (bb) and after (d) add—
        - “or
        - (e) who is in receipt of an employment and support allowance which includes an amount under section 2(2) or (3) or 4(4) or (5) of the Welfare Reform Act (components).”; and
    - (ii) in sub-paragraph (4) after “disqualification etc.)” add “ or disqualified for receiving employment and support allowance or treated as not having limited capability for



- work in accordance with regulations made under section 18 of the Welfare Reform Act (disqualification) ”.
- (b) in paragraph 1A <sup>M49</sup> (previous entitlement to income support and state pension credit)—
- (i) in the heading after “income support” insert “ , income-related employment and support allowance ”;
  - (ii) after “income support” each time it occurs insert “ or income-related employment and support allowance ”;
  - (iii) in sub-paragraph (1)(a) after “Income Support Regulations” add “ or paragraphs 16 to 18 of Schedule 6 to the Employment and Support Allowance Regulations ”; and
  - (iv) in sub-paragraph (1A)(a) <sup>M50</sup> after “Income Support Regulations” add “ or paragraphs 16 or 17 of schedule 6 to the Employment and Support Allowance Regulations ”;
- (c) in paragraph 6 (existing housing costs)—
- (i) in sub-paragraph (3) for “or state pension credit” substitute “ , state pension credit or income-related employment and support allowance ”; and
  - (ii) in sub-paragraph (4) after “income support” insert “ or income-related employment and support allowance ”;
- (d) in paragraph 7 (new housing costs)—
- (i) in sub-paragraph (2A) <sup>M51</sup> after “income support” insert “ or income-related employment and support allowance ”; and
  - (ii) in sub-paragraph (2B) <sup>M52</sup> after “income support” insert “ or income-related employment and support allowance ”;
- (e) in paragraph 13(6)(a) (linking rule) for “or incapacity benefit” substitute “ , incapacity benefit or contributory employment and support allowance ”;
- (f) in paragraph 17(7) (non-dependant deductions)—
- (i) after paragraph (g) omit “or”; and
  - (ii) after paragraph (h) add—
    - “or
    - (i) he is aged less than 25 and is in receipt of employment and support allowance which does not include an amount under section <sup>F3</sup>... 4(4) or (5) of the Welfare Reform Act (components)”;
- (g) in paragraph 18 (continuity with income support)—
- (i) in the heading after “income support” add “ or income-related employment and support allowance ”; and
  - (ii) in sub-paragraph (1)—
    - (aa) after “income support” the first time it occurs insert “ or income-related employment and support allowance ”; and
    - (bb) in paragraph (c) after “income support” add “ or income-related employment and support allowance ”.
- (26) In paragraph 5(7) of Schedule 6 (sums to be disregarded in the calculation of earnings) for “or income support” each time it occurs substitute “ , income support or an employment and support allowance ”.
- (27) In paragraph 1(5) of Schedule 6A <sup>M53</sup> (sums to be disregarded in the calculation of earnings of members of joint-claim couples) for “income support” each time it occurs substitute “ , income support or an employment and support allowance ”.

- (28) In Schedule 7 (sums to be disregarded in the calculation of income other than earnings)—
- (a) in paragraph 8(b) for “or income support” substitute “ , income support or employment and support allowance ”; and
  - (b) in paragraph 14(1)(a) <sup>M54</sup> for “or severe disablement allowance” substitute “ , severe disablement allowance or employment and support allowance ”.
- (29) In paragraph 12 <sup>M55</sup> of Schedule 8 (capital to be disregarded)—
- (a) in sub-paragraph (1)(b) after “working tax credit” add “ or an income-related employment and support allowance ”; and
  - (b) in sub-paragraph (3) for “or of income support” each time it occurs substitute “ , income support or of an income-related employment and support allowance ”.

**F3** Words in [reg. 3\(25\)\(f\)\(ii\)](#) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), [regs. 1\(2\)](#), [41\(3\)](#)

#### Marginal Citations

- M29** [S.I. 1996/207](#).
- M30** Definition was amended by [S.I. 1996/1517](#) and [1997/454](#).
- M31** Paragraphs 1 and 2 were amended by [S.I. 1996/1517](#), [1997/563](#), [1999/3087](#), [2000/3336](#), [2004/1869](#), [2006/1402](#) and [2008/698](#).
- M32** Paragraph 1 was amended by [S.I. 1996/1517](#), [1997/563](#), [1998/1274](#), [1999/3087](#), [2000/3336](#), [2004/1869](#) and [2006/1402](#).
- M33** Paragraph 1 was amended by [S.I. 2000/1978](#) and [2003/511](#).
- M34** Paragraph 2 was amended by [S.I. 1996/2538](#), [1997/454](#) and [2863](#), [2000/724](#), [2001/1029](#), [2002/2314](#), and [2003/511](#).
- M35** Paragraph 2 substituted by [S.I. 1996/1517](#).
- M36** Paragraph 1 was amended by [S.I. 1996/1517](#), [1999/2860](#) and [2000/1978](#).
- M37** Regulation was inserted by [S.I. 2004/1869](#).
- M38** Paragraph 1 was amended by [S.I. 2000/1978](#) and [2001/652](#).
- M39** Paragraph 2 was amended by [S.I. 2000/1978](#).
- M40** Paragraph 2 was amended by [S.I. 2001/3070](#) and [2006/718](#).
- M41** Paragraph 6 was amended by [S.I. 1996/1516](#).
- M42** Paragraph 5A was inserted by [S.I. 1997/65](#).
- M43** Paragraph 3 was amended by [S.I. 1996/1517](#).
- M44** Regulation was inserted by [S.I. 2000/1978](#).
- M45** Regulation was amended by [S.I. 2000/1978](#).
- M46** Regulation was amended by [S.I. 1996/1516](#).
- M47** Schedule was inserted by [S.I. 2000/1978](#) and [2001/518](#).
- M48** Paragraph 20H was inserted by [S.I. 2000/1978](#) and sub-paragraph (1) was amended by [S.I. 2003/455](#).
- M49** Paragraph 1A was inserted by [S.I. 1997/2305](#) and amended by [S.I. 2007/3183](#).
- M50** Sub-paragraph (1A) was inserted by [S.I. 2000/1978](#).
- M51** Sub-paragraph (2A) was inserted by [S.I. 1997/2305](#).
- M52** Sub-paragraph (2B) was inserted by [S.I. 2000/1978](#).
- M53** Schedule was inserted by [S.I. 2000/1978](#).
- M54** Paragraph 14(1)(a) was amended by [S.I. 2004/565](#).
- M55** Paragraph 12 was amended by [S.I. 1996/2538](#), [2001/2333](#), [2002/2380](#), [2003/455](#) and [2005/574](#).

#### Amendment of the State Pension Credit Regulations 2002

- 4.—(1) The State Pension Credit Regulations 2002 <sup>M56</sup> are amended as follows.
- (2) In regulation 1(2) (citation, commencement and interpretation)—

- (a) after the definition of “close relative”<sup>M57</sup> insert—  
““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act (employment and support allowance);”;
  - (b) after the definition of “Eileen Trust” insert—  
““the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;”;
  - (c) after the definition of “a guaranteed income payment”<sup>M58</sup> insert—  
““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act (employment and support allowance);”;  
and
  - (d) after the definition of “water charges” add—  
““the Welfare Reform Act” means the Welfare Reform Act 2007.”.
- (3) In regulation 9 (qualifying income for the purposes of savings credit) after sub-paragraph (f) add—  
“(g) contributory employment and support allowance.”.
- (4) In regulation 13A(1)(a)<sup>M59</sup> (part-weeks) after “income support” insert “ , an income-related employment and support allowance ”.
- (5) In regulation 13B(1)<sup>M60</sup> (date on which benefits are treated as paid) after sub-paragraph (d) add—  
“(e) contributory employment and support allowance.”.
- (6) In regulation 15(4)<sup>M61</sup> (income for the purposes of the Act) after sub-paragraph (c) add—  
“(d) section 3 of the Welfare Reform Act (deductions from contributory allowance).”.
- (7) In paragraph 6<sup>M62</sup> of Schedule 1 (amount applicable for former claimants of income support or income-related jobseeker's allowance)—
  - (a) in the heading for “or income-related jobseeker's allowance” substitute “ , income-based jobseeker's allowance or income-related employment and support allowance ”;
  - (b) in sub-paragraph (2) for “or an income-based jobseeker's allowance” substitute “ , an income-based jobseeker's allowance or an income-related employment and support allowance ”;
  - (c) in sub-paragraph (5)—
    - (i) after paragraph (a) omit “or”;
    - (ii) after paragraph (b) insert—  
“or  
(c) for the purposes of determining his entitlement to income-related employment and support allowance;”;
    - (iii) in sub-paragraph (v) after “Income Support Regulations” insert “ , paragraph 7 of Schedule 4 to the Employment and Support Allowance Regulations ”; and
  - (d) in sub-paragraph (10)(a) after “Jobseeker's Allowance Regulations” insert “ or paragraph 20(2) of Schedule 6 to the Employment and Support Allowance Regulations ”.
- (8) In Schedule 2 (housing costs)—
  - (a) in paragraph 1 (housing costs)—
    - (i) in sub-paragraph (2)(a)(iii) after paragraph (cc) add—  
“or

- (dd) is in receipt of an employment and support allowance which includes an amount under section 2(2) or (3) or 4(4) or (5) of the Welfare Reform Act (components).”; and
- (ii) in sub-paragraph (3) after “disqualification etc)” add “ or disqualified for receiving employment and support allowance or treated as not having limited capability for work in accordance with regulations made under section 18 of the Welfare Reform Act (disqualification) ”;
- (b) in paragraph 5 (housing costs not met)—
  - (i) in sub-paragraph (4) after “income-based jobseeker's allowance” each time it occurs insert “ , income-related employment and support allowance ”; and
  - (ii) in sub-paragraph (5) for “or state pension credit” substitute “ , state pension credit or income-related employment and support allowance ”;
- (c) in paragraph 7 (the calculation for loans)—
  - (i) in sub-paragraph (4A)(a) after “income support” insert “ , income-related employment and support allowance ”;
  - (ii) in sub-paragraph (4B)—
    - (aa) after paragraph (a) omit “or”; and
    - (bb) after paragraph (b) for “and” substitute—
      - “or
      - (c) where the earlier entitlement was to an income-related employment and support allowance, if their applicable amount included an amount determined in accordance with Schedule 6 to the Employment and Support Allowance Regulations as applicable to them in respect of a loan which qualifies under paragraph 16 to 18 of that Schedule, and”;
- (d) in paragraph 10(10) (excessive housing costs) for “and income-based jobseeker's allowance” substitute “ , income-based jobseeker's allowance and income-related employment and support allowance ”; and
- (e) in paragraph 14(7) (persons residing with the claimant) after (f) add—
  - “(g) if he is aged less than 25 and is in receipt of employment and support allowance which does not include an amount under section <sup>F4</sup>... 4(4) or (5) of the Welfare Reform Act (components).”.
- (9) In Schedule 5 (income from capital)—
  - (a) in paragraph 20(2) <sup>M63</sup> after paragraph (n) add—
    - “(o) income-related employment and support allowance.”;
  - (b) in paragraph 20A(2) <sup>M64</sup>—
    - (i) after sub-paragraph (c) omit “or”; and
    - (ii) after paragraph (d) add—
      - “or
      - (e) paragraph 11(2) of Schedule 9 to the Employment and Support Allowance Regulations.”.
- (10) In paragraph 4 <sup>M65</sup> of Schedule 6 (sums disregarded from claimant's earnings)—
  - (a) in sub-paragraph (1)(a)—
    - (i) after paragraph (v) omit “or”; and

- (ii) after paragraph (vi) add—
- “(vii) employment and support allowance; or”;
- (b) in sub-paragraph (2) for “or income-based jobseeker's allowance” substitute “, income-based jobseeker's allowance or income-related employment and support allowance”.

**F4** Words in reg. 4(8)(e) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **41(4)**

#### Marginal Citations

**M56** [S.I. 2002/1792](#).

**M57** Definition was amended by [S.I. 2005/2877](#).

**M58** Definition was inserted by [S.I. 2005/574](#).

**M59** Regulation was inserted by [S.I. 2002/3019](#).

**M60** Regulation was inserted by [S.I. 2002/3019](#).

**M61** Paragraph 4 was amended by [S.I. 2005/3360](#).

**M62** Paragraph 6 was amended by [S.I. 2002/3197](#) and 2006/588.

**M63** Paragraph 2 was substituted by [S.I. 2003/2274](#).

**M64** Paragraph 2 was substituted by [S.I. 2003/2274](#) and amended by [S.I. 2002/3197](#)

**M65** Paragraph 4 was amended by [S.I. 2002/3197](#).

## PART 3

### The Social Fund

#### Amendment of the Social Fund (Recovery by Deductions from Benefits) Regulations 1988

**5.** In regulation 3 of the Social Fund (Recovery by Deductions from Benefits) Regulations 1988 <sup>M66</sup> (benefits from which an award may be recovered) after sub-paragraph (d) insert—

- “(dd) an employment and support allowance under section 1 of the Welfare Reform Act 2007;”.

#### Marginal Citations

**M66** [S.I. 1988/35](#).

#### Amendment of the Social Fund Cold Weather Payments (General) Regulations 1988

**6.—(1)** The Social Fund Cold Weather Payments (General) Regulations 1988 <sup>M67</sup> are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)—

(a) after the definition of “the Act” insert—

““the Welfare Reform Act” means the Welfare Reform Act 2007;”;

(b) in the definition of “claimant”<sup>M68</sup> for “or income-based jobseeker's allowance” substitute “, income-based jobseeker's allowance or income-related employment and support allowance”; and

(c) after the definition of “income-based jobseeker's allowance” insert—

““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act (employment and support allowance);”.

- (3) In regulation 1A(1) <sup>M69</sup> (prescribed description of persons)—
- (a) for “or income-based jobseeker's allowance” substitute “ , income-based jobseeker's allowance or income-related employment and support allowance ”; and
- (b) after sub-paragraph (ic) insert—
- “(id) whose applicable amount includes one or more of the premiums specified in paragraphs 5 to 8 of Schedule 4 to the Employment and Support Allowance Regulations 2008; or
- (ic) whose applicable amount includes an amount under section 4(2)(b) of the Welfare Reform Act; or”.

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**Marginal Citations**

**M67** [S.I. 1988/1724](#).

**M68** Definition was substituted by [S.I. 1991/2238](#).

**M69** [Regulation 1A](#) was inserted by [S.I. 1991/2448](#) and paragraph (1) was amended by [S.I. 2002/3019](#), [2003/1121](#) and [2005/2687](#).

**Amendment of the Social Fund Winter Fuel Payment Regulations 2000**

7.—(1) The Social Fund Winter Fuel Payment Regulations 2000 <sup>M70</sup> are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation) after the definition of “free in-patient treatment” insert—

““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance);”.

(3) In regulation 2(1)(b)(ii) <sup>M71</sup> (social fund winter fuel payments) for “or an income-based jobseeker's allowance” substitute “ , an income-based jobseeker's allowance or an income-related employment and support allowance ”.

(4) In regulation 3(1)(a)(i) (persons not entitled to a social fund winter fuel payment) for “or an income-based jobseeker's allowance” substitute “ , an income-based jobseeker's allowance or an income-related employment and support allowance ”.

(5) In regulation 4(2) (making a winter fuel payment without a claim) for “or state pension credit” substitute “ , state pension credit or an income-related employment and support allowance ”.

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**Marginal Citations**

**M70** [S.I. 2000/729](#).

**M71** [Regulation 2](#) was substituted by [S.I. 2003/1737](#).

**Amendment of the Social Fund Maternity and Funeral Expenses (General) Regulations 2005**

8.—(1) The Social Fund Maternity and Funeral Expenses (General) Regulations 2005 <sup>M72</sup> are amended as follows.

- (2) In regulation 3 (interpretation)—
- (a) in paragraph (1)—

- (i) after the definition of “the Act” insert—
    - ““the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;”; and
  - (ii) after the definition of “income-based jobseeker's allowance” insert—
    - ““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance);”;
  - (b) in paragraph (3) after “Regulations” add “ or regulation 2(1) of the Employment and Support Allowance Regulations ”; and
  - (c) in paragraph (4)(a) after “Income Support Regulations” insert “ , in regulation 156 of the Employment and Support Allowance Regulations ”.
- (3) In regulation 5(1)(a) (entitlement)—
- (a) after paragraph (iv) omit “or”; and
  - (b) after paragraph (v) for “; and” substitute—
    - “or
    - (vi) income-related employment and support allowance; and”.
- (4) In regulation 7(4)(a) (funeral payments: entitlement)—
- (a) after paragraph (vi) omit “or”; and
  - (b) after paragraph (vii) insert—
    - “(viii) income-related employment and support allowance; or”.

**Marginal Citations**  
M72 S.I. 2005/3061.

## PART 4

### Administrative Provisions

#### CHAPTER 1

#### The Social Security (Claims and Payments) Regulations 1987

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

**9.** The Social Security (Claims and Payments) Regulations 1987<sup>M73</sup> are amended in accordance with this Chapter.

**Marginal Citations**  
M73 S.I. 1987/1968.

#### Amendment of regulation 2

- 10.** In regulation 2 (interpretation)—
- (a) in paragraph (1)—

- (i) after the definition of “electronic communication”<sup>M74</sup> insert—
  - ““the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;”;
- (ii) after the definition of “joint-claim couple”<sup>M75</sup> insert—
  - ““limited capability for work” has the same meaning as in section 1(4) of the Welfare Reform Act”; and
- (iii) after the definition of “week” insert—
  - ““the Welfare Reform Act” means the Welfare Reform Act 2007;”; and
- (b) in paragraph (2)(b) <sup>M76</sup> for “and a shared additional pension” substitute “ , a shared additional pension or an employment and support allowance under Part 1 of the Welfare Reform Act ”.

#### Marginal Citations

**M74** Definition inserted by [S.I. 2003/2800](#).

**M75** Definition was inserted by [S.I. 2000/1892](#).

**M76** Paragraph (2)(b) was amended by [S.I. 1988/1725](#), 1996/1360, 1999/2572, 2002/3019 and 2005/1551.

#### Amendment of regulation 3

- 11.** In regulation 3 (claims not required for entitlement to benefit in certain cases)—
  - (a) in paragraph (h)(ii) <sup>M77</sup> after “allowance” insert “ or an income-related employment and support allowance ”; and
  - (b) after paragraph (i) <sup>M78</sup> add—
    - “(j) in the case of an employment and support allowance where the beneficiary has made and is pursuing an appeal against the decision of the Secretary of State that he does not have limited capability for work.”.

#### Marginal Citations

**M77** Sub-paragraph (h) was added by [S.I. 1999/2556](#) and (2) was amended by [S.I.2001/488](#).

**M78** Paragraph (i) was added by [S.I. 2005/1551](#).

#### Amendment of regulation 4

- 12.** In regulation 4(10) <sup>M79</sup> (making a claim for benefit), after “state pension credit” insert “ or an employment and support allowance ”.

#### Marginal Citations

**M79** Paragraph (10) was inserted by [S.I. 2002/3019](#).

#### Claims for employment and support allowance

- 13.** After regulation 4F <sup>M80</sup> (making a claim after attaining the qualifying age: date of claim) insert—



#### **“Making a claim for employment and support allowance by telephone**

**4G.**—(1) A claim (“a telephone claim”) for an employment and support allowance may be made by telephone call to the telephone number specified by the Secretary of State.

(2) Where the Secretary of State, in any particular case, directs that the person making the claim approves a written statement of his circumstances, provided for the purpose by the Secretary of State, a telephone claim is not a valid claim unless the person complies with the direction.

(3) A telephone claim is defective unless the Secretary of State is provided, during that telephone call, with all the information he requires to determine the claim.

(4) Where a telephone claim is defective, the Secretary of State is to advise the person making it of the defect and of the relevant provisions of regulation 6(1F) relating to the date of claim.

(5) If the person corrects the defect within one month, or such longer period as the Secretary of State considers reasonable, of the date the Secretary of State last drew attention to the defect, the Secretary of State must treat the claim as if it had been properly made in the first instance.

#### **Making a claim for employment and support allowance in writing**

**4H.**—(1) A claim (“a written claim”) for employment and support allowance need only be made in writing if the Secretary of State so directs in any particular case but a written claim may be made whether or not a direction is issued.

(2) A written claim must be made on a form approved for the purpose by the Secretary of State and be made in accordance with the instructions on the form.

(3) A claim in writing may also be made at the offices of—

- (a) a local authority administering housing benefit or council tax benefit;
- (b) a person providing to such an authority services relating to housing benefit or council tax benefit; or
- (c) a person authorised to exercise the function of a local authority relating to housing benefit or council tax benefit,

if the Secretary of State has arranged with the local authority or person specified in sub-paragraph (b) or (c) for them to receive claims in accordance with this paragraph.

(4) Where a written claim is made in accordance with paragraph (3), on receipt of that claim the local authority or other person specified in that paragraph—

- (a) must forward the claim to the Secretary of State as soon as reasonably practicable;
- (b) may receive information or evidence relating to the claim supplied by—
  - (i) the person making, or who has made, the claim; or
  - (ii) other persons in connection with the claim,

and shall forward it to the Secretary of State as soon as reasonably practicable;

- (c) may obtain information or evidence relating to the claim from the person who has made the claim, but not any medical information or evidence except for that which the claimant must provide in accordance with instructions on the form, and must forward the information or evidence to the Secretary of State as soon as reasonably practicable;
- (d) may record information or evidence relating to the claim supplied or obtained in accordance with sub-paragraph (b) or (c) and may hold the information or

evidence (whether as supplied or obtained or as recorded) for the purpose of forwarding it to the Secretary of State; and

- (e) may give information and advice with respect to the claim to the person who makes, or who has made, the claim.

(5) Paragraphs (4)(b) to (e) apply in respect of information, evidence and advice relating to any claim whether the claim is made in accordance with paragraph (3) or otherwise.

(6) If a written claim is defective when first received, the Secretary of State is to advise the person making it of the defect and of the provisions of regulation 6(1F) relating to the date of claim.

(7) If that person corrects the defect so that the claim then satisfies the requirements of paragraph (2) and does so within one month, or such longer period as the Secretary of State considers reasonable, of the date the Secretary of State last drew attention to the defect, the claim must be treated as having been properly made in the first instance.

#### **Claims for employment and support allowance: supplemental**

**4I.**—(1) Where a person who is a member of a couple may be entitled to an income-related employment and support allowance the claim for an employment and support allowance must be made by whichever member of the couple they agree should claim or, in default of agreement, by such one of them as the Secretary of State may choose.

(2) Where one member of a couple (“the former claimant”) is entitled to an income-related employment and support allowance under an award but a claim for an employment and support allowance is made by the other member of the couple and the Secretary of State considers that the other member is entitled to an income-related employment and support allowance, then, if both members of the couple confirm in writing that they wish the claimant to be the other member, the former claimant's entitlement terminates on the day the partner's claim is actually made or, if earlier, is treated as made.

(3) In calculating any period of one month for the purposes of regulations 4G and 4H, any period commencing on a day on which a person is first notified of a decision in connection with his failure to take part in a work-focused interview and ending on a day on which he was notified that that decision has been revised so that the decision as revised is that he did take part is to be disregarded.

(4) Employment and support allowance is a relevant benefit for the purposes of section 7A of the 1992 Act.”.

#### **Marginal Citations**

**M80** Regulation 4F was inserted by S.I. 2002/3019.

#### **Amendment of regulation 6**

**14.** In regulation 6 (date of claim) after paragraph (1E) <sup>M81</sup> insert—

“(1F) For employment and support allowance—

- (a) in the case of a telephone claim made in accordance with regulation 4G(1) the date of claim is the date of the telephone call or the first day in respect of which the claim is made, if later;
- (b) subject to sub-paragraph (c) in the case of a written claim which meets the requirements of regulation 4H(2) the date of claim is the date the claim form was

received in an appropriate office or office mentioned in regulation 4H(3) or the first day in respect of which the claim is made, if later;

- (c) where the claimant notifies the Secretary of State (by whatever means) of his intention of making a claim and, within one month or such longer period as the Secretary of State considers reasonable of first notification, a claim mentioned in sub-paragraph (b) is received, in an office mentioned in that sub-paragraph, the date of claim is the date notification was made or the first day in respect of which the claim is made, if later.”.

**Marginal Citations**

**M81** Paragraph (1E) was inserted by [S.I. 2006/832](#) and amended by [S.I. 2007/2911](#).

**Amendment of regulation 7**

**15.** In regulation 7(4) <sup>M82</sup> (evidence and information) for “or state pension credit” substitute “ , state pension credit or employment and support allowance ”.

**Marginal Citations**

**M82** Paragraph (4) was added by [S.I. 1995/2303](#) and amended by [S.I. 1996/1460](#), [1999/2572](#) and [2002/3019](#).

**Amendment of regulation 10**

**16.** In regulation 10 (claim for incapacity benefit or severe disablement allowance where no entitlement to statutory sick pay or statutory maternity pay)—

- (a) in the heading for “or severe disablement allowance” substitute “ , severe disablement allowance or employment and support allowance ”; and  
(b) after paragraph (1) <sup>M83</sup> insert—

“(1A) Paragraph (2) also applies to a claim for an employment and support allowance for a period of limited capability for work in relation to which the claimant gave his employer a notice of incapacity under regulation 7 of the Statutory Sick Pay (General) Regulations 1982 <sup>M84</sup>, and for which he has been informed in writing by his employer that there is no entitlement to statutory sick pay.”.

**Marginal Citations**

**M83** Paragraph (1) was amended by [S.I. 1994/2943](#).

**M84** [S.I. 1982/894](#).

**Amendment of regulation 11**

**17.** In regulation 11 <sup>M85</sup> (special provisions where it is certified that a woman is expected to be confined or where she has been confined)—

- (a) in paragraph (1) for “or severe disablement allowance” substitute “ , severe disablement allowance or an employment and support allowance, ”; and

- (b) in paragraph (2) for “or severe disablement allowance” substitute “ , severe disablement allowance or an employment and support allowance, ”.

**Marginal Citations**

**M85** [Regulation 11](#) was amended by [S.I. 1994/2943](#) and 1997/793.

**Amendment of regulation 13**

- 18.** In regulation 13(9) <sup>M86</sup> (advance claims and awards)—
- (a) after sub-paragraph (a) omit “or”; and
  - (b) after sub-paragraph (b) add—  
“and
  - (c) a claim for an employment and support allowance made by a person from abroad as defined in regulation 70 of the Employment and Support Allowance Regulations (special cases: supplemental – persons from abroad).”.

**Marginal Citations**

**M86** Paragraph (9) was added by [S.I. 2007/1331](#).

**Amendment of regulation 16**

- 19.** In regulation 16(4) <sup>M87</sup> (date of entitlement under an award for the purpose of payability of benefit and effective date of change of rate) after “incapacity benefit” insert “ , employment and support allowance ”.

**Marginal Citations**

**M87** Paragraph (4) was amended by [S.I. 1988/522](#), 1994/2943, 1996/1460 and 2002/3019.

**Amendment of regulation 16A**

- 20.** In regulation 16A(2)(a) <sup>M88</sup> (date of entitlement under an award of state pension credit for the purpose of payability and effective date of change of rate) for “or income-based jobseeker's allowance” substitute “ , income-based jobseeker's allowance or income-related employment and support allowance ”.

**Marginal Citations**

**M88** [Regulation 16A](#) was inserted by [S.I. 2002/3019](#).

**Payment**

- 21.** After regulation 26B <sup>M89</sup> (state pension credit) insert—

### “Employment and support allowance

**26C.**—(1) Subject to paragraphs (3) to (7), employment and support allowance is to be paid fortnightly in arrears on the day of the week determined in accordance with paragraph (2).

(2) The day specified for the purposes of paragraph (1) is the day in column (2) which corresponds to the series of numbers in column (1) which includes the last 2 digits of the claimant's national insurance number—

<b>(1)</b>	<b>(2)</b>
00 to 19	Monday
20 to 39	Tuesday
40 to 59	Wednesday
60 to 79	Thursday
80 to 99	Friday

(3) The Secretary of State may, in any particular case or class of case, arrange that the claimant be paid otherwise than fortnightly.

(4) The Secretary of State may, in any particular case or class of case, arrange that employment and support allowance be paid on any day of the week and where it is in payment to any person and the day on which it is payable is changed, it must be paid at a daily rate of 1/7th of the weekly rate in respect of any of the days for which payment would have been made but for that change.

(5) Where the weekly amount of employment and support allowance is less than £1.00 it may be paid in arrears at intervals of not more than 13 weeks.

(6) Where the weekly amount of an employment and support allowance is less than 10 pence that allowance is not payable.

(7) The provisions of paragraph 2A of Schedule 7 (payment of income support at time of office closure) apply for the purposes of payment of employment and support allowance as they apply for the purposes of payment of income support.”

#### Marginal Citations

**M89** Regulation 26B was inserted by S.I. 2002/3019.

### Amendment of regulation 32

**22.** In regulation 32(3) <sup>M90</sup> (information to be given and changes to be notified) for “or a jobseeker's allowance” substitute “ , a jobseeker's allowance or an employment and support allowance ”.

#### Marginal Citations

**M90** Paragraph (3) was added by S.I. 1995/2303 and amended by S.I. 1996/1460, and 2002/3019.

### Amendment of regulation 36

**23.** In regulation 36(2)(b)<sup>M91</sup> (payment to a partner as alternative payee) for “or an income-based jobseeker’s allowance” substitute “ , an income-based jobseeker’s allowance or an income-related employment and support allowance ”.

#### Marginal Citations

**M91** Paragraph (2) was added by [S.I. 2002/2660](#) and amended by [S.I. 2005/2877](#).

### Amendment of Schedule 1

**24.** In Schedule 1 (benefit claimed and other benefit which may be treated as if claimed in addition or in the alternative)—

- (a) in column (1) (benefit claimed) after the entry “Severe disablement allowance for a woman” insert “ Employment and support allowance for a woman ” and in the corresponding place in column (2) (alternative benefit) insert “ Maternity allowance. ”; and
- (b) in column (2) in the entry corresponding to “Maternity allowance”<sup>M92</sup> for “or severe disablement allowance” substitute “ , severe disablement allowance or employment and support allowance ”.

#### Marginal Citations

**M92** Entry was amended by [S.I. 1994/2943](#).

### Amendment of Schedule 4

**25.** In Schedule 4 (prescribed times for claiming benefit)—

- (a) in column (1) (description of benefit) after the entry “15. Shared additional pension”<sup>M93</sup> add “ **16.** Employment and support allowance ”; and
- (b) in column (2) (prescribed time for claiming benefit) in the corresponding place insert “ The day in respect of which the claim is made and the period of three months immediately following it. ”.

#### Marginal Citations

**M93** Paragraph 15 was added by [S.I. 2005/1551](#).

### Amendment of Schedule 9

**26.**—(1) Schedule 9 (deductions from benefit and direct payment to third parties) is amended as follows.

(2) In paragraph 1 (interpretation)—

(a) in sub-paragraph (1)—

(i) after the definition of “contribution-based jobseeker’s allowance” insert—

““contributory employment and support allowance” means any contributory employment and support allowance which does not fall within the definition of “specified benefit””;

- (ii) in the definition of “housing costs”<sup>M94</sup> after paragraph (c) add—
  - “or
  - (d) Schedule 6 to the Employment and Support Allowance Regulations but—
    - (i) excludes costs under paragraph 18(1)(f) of that Schedule (tents and tent sites); and
    - (ii) includes costs under paragraph 18(1)(a) (ground rent) and 18(1)(c) (rent charges) of that Schedule but only where they are paid with costs under paragraph 18(1)(b) of that Schedule (service charges);”;
- (iii) in the definition of “mortgage payment”<sup>M95</sup> after paragraph (b) omit “or” and after paragraph (c) add—
  - “or
  - (d) Schedule 6 to the Employment and Support Allowance Regulations in accordance with paragraphs 8 to 11 of that Schedule (housing costs to be met in employment and support allowance) on a loan which qualifies under paragraph 16 or 17 of that Schedule, but less any amount deducted under paragraph 19 of that Schedule (non- dependant deductions);”;
- (iv) in the definition of “personal allowance for a single claimant aged not less than 25 years”<sup>M96</sup> after “Jobseeker’s Allowance Regulations” add “ or, in connection with employment and support allowance, paragraph 1(1)(b) of Schedule 4 to the Employment and Support Allowance Regulations ”; and
- (v) in the definition of “specified benefit”<sup>M97</sup> after paragraph (d) add—
  - “(e) subject to sub-paragraph (3), employment and support allowance;”;
- (b) after sub-paragraph (2) add—
  - “(3) For the purposes of the definition of “specified benefit” in sub-paragraph (1) “employment and support allowance” means—
    - (a) income-related employment and support allowance; and
    - (b) in a case where, if there was no entitlement to a contributory employment and support allowance, there would be entitlement to income-related employment and support allowance at the same rate, contributory employment and support allowance.”.
- (3) In paragraph 3(2A) <sup>M98</sup> (housing costs)—
  - (a) in sub-paragraph (b) after “State Pension Credit Regulations” insert “ or paragraph 6(10) or (13) or paragraph 19 of Schedule 6 to the Employment and Support Allowance Regulations ”; and
  - (b) in the description of “C” after “State Pension Credit Regulations” add “ or paragraph 6(10) or (13) or paragraph 19 of Schedule 6 to the Employment and Support Allowance Regulations ”.
- (4) In paragraph 4 (miscellaneous accommodation costs)—
  - (a) in sub-paragraph (1) <sup>M99</sup>—
    - (i) for “or state pension credit” substitute “ , state pension credit or employment and support allowance ”; and

- (ii) in paragraph (a) after “Jobseeker's Allowance Regulations” insert “ or in the case of employment and support allowance, regulation 2(1) of the Employment and Support Allowance Regulations ”;
- (b) in sub-paragraph (2) <sup>M100</sup>—
  - (i) for “or state pension credit” substitute “ , state pension credit or employment and support allowance ”;
  - (ii) in paragraph (a)—
    - (aa) for “or guarantee credit” substitute “ , guarantee credit or employment and support allowance ”; and
    - (bb) after “Jobseeker's Allowance Regulations” insert “ , regulation 90 of the Employment and Support Allowance Regulations ”; and
  - (iii) in paragraph (b) for “or guarantee credit” substitute “ , guarantee credit or employment and support allowance ”; and
- (c) in sub-paragraph (3)—
  - (i) after paragraph (b) omit “or”; and
  - (ii) after paragraph (c) add—
    - “or
    - (d) employment and support allowance for a period of less than a week calculated in accordance with Part 14 of the Employment and Support Allowance Regulations (periods of less than a week).”.
- (5) In paragraph 4A(6) <sup>M101</sup> (hostel payments)—
  - (a) after paragraph (a)—
    - (i) omit “or”; and
    - (ii) after paragraph (b) insert—
      - “or
      - (c) an award of employment and support allowance is calculated in accordance with regulation 165 of the Employment and Support Allowance Regulations (entitlement of less than a week etc.)”; and
  - (b) after “jobseeker's allowance” the third time it occurs insert “ or employment and support allowance ”.
- (6) In paragraph 7B <sup>M102</sup> (arrear of child support maintenance)—
  - (a) after “jobseeker's allowance” each time it occurs insert “ or contributory employment and support allowance ”; and
  - (b) after sub-paragraph (3) insert—
    - “(3A) Subject to sub-paragraphs (4) and (5), the amount to be deducted from the beneficiary's employment and support allowance under sub-paragraph (2) is the weekly amount requested from the beneficiary's employment and support allowance by the Secretary of State, subject to a maximum of one-third of the amount applicable to the beneficiary under regulation 67(2) of the Employment and Support Allowance Regulations (prescribed amounts).”.
- (7) In paragraph 7C(2)(c) <sup>M103</sup> (eligible loans) after sub-paragraph (iii) add—
  - “(iv) employment and support allowance.”.
- (8) In paragraph 8(4)(a) <sup>M104</sup> (maximum amount of payment to third parties)—



- (a) in sub-paragraph (ii) omit “or”; and
- (b) after sub-paragraph (iii) add—
  - “(iv) in the case of employment and support allowance, the applicable amount for the family as is awarded under paragraphs (a) to (d) of regulation 67 (prescribed amounts) or regulation 68 (polygamous marriages) of the Employment and Support Allowance Regulations; or”.

#### Marginal Citations

- M94** Definition was substituted by [S.I. 1996/1460](#) and amended by [S.I. 2002/3019](#) and 2005/777.
- M95** Definition was substituted by [S.I. 1996/1460](#) and amended by [S.I. 2002/3019](#).
- M96** Definition was amended by [S.I. 1991/2284](#), 1996/1460 and 2002/3019.
- M97** Definition was substituted by [S.I. 1996/672](#) and amended by [S.I. 1996/1460](#) and 3195, 2002/2441 and 3019 and 2005/777.
- M98** Sub-paragraph (2A) was inserted by [S.I. 1992/1026](#) and amended by [S.I. 1995/1613](#) and 2927, 1996/1460 and 2002/3019.
- M99** Sub-paragraph (1) was amended by [S.I. 1989/136](#), 1992/3147, 1996/1460, 1999/3178, 2002/398, 2003/2325 and 2005/2687.
- M100** Sub-paragraph (2) was substituted by [S.I. 2003/2325](#) and amended by [S.I. 2005/2687](#).
- M101** Paragraph 4A was inserted by [S.I. 1991/2284](#) and sub-paragraph (6) was substituted by [S.I. 1996/1460](#).
- M102** Paragraph 7B was inserted by [S.I. 1996/2344](#) and amended by [S.I. 1999/3178](#).
- M103** Paragraph 7C was inserted by [S.I. 2006/3188](#).
- M104** Sub-paragraph (4) was inserted by [S.I. 2006/2377](#).

#### Amendment of Schedule 9A

27.—(1) Schedule 9A <sup>M105</sup> (deductions of mortgage interest from benefit and payment to qualifying lenders) is amended as follows.

- (2) In paragraph 1 (interpretation) in the definition of “relevant benefits”<sup>M106</sup>—
  - (a) after paragraph (c) omit “and”; and
  - (b) after paragraph (d) add—
    - “and
    - (e) income-related employment and support allowance;”.
- (3) In paragraph 2(a) <sup>M107</sup> (specified circumstances for the purposes of regulation 34A) after sub-paragraph (iii) add—
  - “or
  - (iv) Schedule 6 to the Employment and Support Allowance Regulations;”.
- (4) In paragraph 3 (specified part of relevant benefit)—
  - (a) in sub-paragraph (1) <sup>M108</sup> after “Jobseeker’s Allowance Regulations” add “ or, in the case of employment and support allowance, a sum equal to the amount of mortgage interest to be met in accordance with paragraphs 8 to 11 of Schedule 6 to the Employment and Support Allowance Regulations ”; and
  - (b) in sub-paragraph (3) <sup>M109</sup>—
    - (i) for “or income-based jobseeker’s allowance” substitute “ income-based jobseeker’s allowance or income-related employment and support allowance ”;

- (ii) in paragraph (b) after “Jobseeker's Allowance Regulations” insert “ or paragraph 6(10) or (13) or 19 of Schedule 6 to the Employment and Support Allowance Regulations ”;
- (iii) in the definition of “A” after “Jobseeker's Allowance Regulations” add “ or paragraph 1 of Schedule 6 to the Employment and Support Allowance Regulations ”;
- (iv) in the definition of “B” after “Jobseeker's Allowance Regulations” add “ or paragraphs 8 to 11 of Schedule 6 to the Employment and Support Allowance Regulations ”; and
- (v) in the definition of “C” after “Jobseeker's Allowance Regulations” add “ or paragraph 19 of Schedule 6 to the Employment and Support Allowance Regulations ”.

(5) In paragraph 4(2)(a) <sup>M110</sup> (direct payment: more than one loan) after “Jobseeker's Allowance Regulations” insert “ or paragraph 13 of Schedule 6 to the Employment and Support Allowance Regulations ”.

(6) In paragraph 10 <sup>M111</sup> (provision of information)—

- (a) in sub-paragraph (2)(a) after “income support” insert “ , employment and support allowance ”;
- (b) in sub-paragraph (3)(a) after “income support” insert “ , employment and support allowance ”; and
- (c) in sub-paragraph (4) after “(housing costs)” the first time it occurs insert “ , paragraph 3 of Schedule 6 to the Employment and Support Allowance Regulations (housing costs) ”.

(7) In paragraph 11(2)(a)(i) <sup>M112</sup> (recovery of sums wrongly paid) after “Jobseeker's Allowance Regulations” insert “ , or paragraph 13 of Schedule 6 to the Employment and Support Allowance Regulations ”.

#### Marginal Citations

**M105** Schedule 9A was inserted by S.I. 1992/1026.

**M106** Definition was substituted by S.I. 1996/672 and amended by S.I. 1996/1460 and 3195, 2002/2441 and 3019 and 2005/777.

**M107** Paragraph 2 was substituted by S.I. 1995/1613 and amended by S.I. 1996/1460, 2002/3019 and 3197 and 2004/2825.

**M108** Sub-paragraph (1) was substituted by S.I. 1995/1613 and amended by S.I. 1996/1460 and 1999/3178.

**M109** Sub-paragraph (3) was amended by S.I. 1995/1613, 1996/1460 and 2002/3019.

**M110** Paragraph 4 was amended by S.I. 1995/1613, 1996/1460, 1997/827 and 2002/3019.

**M111** Paragraph 10 was amended by S.I. 1996/1460, 1997/2305 and 2002/3019

**M112** Paragraph 11 was amended by S.I. 1995/1613, 1996/1460, 2002/3197 and 2004/2825.

#### Amendment of Schedule 9B

**28.**—(1) Schedule 9B <sup>M113</sup> (deductions from benefit in respect of child support maintenance etc.) is amended as follows.

(2) In paragraph 2(1) <sup>M114</sup> (deductions) for “or income-based jobseeker's allowance” substitute “ , income-based jobseeker's allowance or income-related employment and support allowance ”.

(3) In paragraph 3(1) <sup>M115</sup> (arrears) for “or income-based jobseeker's allowance” substitute “ , income-based jobseeker's allowance or income-related employment and support allowance ”.

(4) In paragraph 5(1) <sup>M116</sup> (flat rate maintenance) for “or income-based jobseeker's allowance” substitute “, income-based jobseeker's allowance or income-related employment and support allowance”.

(5) In paragraph 6(1) <sup>M117</sup> (flat rate maintenance (polygamous marriage)) for “or income-based jobseeker's allowance” substitute “, income-based jobseeker's allowance or income-related employment and support allowance”.

(6) In paragraph 8 (general) after “1987” insert “, regulation 104(3)of the Employment and Support Allowance Regulations”.

**Marginal Citations**

**M113** [Schedule 9B](#) was inserted by [S.I. 2001/18](#).

**M114** Sub-paragraph (1) was amended by [S.I. 2002/3019](#).

**M115** Sub-paragraph (1) was amended by [S.I. 2002/3019](#).

**M116** Paragraph (1) was amended by [S.I. 2002/3019](#).

**M117** Paragraph (1) was amended by [S.I. 2002/3019](#).

CHAPTER 2

The Social Security and Child Support (Decisions and Appeals) Regulations 1999

**Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations 1999**

**29.** The Social Security and Child Support (Decisions and Appeals) Regulations 1999 <sup>M118</sup> are amended in accordance with this Chapter.

**Marginal Citations**

**M118** [S.I. 1999/991](#).

**Amendment of regulation 1**

**30.** In regulation 1(3) (citation, commencement and interpretation)—

(a) in paragraph (a) of the definition of “claimant”<sup>M119</sup> for “or section 17(1) of the State Pension Credit Act” substitute “, section 17(1) of the State Pension Credit Act or section 24(1) of the Welfare Reform Act”;

(b) after the definition of “clerk to the appeal tribunal” insert—

““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;”;

(c) after the definition of “designated authority”<sup>M120</sup> insert—

““the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008 <sup>M121</sup>;

“failure determination” means a determination by the Secretary of State under regulation 63(1) of the Employment and Support Allowance Regulations that a claimant has failed to satisfy the requirement of regulation 47 or 54 of those Regulations (requirement to take part in a work-focused health related assessment or a work-focused interview);”;

- (d) after the definition of “the Graduated Retirement Benefit Regulations”<sup>M122</sup> insert—  
““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act;”;
- (e) after the definition of “legally qualified panel member” insert—  
““limited capability for work” has the same meaning as in section 1(4) of the Welfare Reform Act”; and
- (f) after the definition of “the Variations Regulations”<sup>M123</sup> insert—  
““the Welfare Reform Act” means the Welfare Reform Act 2007;”.

#### Marginal Citations

**M119** Definition amended by [S.I. 1999/1662](#) and [2002/3019](#).

**M120** Definition substituted by [S.I. 2002/1703](#).

**M121** [S.I. 2008/794](#)

**M122** Definition was inserted by [S.I. 2005/2677](#).

**M123** Definition inserted by [S.I. 2000/3185](#).

### Amendment of regulation 3

**31.**—(1) Regulation 3 (revision of decisions) is amended as follows.

- (2) In paragraph (5)—
  - (a) in sub-paragraph (c) <sup>M124</sup>—
    - (i) after “incapacity determination” the first time it occurs insert “ or is an employment and support allowance decision where there has been a limited capability for work determination ”; and
    - (ii) for “or the incapacity determination” substitute “ , the incapacity determination or the limited capability for work determination ”; and
  - (b) in sub-paragraph (d) <sup>M125</sup>—
    - (i) after “where the decision” insert “ is an employment and support allowance decision, ”;
    - (ii) after “not in relation to the” insert “ limited capability for work determination, ”; and
    - (iii) after “in or necessary to” insert “ the employment and support allowance decision, ”.
- (3) In paragraph (5ZB) <sup>M126</sup>—
  - (a) after sub-paragraph (f) omit “and”; and
  - (b) after sub-paragraph (g) add—  
“and  
(h) contributory employment and support allowance.”
- (4) After paragraph (5B) <sup>M127</sup> insert—  
“(5C) A decision of the Secretary of State under section 10 made in consequence of a failure determination may be revised at any time if it contained an error to which the claimant did not materially contribute;  
(5D) A decision by the Secretary of State under section 8 or 10 awarding employment and support allowance may be revised at any time if—

- (a) it incorporates a determination that the condition in regulation 30 of the Employment and Support Allowance Regulations is satisfied;
  - (b) the condition referred to in sub-paragraph (a) was not satisfied at the time when the claim was first determined; and
  - (c) there is a period before the award which falls to be decided.”.
- (5) In paragraph (7ZA) <sup>M128</sup>—
- (a) in sub-paragraph (a) for “or state pension credit” substitute “ , state pension credit or an income-related employment and support allowance ”;
  - (b) in sub-paragraph (b) after “Income Support Regulations” insert “ or regulation 71 of the Employment and Support Allowance Regulations ”;
  - (c) in sub-paragraph (c)(i) after “Income Support Regulations” insert “ or regulation 67 of the Employment and Support Allowance Regulations ”; and
  - (d) in sub-paragraph (d)(ii) after “Income Support Regulations” insert “ , paragraph 6(4)(a) of Schedule 4 to the Employment and Support Allowance Regulations ”.
- (6) In paragraph (9) <sup>M129</sup>—
- (a) after sub-paragraph (a) omit “nor”; and
  - (b) after sub-paragraph (b) insert—
    - “nor
    - (c) a decision which relates to an employment and support allowance where the claimant is terminally ill, within the meaning of regulation 2(1) of the Employment and Support Allowance Regulations unless the claimant makes an application which contains an express statement that he is terminally ill and where such an application is made, the decision may be revised.”.

#### **Marginal Citations**

**M124** Sub-paragraph (c) was inserted by [S.I. 1999/1623](#) and amended by [S.I. 2007/2470](#).

**M125** Sub-paragraph (d) was inserted by [S.I. 2007/2470](#).

**M126** Paragraph (5ZB) was inserted by [S.I.2007/2582](#).

**M127** Paragraph (5B) was inserted by [S.I. 2007/2470](#).

**M128** Paragraph (7ZA) was inserted by [S.I. 2005/337](#).

**M129** Paragraph 9 was substituted by [S.I. 1999/2677](#) and amended by [S.I. 1999/2570](#), [2003/1050](#) and [2005/337](#).

#### **Amendment of regulation 6**

**32.**—(1) Regulation 6 (supersession of decisions) is amended as follows.

- (2) In paragraph (2) <sup>M130</sup>—
- (a) in sub-paragraph (a)(i) after “Regulations” insert “ or regulation 146 of the Employment and Support Allowance Regulations ”;
  - (b) in sub-paragraph (i) for “or income support” substitute “ , income support or an employment and support allowance ”; and
  - (c) after sub-paragraph (o) add—
    - “(p) is a decision awarding employment and support allowance where there has been a failure determination;

- (q) is a decision made in consequence of a failure determination where the reduction ceases to have effect under of regulation 64 of the Employment and Support Allowance Regulations;
- (r) is an employment and support allowance decision where, since the decision was made, the Secretary of State has received medical evidence from a health care professional approved by the Secretary of State for the purposes of regulation 23 or 38 of the Employment and Support Allowance Regulations.”.

(3) In paragraph (6)(a) <sup>M131</sup> after “Income Support Regulations” insert “ , regulation 137 of the Employment and Support Allowance Regulations ”.

#### Marginal Citations

**M130** Paragraph (2) was amended by [S.I. 1999/1623](#), 1999/2570 and 1999/2677, 2000/1596, 2001/1711 and 2000/1982, 2002/428, 2002/490, 2000/897 and 2002/3019, 2003/1050, 2003/1886 and 2003/2274, 2004/959, 2005/337 and 2005/2677.

**M131** Paragraph (6) was amended by [S.I. 1999/2677](#) and 2005/337.

#### Amendment of regulation 7

**33.**—(1) Regulation 7 (date from which a decision superseded under section 10 takes effect) is amended as follows.

- (2) In paragraph (1)(a) <sup>M132</sup>—
  - (a) after “(2)(b)” insert “ or (be) ”; and
  - (b) for “and 3B” substitute “ , 3B and 3C ”.
- (3) In paragraph (2) <sup>M133</sup>—
  - (a) in sub-paragraph (b)(i) for “or state pension credit” substitute “ , state pension credit or an employment and support allowance ”; and
  - (b) after paragraph (bc) <sup>M134</sup> insert—
    - “(be) in the case of a claimant who is in receipt of an employment and support allowance and the claimant makes an application which contains an express statement that he is terminally ill within the meaning of regulation 2(1) of the Employment and Support Allowance Regulations, from the date the claimant became terminally ill;”.
- (4) For paragraph (3) <sup>M135</sup> substitute—
  - “(3) For the purposes of paragraphs (2) and (8) “benefit week” has the same meaning, as the case may be, as in—
    - (a) regulation 2(1) of the Income Support Regulations;
    - (b) regulation 1(3) of the Jobseeker's Allowance Regulations;
    - (c) regulation 1(2) of the State Pension Credit Regulations; or
    - (d) regulation 2(1) of the Employment and Support Allowance Regulations.”.
- (5) In paragraph (7)(b) <sup>M136</sup>—
  - (a) in paragraph (i) after “(guarantee credit)” add “ or paragraph 6 of Schedule 4 to the Employment and Support Allowance Regulations; ”; and

- (b) in paragraph (ii)(aa) after “Income Support Regulations” add “ or regulation 71 of the Employment and Support Allowance Regulations ”.
- (6) In paragraph (13)(a) <sup>M137</sup>—
- (a) in paragraph (iii) for “and” substitute “ or ”; and
- (b) after paragraph (iii) insert—
- “(iv) paragraph 16 or 17 of Schedule 6 to the Employment and Support Allowance Regulations; and”.
- (7) After paragraph (17C) <sup>M138</sup> insert—
- “(17D) Except in a case where paragraph (23) applies, where a claimant is in receipt of an employment and support allowance and his applicable amount includes an amount determined in accordance with Schedule 6 to the Employment and Support Allowance Regulations (housing costs), and there is a reduction in the amount of eligible capital owing in connection with a loan which qualifies under paragraph 16 or 17 of that Schedule, a decision made under section 10 shall take effect—
- (a) on the first anniversary of the date on which the claimant's housing costs were first met under that Schedule; or
- (b) where the reduction in eligible capital occurred after the first anniversary of the date referred to in sub-paragraph (a), on the next anniversary of that date following the date of the reduction.
- (17E) Where a claimant is in receipt of an employment and support allowance and payments made to that claimant which fall within paragraph 31 or 32(1)(a) to (c) of Schedule 8 to the Employment and Support Allowance Regulations have been disregarded in relation to any decision under section 8 or 10 and there is a change in the amount of interest payable—
- (a) on a loan qualifying under paragraph 16 or 17 of Schedule 6 to those Regulations to which those payments relate; or
- (b) on a loan not so qualifying which is secured on the dwelling occupied as the home to which those payments relate,
- a decision under section 10 which is made as a result of that change in the amount of interest payable shall take effect on whichever of the dates referred to in paragraph (17F) is appropriate in the claimant's case.
- (17F) The date on which a decision under section 10 takes effect for the purposes of paragraph (17E) is—
- (a) the date on which the claimant's housing costs are first met under paragraph 8(1)(a), 9(1)(a) or 10(2)(a) of Schedule 6 to the Employment and Support Allowance Regulations; or
- (b) where the change in the amount of interest payable occurred after the date referred to in sub-paragraph (a), on the date of the next alteration in the standard rate following the date of that change.
- (17G) In paragraph (17F) “standard rate” has the same meaning as it has in paragraph 13(2) of Schedule 6 to the Employment and Support Allowance Regulations.
- (17H) Where the decision is superseded in accordance with regulation 6(2)(a)(i) and the relevant circumstances are that the claimant has a non-dependant who has become entitled to main phase employment and support allowance, the superseding decision shall take effect from the date the main phase employment and support allowance is first paid to the non-dependant.”.

- (8) In paragraph (23) <sup>M139</sup>—
- (a) after “(17A)” insert “, (17D) ”;
  - (b) after “a jobseeker's allowance” the first time it occurs insert “, an employment and support allowance ”; and
  - (c) in sub-paragraph (a) for “or jobseeker's allowance” substitute “, jobseeker's allowance or employment and support allowance ”.
- (9) After paragraph (34) <sup>M140</sup> add—
- “(35) A decision made in accordance with regulation 6(2)(p), where the failure determination was made before the 13th week of entitlement, shall take effect from the first day of the benefit week following that week.
- (36) A decision made in accordance with regulation 6(2)(p) where paragraph (35) does not apply shall take effect from the first day of the benefit week in which the failure determination was made.
- (37) A decision made in accordance with regulation 6(2)(q) shall take effect from the first day of the benefit week in which the reduction mentioned in that sub-paragraph ceased to have effect.
- (38) A decision made in accordance with regulation 6(2)(r) that embodies a determination that the claimant has limited capability for work which is the first such determination shall take effect from the beginning of the 14th week of entitlement.
- (39) A decision made in accordance with regulation 6(2)(r), following an application by the claimant, that embodies a determination that the claimant has limited capability for work-related activity shall take effect from the date of the application.”.

#### Marginal Citations

- M132** Paragraph (1) was substituted by [S.I. 1999/3178](#) and sub-paragraph (a) was substituted by [S.I. 2002/3019](#) and amended by [S.I. 2003/1050](#).
- M133** Paragraph (2) was amended by [S.I. 1999/3178](#), [2000/1596](#), [2002/3019](#), [2003/1050](#), [2005/337](#), [2006/832](#) and [2006/2377](#) and [2007/2470](#).
- M134** Sub-paragraph (bc) was inserted by [S.I. 2006/2377](#). Sub-paragraph (bd) was inserted by [S.I. 2007/2470](#) and omitted by [S.I. 2008/1042](#).
- M135** Paragraph (3) was amended by [S.I. 2002/3019](#).
- M136** Paragraph (7) was substituted by [S.I. 2006/832](#).
- M137** Paragraph (3)(a) was amended by [S.I. 2002/3019](#).
- M138** Paragraph (17C) was inserted by [S.I. 2002/3197](#) and substituted by [S.I. 2004/647](#).
- M139** Paragraph (23) was substituted by [S.I. 2002/3197](#) and amended by [S.I. 2004/647](#).
- M140** Paragraph (34) was inserted by [S.I. 2005/337](#).

#### Amendment of regulation 7A

- 34.—**(1) Regulation 7A <sup>M141</sup> (definitions etc.) is amended as follows.
- (2) For the heading substitute “Definitions for the purposes of Chapters I and II”.
  - (3) In paragraph (1)—
    - (a) after the definition of “disability determination” insert—
 

““employment and support allowance decision” means a decision to award a relevant benefit or relevant credit embodied in or necessary to which is a determination that a



person has or is to be treated as having limited capability for work under Part 1 of the Welfare Reform Act;”

- (b) after the definition of “incapacity determination” insert—
- ““limited capability for work determination” means a determination whether a person has limited capability for work by applying the test of limited capability for work or whether a person is to be treated as having limited capability for work in accordance with regulation 20 of the Employment and Support Allowance Regulations;”;
- (c) in the definition of “payee” after “incapacity benefit decision” insert “ or “employment and support allowance decision” .

**Marginal Citations**

M141 Regulation 7A was inserted by S.I. 1999/1623 and amended by 2000/1596

**Amendment of regulation 7B**

35. In regulation 7B(23)<sup>M142</sup> (date from which a decision superseded under section 17 of the Child Support Act takes effect) in the definition of “benefit week” after “Income Support Regulations” insert “, in relation to employment and support allowance has the same meaning as in regulation 2(1) of the Employment and Support Allowance Regulations ”.

**Marginal Citations**

M142 Regulation 7B was inserted by S.I. 2000/3185.

**Amendment of regulation 10**

36. For regulation 10 (effect of a determination as to capacity for work) substitute—

**“Effect of determination as to capacity or capability for work**

10.—(1) This regulation applies to a determination whether a person—

- (a) is capable or incapable of work;
- (b) is to be treated as capable or incapable of work;
- (c) has or does not have limited capability for work; or
- (d) is to be treated as having or not having limited capability for work.

(2) A determination (including a determination made following a change of circumstances) as set out in paragraph (1) which is embodied in or necessary to a decision under Chapter II of Part I of the Act or on which such a decision is based shall be conclusive for the purposes of any further decision.”.

**Amendment of regulation 11**

37. In regulation 11 (Secretary of State to determine certain matters)—

- (a) after “Act” insert “ or Part 1 of the Welfare Reform Act ”; and
- (b) after sub-paragraph (a) insert—
  - “(aa) whether a person is, or is to be treated as, having or not having limited capability for work; or”.

### Amendment of regulation 13

**38.** In regulation 13<sup>M143</sup> (income support and social fund determinations on incomplete evidence)

- (a) in paragraph (1)(a)—
  - (i) after paragraph (i) omit “or”; and
  - (ii) after paragraph (ii) for “and” substitute—
    - “or
    - (iii) a claimant's applicable amount under regulation 67(1)(c) or 68(1)(d) of the Employment and Support Allowance Regulations; and” and
- (b) in paragraph (2)(a)—
  - (i) in paragraph (ii) omit “or”;
  - (ii) after paragraph (iii) for “and” substitute—
    - “or
    - (iv) in relation to any claimant, the applicable amount includes the severe disability premium by virtue of regulation 67(1) or 68(1) of, and paragraph 6 of Schedule 4 to, the Employment and Support Allowance Regulations; and”.

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#### Marginal Citations

**M143** Regulation 13 was amended by [S.I. 2002/3019](#).

### Amendment of regulation 14A

**39.**—(1) Regulation 14A<sup>M144</sup> (termination of award of income support or jobseeker's allowance) is amended as follows.

- (2) In the heading for “or jobseeker's allowance” substitute “ , jobseeker's allowance or employment and support allowance ”.
- (3) In paragraph (1)—
  - (a) for “or a jobseeker's allowance” substitute “ , a jobseeker's allowance or an employment and support allowance ”; and
  - (b) after “partner for” insert “ an employment and support allowance, ”.
- (4) After paragraph (4) add—
  - “(5) Where an award of an employment and support allowance is made in accordance with the provisions of this regulation, paragraph 2 of Schedule 2 to the Welfare Reform Act (waiting days) shall not apply.”.

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#### Marginal Citations

**M144** Regulation 14A was inserted by [S.I. 2002/1379](#).

### Amendment of regulation 17

**40.** In regulation 17(2) (provision of information or evidence) after sub-paragraph (e) add—

- “(f) a person whose entitlement to an employment and support allowance is conditional on his having, or being treated as having, limited capability for work.”.

### Amendment of regulation 19

**41.** In regulation 19(1) <sup>M145</sup> (suspension and termination for failure to submit to medical examination)—

- (a) omit “applies”; and
- (b) after “capable of work)” insert “ or regulation 23 of the Employment and Support Allowance Regulations (where a question arises whether a person has limited capability for work) applies ”.

#### Marginal Citations

**M145** Regulation 19 was amended by S.I. 1999/2570 and 2007/1626.

### Amendment of Schedule 2

**42.** In paragraph 5 of Schedule 2 (decisions against which no appeal lies)—

- (a) after paragraph (a) insert—
  - “(aa) regulation 4I (which partner should make a claim for an employment and support allowance);”;
- (b) in sub-paragraph (h) after “benefit” add “ or employment and support allowance ”; and
- (c) after paragraph (mm) insert—
  - “(mn) regulation 26C (manner and time of payment of employment and support allowance);”.

### Schedule 3C

**43.** After Schedule 3B <sup>M146</sup> (date on which change of circumstances takes effect where claimant entitled to state pension credit) insert—

“SCHEDULE 3C

Regulation 7(1)(a)

#### DATE FROM WHICH CHANGE OF CIRCUMSTANCES TAKES EFFECT WHERE CLAIMANT ENTITLED TO EMPLOYMENT AND SUPPORT ALLOWANCE

- 1.** Subject to paragraphs 2 to 7, where the amount of an employment and support allowance payable under an award is changed by a superseding decision made on the ground of a change of circumstances, that superseding decision shall take effect from the first day of the benefit week in which the relevant change of circumstances occurs or is expected to occur.
- 2.** In the cases set out in paragraph 3, the superseding decision shall take effect from the day on which the relevant change of circumstances occurs or is expected to occur.
- 3.** The cases referred to in paragraph 2 are where—
  - (a) entitlement ends, or is expected to end, for a reason other than that the claimant no longer satisfies the provisions of paragraph 6(1)(a) of Schedule 1 to the Welfare Reform Act;

- (b) a child or young person referred to in regulation 156(6)(d) or (h) of the Employment and Support Allowance Regulations (child in care of local authority or detained in custody) lives, or is expected to live, with the claimant for part only of the benefit week;
- (c) a person referred to in paragraph 12 of Schedule 5 to the Employment and Support Allowance Regulations—
  - (i) ceases, or is expected to cease, to be a patient; or
  - (ii) a member of the person's family ceases, or is expected to cease, to be a patient,
 in either case for a period of less than a week;
- (d) a person referred to in paragraph 3 of Schedule 5 to the Employment and Support Allowance Regulations—
  - (i) ceases to be a prisoner; or
  - (ii) becomes a prisoner;
- (e) during the currency of the claim a claimant makes a claim for a relevant social security benefit—
  - (i) the result of which is that his benefit week changes; or
  - (ii) in accordance with regulation 13 of the Claims and Payments Regulations and an award of that benefit on the relevant day for the purposes of that regulation means that his benefit week is expected to change.

4. A superseding decision made in consequence of a payment of income being treated as paid on a particular day under regulation 93 of the Employment and Support Allowance Regulations (date on which income is treated as paid) shall take effect from the day on which that payment is treated as paid.

5. Where—

- (a) it is decided upon supersession on the ground of a relevant change of circumstances or change specified in paragraphs 9 and 10 that the amount of an employment and support allowance is, or is to be, reduced; and
- (b) the Secretary of State certifies that it is impracticable for a superseding decision to take effect from the day prescribed in paragraph 9 or the preceding paragraphs of this Schedule (other than where paragraph 3(e) or 4 applies),

that superseding decision shall take effect—

- (i) where the relevant change has occurred, from the first day of the benefit week following that in which that superseding decision is made; or
- (ii) where the relevant change is expected to occur, from the first day of the benefit week following that in which that change of circumstances is expected to occur.

6. Where—

- (a) a superseding decision (“the former supersession”) was made on the ground of a relevant change of circumstances in the cases set out in paragraph 3(b) to (e); and
- (b) that superseding decision is itself superseded by a subsequent decision because the circumstances which gave rise to the former supersession cease to apply (“the second change”),

that subsequent decision shall take effect from the date of the second change.

7. In the case of an employment and support allowance decision where there has been a limited capability for work determination, where—

- (a) the Secretary of State is satisfied that, in relation to a limited capability for work determination, the claimant or payee failed to notify an appropriate office of a change of circumstances which regulations under the Administration Act required him to notify; and
- (b) the claimant or payee, as the case may be, could reasonably have been expected to know that the change of circumstances should have been notified, the superseding decision shall take effect—
  - (i) from the date on which the claimant or payee, as the case may be, ought to have notified the change of circumstances; or
  - (ii) if more than one change has taken place between the date from which the decision to be superseded took effect and the date of the superseding decision, from the date on which the first change ought to have been notified.

*Changes other than changes of circumstances*

8. Where—

- (a) the Secretary of State supersedes a decision made by an appeal tribunal or a Commissioner on the grounds specified in regulation 6(2)(c)(i) (ignorance of, or mistake as to, a material fact);
- (b) the decision to be superseded was more advantageous to the claimant because of the ignorance or mistake than it would otherwise have been; and
- (c) the material fact—
  - (i) does not relate to the limited capability for work determination embodied in or necessary to the decision; or
  - (ii) relates to a limited capability for work determination embodied in or necessary to the decision and the Secretary of State is satisfied that at the time the decision was made the claimant or payee, as the case may be, knew or could reasonably have been expected to know of it and that it was relevant,

the superseding decision shall take effect from the first day of the benefit week in which the decision of the appeal tribunal or the Commissioner took effect or was to take effect.

9. Where an amount of an employment and support allowance payable under an award is changed by a superseding decision specified in paragraph 10 the superseding decision shall take effect from the day specified in paragraph 1 for a change of circumstances.

10. The following are superseding decisions for the purposes of paragraph 9—

- (a) a decision which supersedes a decision specified in regulation 6(2)(b) and (d) to (ee); and
- (b) a superseding decision which would, but for paragraph 9, take effect from a date specified in regulation 7(6), (7), (12), (13), (17D) to (17F), and (33).”.

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**Marginal Citations**

M146 Schedule 3B was inserted by S.I. 2002/3019.

## PART 5

### Miscellaneous Amendments

#### CHAPTER 1

#### Statutory Payments

#### **Amendment of the Social Security Contributions and Benefits Act 1992**

**44.** After paragraph 2(d)<sup>M147</sup> of Schedule 11 to the Social Security Contributions and Benefits Act 1992 (circumstances in which periods of entitlement to statutory sick pay do not arise) insert—

“(dd) in the period of 85 days ending immediately before the relevant date the employee had at least one day on which he was entitled to an employment and support allowance (or would have been so entitled had he satisfied the requirements in section 1(2) of the Welfare Reform Act 2007.”.

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#### **Marginal Citations**

**M147** 1992 c. 4. Paragraph (2) was amended by [Social Security \(Incapacity for Work\) Act 1994 \(c. 18\)](#) and the relevant amending Instruments are [S.I. 2002/2034](#) and [2006/1031](#).

#### **Amendment of the Statutory Sick Pay (General) Regulations 1982**

**45.—(1)** In regulation 3 of the Statutory Sick Pay (General) Regulations 1982<sup>M148</sup> (period of entitlement ending or not arising) after paragraph (2B) insert—

“(2C) A period of entitlement in respect of an employee who was entitled to employment and support allowance shall not arise in relation to any day within a period of limited capability for work beginning with the first day on which paragraph 2(dd) of Schedule 11 to the Contributions and Benefits Act ceases to have effect where the employee in question is a person to whom regulation 148 of the Employment and Support Allowance Regulations 2008 (work and training beneficiaries) applies.”.

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#### **Marginal Citations**

**M148** [S.I. 1982/894](#). Paragraph (2B) was inserted by [S.I. 2007/825](#).

#### **Amendment of the Statutory Maternity Pay (General) Regulations 1986**

**46.** In regulation 25A(1) of the Statutory Maternity Pay (General) Regulations 1986<sup>M149</sup> (provision of information relating to claims for certain other benefits) for “or incapacity benefit”, substitute “ , incapacity benefit or an employment and support allowance ”.

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#### **Marginal Citations**

**M149** [S.I. 1986/1960](#). Regulation 25A was inserted by [S.I. 1990/622](#) and amended by [S.I. 1995/829](#) and [2002/2690](#).

## CHAPTER 2

### National Insurance

#### Amendment of the Social Security Contributions and Benefits Act 1992

**47.**—(1) Section 44A<sup>M150</sup> of the Social Security Contributions and Benefits Act 1992 (deemed earnings factors) is amended as follows.

(2) In subsection (2)(d)—

- (a) after “incapacity benefit” insert “ or qualifying employment and support allowance ”; and
- (b) in sub-paragraph (i) after “Schedule 3” add “ or, as the case may be, paragraph 1 of Schedule 1 to the Welfare Reform Act ”.

(3) After subsection (6) add—

“(7) In subsection (2)(d) “qualifying employment and support allowance” means contributory employment and support allowance where—

- (a) that allowance was payable for a continuous period of 52 weeks;
- (b) that allowance included the support component under section 2(2) of the Welfare Reform Act; or
- (c) in the case of—

- (i) a man born between 6th April 1944 and 5th April 1947; or
- (ii) a woman born between 6th April 1949 and 5th April 1951,

that allowance was payable for a continuous period of 13 weeks immediately following a period throughout which statutory sick pay was payable.”.

#### Marginal Citations

**M150** Section 44A was inserted by section 30(3) of the [Child Support, Pensions and Social Security Act 2000](#) (c. 19).

#### Amendment of the Social Security (Credits) Regulations 1975

**48.**—(1) The Social Security (Credits) Regulations 1975<sup>M151</sup> are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) in the definition of “benefit”<sup>M152</sup> after “income-based jobseeker's allowance” insert “ and includes a contributory employment and support allowance but not an income-related employment and support allowance ”;

(b) after the definition of “contribution-based jobseeker's allowance”<sup>M153</sup> insert—

““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act (employment and support allowance);”;

(c) after the definition of “income-based jobseeker's allowance” insert—

““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act (employment and support allowance);”;

(d) in the definition of “reckonable year”<sup>M154</sup>—

- (i) after sub-paragraph (a) omit “or”; and
- (ii) after sub-paragraph (b) add—

“or

(c) in relation to a contributory employment and support allowance, the condition specified in paragraph 2(1) of Schedule 1 to the Welfare Reform Act (conditions relating to national insurance).”;

(e) in the definition of “relevant benefit year”<sup>M155</sup>—

(i) after sub-paragraph (a) omit “and”; and

(ii) after sub-paragraph (b) add—

“and

(c) in relation to a contributory employment and support allowance, in paragraph 3(1)(f) of Schedule 1 to the Welfare Reform Act (conditions relating to national insurance).”;

(f) after the definition of “relevant past year”<sup>M156</sup> insert—

““the Welfare Reform Act” means the Welfare Reform Act 2007;”.

(3) In regulation 3(1) <sup>M157</sup> (general provisions relating to the crediting of contributions and earnings)—

(a) after sub-paragraph (a) omit “or”; and

(b) after sub-paragraph (b) add—

“or

(c) in relation to a contributory employment and support allowance, the condition specified in paragraph 2(1) of Schedule 1 to the Welfare Reform Act.”.

(4) In regulation 8(1) <sup>M158</sup> (credits on termination of full-time education, training or apprenticeship) for “or short-term incapacity benefit” substitute “ , short-term incapacity benefit or a contributory employment and support allowance ”.

(5) In regulation 8A(2)(c) <sup>M159</sup> (credits for unemployment) after “incapable of work” insert “ or had limited capability for work ”.

(6) In regulation 8B <sup>M160</sup> (credits for incapacity for work)—

(a) in the heading, after “incapacity for work” insert “ or limited capability for work ”; and

(b) in paragraph (2) after sub-paragraph (a) omit “or” and substitute—

“(aa) a week in which, in relation to the person concerned, each of the days—

(i) was a day of limited capability for work for the purposes of Part 1 of the Welfare Reform Act (limited capability for work) or would have been such a day had that person been entitled to an employment and support allowance by virtue of section 1 of the Welfare Reform Act; or

(ii) would have been such a day had the person concerned claimed an employment and support allowance or maternity allowance within the prescribed time; or”.

(7) In regulation 8C(1) <sup>M161</sup> (credits on termination of bereavement benefits)—

(a) after sub-paragraph (a) omit “or”; and

(b) after sub-paragraph (b) add—

(c) after sub-paragraph (b) add—

“or

(c) paragraph 2(1) of Schedule 1 to the Welfare Reform Act in relation to a contributory employment and support allowance.”.



### Marginal Citations

- M151** S.I. 1975/556.
- M152** Definition inserted by S.I. 1996/2367 and amended by S.I. 2000/1483.
- M153** Definition inserted by S.I. 1996/2367.
- M154** Definition was substituted by S.I. 1996/2367 and amended by S.I. 2007/1749.
- M155** Definition was substituted by S.I. 1996/2367.
- M156** Definition was amended by S.I. 1988/1545.
- M157** Paragraph 1 was substituted by S.I. 1996/2367 and amended by S.I. 2000/1483.
- M158** Paragraph 1 was substituted by S.I. 1989/1627 and amended by S.I. 1991/387, 1995/829 and 1996/2367.
- M159** Regulation 8A was inserted by S.I. 1996/2367 and paragraph 2 was amended by S.I. 2002/490.
- M160** Regulation 8B was inserted by S.I. 1996/2367 and amended by S.I. 2003/521, 2007/1749.
- M161** Regulation 8C was inserted by S.I. 2000/1483.

### Amendment of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001

**49.**—(1) The Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001<sup>M162</sup> are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)—

- (a) in the definition of “contributory benefit” after “income-based jobseeker's allowance” insert “ and includes a contributory employment and support allowance but not an income-related employment and support allowance ”;
- (b) after the definition of “contributory benefit” insert—  
““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act (employment and support allowance);”;
- (c) after the definition of “earnings factor” insert—  
““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act (employment and support allowance);”;
- (d) in the definition of “relevant benefit year” after sub-paragraph (b) add—  
“(c) paragraph 3(1)(f) of Schedule 1 to the Welfare Reform Act (conditions relating to national insurance), in relation to a contributory employment and support allowance.”; and
- (e) after the definition of “relevant time” insert—  
““the Welfare Reform Act” means the Welfare Reform Act 2007;”.

(3) In regulation 4 (treatment for the purpose of any contributory benefit of late paid contributions)—

- (a) in paragraph (8) for “or short-term incapacity benefit” substitute “ , short-term incapacity benefit or a contributory employment and support allowance ”; and
- (b) after paragraph (9)(b) insert—  
“(c) a contributory employment and support allowance is a reference to the condition specified in paragraph 2(1) of Schedule 1 to the Welfare Reform Act”.

(4) In regulation 5<sup>M163</sup> (treatment... of late paid primary Class 1 contributions etc.)—

- (a) in paragraph (1)(b)—  
(i) after paragraph (i) omit “or”; and

(ii) after paragraph (ii) add—

“or

(iii) a contributory employment and support allowance, is not paid before the beginning of the relevant benefit year;”;

(b) in paragraph (2)(a) for “or short-term incapacity benefit” substitute “ , short-term incapacity benefit or a contributory employment and support allowance ”; and

(c) in paragraph (3)(a) <sup>M164</sup> after (ii) add—

“(iii) a contributory employment and support allowance is a reference to the condition specified in paragraph 1(1) of Schedule 1 to the Welfare Reform Act;”.

(5) In regulation 5A(a) <sup>M165</sup> (treatment for the purpose of any contributory benefit of duly paid primary Class 1 contributions in respect of retrospective earnings) for “or short-term incapacity benefit” substitute “ , short-term incapacity benefit or a contributory employment and support allowance ” .

#### Marginal Citations

**M162** S.I. 2001/769.

**M163** Regulation 5 was amended by S.I. 2002/2366.

**M164** Paragraph (3)(a) was modified by S.I. 1996/207 and paragraph 2(2) of Schedule 3 to the Act was amended by the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#).

**M165** Regulation 5A was inserted by S.I. 2007/1154.

## CHAPTER 3

### Adjustments and Deductions

#### Amendment of the Social Security (Recovery of Benefits) Act 1997

**50.**—(1) The Social Security (Recovery of Benefits) Act 1997 <sup>M166</sup> is amended as follows.

(2) In section 29 <sup>M167</sup> (general interpretation) in the definition of “benefit” after “a jobseeker’s allowance” insert “ , an employment and support allowance ”.

(3) In Schedule 2 <sup>M168</sup> (calculation of compensation payment) in column (2) (benefit) after the entry “Disablement pension payable under section 103 of the 1992 Act” insert the entry “ Employment and support allowance ”.

#### Marginal Citations

**M166** 1997 c. 27.

**M167** Section 29 was amended by the [Social Security Act 1998 \(c.14\)](#).

**M168** Schedule 2 was amended by the [Tax Credits Act 1999 \(c. 10\)](#).

#### Amendment of the Social Security (Overlapping Benefits) Regulations 1979

**51.**—(1) The Social Security (Overlapping Benefits) Regulations 1979 <sup>M169</sup> are amended as follows.

(2) In regulation 2(1) (interpretation)—

- (a) in the definition of “contributory benefit”<sup>M170</sup> for “ and a contribution-based jobseeker's allowance” substitute “ a contribution-based jobseeker's allowance and a contributory employment and support allowance ”;
  - (b) in the definition of “personal benefit”<sup>M171</sup> after “includes” insert “ a contributory employment and support allowance but not an income-related employment and support allowance and includes ”; and
  - (c) after the definition of “1914-1918 War Injuries Scheme” insert—  
““the Welfare Reform Act” means the Welfare Reform Act 2007.”.
- (3) In regulation 4(1)(a) <sup>M172</sup> (adjustment of personal benefit etc.) after “industrial injuries benefits” insert “ , Part 1 of the Welfare Reform Act ”.
- (4) In regulation 10(1) <sup>M173</sup> (adjustment of dependency benefit where certain personal benefit is payable) after sub-paragraph (j) add—  
“(k) a contributory employment and support allowance.”.
- (5) In regulation 16 <sup>M174</sup> (persons to be treated as entitled to benefit for certain purposes)—  
(a) after “the Act” the first time it occurs insert “ , Part 1 of the Welfare Reform Act ”; and  
(b) after “under it,” the first time it occurs insert “ Part 1 of the Welfare Reform Act and regulations made under it ”.
- (6) In regulation 17 <sup>M175</sup> (prevention of double adjustments) for “or under the Jobseekers Act” each time it occurs substitute “ , the Jobseekers Act or Part 1 of the Welfare Reform Act ”.
- (7) In Schedule 1 <sup>M176</sup> (personal benefits which are required to be adjusted etc.) in column (1) (personal benefit under the Act) in paragraph 4, after “severe disablement allowance” insert “ , contributory employment and support allowance ”.

#### **Marginal Citations**

**M169** [S.I. 1979/597](#).

**M170** Definition was inserted by [S.I. 1996/1345](#).

**M171** Definition was amended by [S.I. 2005/1551](#).

**M172** Paragraph (1) was substituted by [S.I. 1992/3194](#) and amended by [S.I. 1996/1345](#).

**M173** Paragraph (1) was amended by [S.I. 1980/1927](#), [1982/1173](#), [1983/186](#), [1991/387](#), [1992/3194](#), [1996/1345](#) and by virtue of the [Employment Act 1998 \(c. 38\)](#).

**M174** [Regulation 16](#) was amended by [S.I. 1996/1345](#).

**M175** [Regulation 17](#) was amended by [S.I. 1996/1345](#)

**M176** [Schedule 1](#) was amended by [S.I. 1983/186](#), [1984/1303](#), [1995/829](#), [1996/1345](#), [2000/1483](#) and [2005/2877](#).

#### **Amendment of the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988**

**52.**—(1) The Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988 <sup>M177</sup> are amended as follows.

- (2) In regulation 1(2) (citation, commencement and interpretation)—
  - (a) in the definition of “benefit”<sup>M178</sup> after “state pension credit” insert “ , an employment and support allowance ”;
  - (b) after the definition of “disabled person's tax credit”<sup>M179</sup> insert—

““the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;” and

(c) after the definition of “tax credit” insert—

““the Welfare Reform Act” means the Welfare Reform Act 2007;”.

(3) In regulation 2(4)(c) <sup>M180</sup> (making of interim payments) after “income support” insert “ or income-related employment and support allowance ”.

(4) In regulation 4(3)(c) <sup>M181</sup> (recovery of overpaid interim payments) after “income support” insert “ or income-related employment and support allowance ”.

(5) In regulation 5(3) <sup>M182</sup> (offsetting prior payment against subsequent award) after “income-based jobseeker's allowance” insert “ or an income-related employment and support allowance ”.

(6) In regulation 7 (duplication and prescribed income)—

(a) in paragraph (1)(a) <sup>M183</sup> after “Part III of the State Pension Credit Regulations” insert “ or Part 10 of the Employment and Support Allowance Regulations ”; and

(b) in paragraph (1)(b) after “(child support maintenance)” insert “ or Chapter 9 of Part 10 to the Employment and Support Allowance Regulations (child support) ”.

(7) In regulation 8 (duplication and prescribed payments)—

(a) in paragraph (1) <sup>M184</sup>, after sub-paragraph (k) add—

“(l) a contributory employment and support allowance.”; and

(b) in paragraph (2) <sup>M185</sup> after “income-based jobseekers allowance” add “ or income-related employment and support allowance ”.

(8) In regulation 13(1)(b) <sup>M186</sup> (sums to be deducted in calculating recoverable amounts) after “income-based jobseeker's allowance” insert “ or income-related employment and support allowance ”.

(9) In regulation 14 <sup>M187</sup> (quarterly diminution of capital) after “or an income-based jobseeker's allowance” each time it occurs insert “, or income-related employment and support allowance ”.

(10) In regulation 15(2)(d) <sup>M188</sup> (recovery by deduction from prescribed benefits) after “income support,” insert “ an employment and support allowance, ”.

(11) In regulation 16 (limitations on deductions from prescribed benefits)—

(a) in paragraph (4A) <sup>M189</sup> after sub-paragraph (d) add—

“(e) an income-related employment and support allowance;

(f) where, if there was no entitlement to a contributory employment and support allowance, there would be entitlement to an income-related employment and support allowance at the same rate, a contributory employment and support allowance.”;

(b) in paragraph (6) <sup>M190</sup> after sub-paragraph (c) add—

“or

(d) in the calculation of the income of a person to whom income-related employment and support allowance is payable, the amount of earnings or other income falling to be taken into account is reduced by paragraph 7 of Schedule 7 to the Employment and Support Allowance Regulations (sums to be disregarded in the calculation of earnings) or paragraphs 16 and 17 of Schedule 8 to those Regulations (sums to be disregarded in the calculation of income other than earnings),”; and

- (c) in paragraph (8) <sup>M191</sup>—
- (i) in the definition of “personal allowance for a single claimant aged not less than 25” for “either” substitute “ an employment and support allowance, ”; and
  - (ii) in the definition of “specified benefit”—
    - (aa) after paragraph (d) omit “and”; and
    - (bb) after paragraph (e) add—  
“and
    - (f) an employment and support allowance.”.

(12) In regulation 17 <sup>M192</sup> (recovery from couples) after “income-based jobseeker's allowance” each time it occurs insert “ or income-related employment and support allowance ”.

#### Marginal Citations

**M177** [S.I. 1988/664](#).

**M178** Definition was amended by [S.I. 1988/1725](#), 1989/136, 1995/829, 1996/1345 and 2002/3019.

**M179** Definition was substituted by [S.I. 1999/2571](#).

**M180** [Regulation 2](#) was amended by [S.I. 1991/2742](#), 1993/650, 1996/30, 1999/3178 and 2005/337.

**M181** Paragraph (3) was amended by [S.I. 1996/650](#).

**M182** [Regulation 5](#) was amended by [S.I. 1996/1345](#), 1999/2571 and 1999/3178, 2000/3120, 2002/3019, 2005/1551 and 2006/516.

**M183** Paragraph (1) was amended by [S.I. 1993/650](#), 1996/1345 and 2002/3019.

**M184** Paragraph (1) was amended by [S.I. 1991/387](#) and 1999/2571, 2742 and 3178, 2000/1483, 2005/337 and 3476 and by virtue of the Employment Act 1988.

**M185** Paragraph (2) was amended by [S.I. 1996/1345](#), 1999/3178 and 2002/3019.

**M186** Paragraph (1) was amended by [S.I. 1996/1345](#), 1999/2571 and 2002/3019.

**M187** [Regulation 14](#) was amended by [S.I. 1996/1345](#) and 1996/2519, 1999/2571 and 2002/3019.

**M188** Sub-paragraph (2)(d) was amended by [S.I. 1996/2519](#) and 2002/3019.

**M189** Paragraph (4A) was inserted by [S.I. 1996/2519](#) and amended by [S.I. 2002/3019](#).

**M190** Paragraph (6) was amended by [S.I. 1996/1345](#) and 2002/3019.

**M191** Paragraph (8) was amended by [S.I. 2000/2336](#) and 2002/3019.

**M192** [Regulation 17](#) was amended by [S.I. 1996/1345](#), 1999/2571, 2002/3019, 2003/492 and 2005/2877.

### Amendment of the Community Charges (Deductions from Income Support) (No. 2) Regulations 1990

**53.**—(1) The Community Charges (Deductions from Income Support) (No. 2) Regulations 1990 <sup>M193</sup> are amended as follows.

- (2) In regulation 2 (applications for deductions etc.)—
- (a) in the heading for “or jobseeker's allowance” substitute “ , jobseeker's allowance or employment and support allowance ”;
  - (b) in paragraph (1) for “or jobseeker's allowance” substitute “ , jobseeker's allowance or employment and support allowance ”; and
  - (c) in paragraph (2)(e) for “or jobseeker's allowance” substitute “ , jobseeker's allowance or employment and support allowance ”.
- (3) In regulation 3—
- (a) in the heading for “or jobseeker's allowance” substitute “ , jobseeker's allowance or employment and support allowance ”; and

(b) in paragraph (1) for “or income-based jobseeker's allowance” substitute “, income-based jobseeker's allowance or income-related employment and support allowance”.

(4) In regulation 4 (circumstances, time of making and termination of deductions) for “or jobseeker's allowance” substitute “, jobseeker's allowance or employment and support allowance”.

**Marginal Citations**

M193 S.I. 1990/545.

**Amendment of the Fines (Deductions from Income Support) Regulations 1992**

54.—(1) The Fines (Deductions from Income Support) Regulations 1992 <sup>M194</sup> are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)—

(a) in the definition of “benefit week”<sup>M195</sup> after “1996” add “ or regulation 2(1) of the Employment and Support Allowance Regulations ”;

(b) after the definition of “contribution-based jobseeker's allowance”<sup>M196</sup> insert—

““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;”;

(c) after the definition of “court” insert—

““the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;”;

(d) after the definition of “income-based jobseeker's allowance”<sup>M197</sup> insert—

““income-related employment and support allowance” means—

(a) an income-related allowance under Part 1 of the Welfare Reform Act; and

(b) in a case where, if there was no entitlement to contributory employment and support allowance, there would be entitlement to income-related employment and support allowance at the same rate, contributory employment and support allowance;”;

(e) in the definition of “personal allowance for a single claimant aged not less than 25”, after sub-paragraph (b), insert—

“(c) in the case of a person who is entitled to an income-related employment and support allowance, the amount specified for the time being in paragraph 1(1)(b) of column 2 of schedule 4 to the Employment and Support Allowance Regulations;”;

(f) in the definition of “social security office”<sup>M198</sup> for “or a jobseeker's allowance” substitute “, a jobseekers allowance or an employment and support allowance ”; and

(g) after the definition of “tribunal”<sup>M199</sup> insert —

““the Welfare Reform Act” means the Welfare Reform Act 2007;”.

(3) In regulation 2 <sup>M200</sup> (application for deductions) for “jobseeker's allowance” each time it occurs substitute “, jobseeker's allowance or employment and support allowance”.

(4) In regulation 2A(2) <sup>M201</sup> (information that the court or fines officer may require) for “or a jobseeker's allowance” substitute “, a jobseeker's allowance or an employment and support allowance”.

(5) In regulation 4 <sup>M202</sup> (deductions from offender's income support etc.) —

- (a) in paragraph (1)(a) for “or income-based jobseeker's allowance” substitute “, income-based jobseeker's allowance or income-related employment and support allowance”;
  - (b) in paragraph (2)—
    - (i) in sub-paragraph (a) after “jobseeker's allowance” insert “ or contributory employment and support allowance”; and
    - (ii) for sub paragraph (b) substitute—
      - “(b) the amount payable, before any deductions under this paragraph, of—
        - (i) contribution-based jobseeker's allowance is equal to or more than one-third of the age related amount applicable to the offender under section 4 (1) (a) of the Jobseekers Act; or
        - (ii) contributory employment and support allowance is equal to or more than one third of the amount applicable to the offender under section 2(1)(a) of the Welfare Reform Act,as the case may be,”; and
      - (iii) after “Jobseekers Act” the second time it occurs insert “ or under section 2 (1)(a) of the Welfare Reform Act ”.
- (6) In regulation 7 <sup>M203</sup> (circumstances, time of making and making of deductions) for “or jobseeker's allowance” each time it occurs substitute “, jobseeker's allowance or employment and support allowance”.

#### Marginal Citations

**M194** S.I. 1992/2182.

**M195** Definition was amended by S.I. 1996/2344 and 2002/3019.

**M196** Definition inserted by S.I. 1996/563.

**M197** Definition inserted by S.I. 1996/563.

**M198** Definition was amended by S.I. 2002/1397.

**M199** Definition substituted by S.I. 1999/3178.

**M200** Regulation was amended by S.I. 1996/2344, 2002/3019.

**M201** Regulation was inserted in relation to England and Wales by S.I. 2004/2889.

**M202** Regulation was substituted by S.I. 1999/3178 and amended by S.I. 2002/3019 and 2004/2889.

**M203** Regulation was amended by S.I. 1996/2344, 1999/3178 and 2002/3019.

#### Amendment of the Council Tax (Deductions from Income Support) Regulations 1993

**55.**—(1) The Council Tax (Deductions from Income Support) Regulations 1993 <sup>M204</sup> are amended as follows.

- (2) In regulation 1(2) (citation, commencement and interpretation) —
  - (a) in the definition of “benefit week” after “State Pension Credit Regulations 2002” insert “, regulation 2(1) of the Employment and Support Allowance Regulations 2008”;
  - (b) after the definition of “contribution-based jobseeker's allowance” insert—
    - ““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act (employment and support allowance);”;
  - (c) after the definition of “income-based jobseeker's allowance” insert—
    - ““income-related employment and support allowance” means—
      - (a) an income-related allowance under Part 1 of the Welfare Reform Act; and

- (b) in a case where, if there was no entitlement to contributory employment and support allowance, there would be entitlement to income-related employment and support allowance at the same rate, contributory employment and support allowance;”;
- (d) in the definition of “personal allowance for a single claimant aged not less than 25” —
  - (i) after sub-paragraph (a) omit “or”;
  - (ii) after sub-paragraph (b) add—
    - “or
    - (c) in the case of a person who is entitled to income-related employment and support allowance, the amount specified for the time being in paragraph 1 of column 2 of Schedule 4 to the Employment and Support Allowance Regulations 2008;”;
- (e) in the definition of “social security office” for “or a jobseeker's allowance” substitute “ , a jobseeker's allowance or an employment and support allowance ”;
- (f) after the definition of “tribunal” insert—
  - ““the Welfare Reform Act” means the Welfare Reform Act 2007.”.
- (3) In regulation 2 (application for deductions... England and Wales)—
  - (a) in the heading for “or jobseeker's allowance” substitute “ , jobseeker's allowance or employment and support allowance ”; and
  - (b) for “or jobseeker's allowance” each time it occurs substitute “ , a jobseeker's allowance or an employment and support allowance ”;
- (4) In regulation 3 (application for deductions... Scotland)—
  - (a) in the heading for “or jobseeker's allowance” substitute “ , jobseeker's allowance or employment and support allowance ”;
  - (b) for “or jobseeker's allowance” each time it occurs substitute “ , a jobseeker's allowance or an employment and support allowance ”.
- (5) In regulation 4(1)(f) (contents of application) for “or jobseeker's allowance” substitute “ , a jobseeker's allowance or an employment and support allowance ”.
- (6) In regulation 5 (deductions from debtor's income support etc.)—
  - (a) in the heading for “or jobseeker's allowance” substitute “ , jobseeker's allowance or employment and support allowance ”;
  - (b) in paragraph (1)(a) for “or income-based jobseeker's allowance” substitute “ , an income-based jobseeker's allowance or an income-related employment and support allowance ”; and
  - (c) in paragraph (2)—
    - (i) in sub-paragraph (a) after “allowance” insert “ or contributory employment and support allowance ”; and
    - (ii) for sub-paragraph (b) substitute—
      - “(b) the amount payable, before any deductions under this paragraph, of—
      - (i) contribution-based jobseeker's allowance is equal to or more than one-third of the age-related amount applicable to the debtor under section 4(1)(a) of the Jobseekers Act; or
      - (ii) contributory employment and support allowance is equal to or more than one-third of the amount applicable to the debtor under section 2(1)(a) of the Welfare Reform Act,



- as the case may be,”; and
- (iii) after “Jobseekers Act” the second time it occurs insert “ or under section 2(1)(a) of the Welfare Reform Act ”.
- (7) In regulation 8 (circumstances, time of making and termination of deductions)—
- (a) in paragraph (1)—
- (i) for “ or jobseeker's allowance” substitute “ , jobseeker's allowance or employment and support allowance ”;
- (ii) for “regulation 7 or 7A” substitute “ regulation 5 ”; and
- (iii) in sub-paragraph (a) for “or jobseeker's allowance” substitute “ , jobseeker's allowance or employment and support allowance ”;
- (b) in paragraph (2) for “or jobseeker's allowance” each time it occurs substitute “ , jobseeker's allowance or employment and support allowance ”;
- (c) in paragraph (3) for “or jobseeker's allowance” each time it occurs substitute “ , jobseeker's allowance or employment and support allowance ”; and
- (d) in paragraph (5) for “or jobseeker's allowance” substitute “ , jobseeker's allowance or employment and support allowance ”.

**Marginal Citations**  
M204 S.I. 1993/494.

**Amendment of the Social Security (Loss of Benefit) Regulations 2001**

- 56.**—(1) The Social Security (Loss of Benefit) Regulations 2001 <sup>M205</sup> are amended as follows.
- (2) In regulation 2 (disqualification period)—
- (a) in paragraph (1) <sup>M206</sup>—
- (i) in sub-paragraph (a)(iii) after “state pension credit” insert “ , employment and support allowance ”; and
- (ii) in sub-paragraph (b)(iii) for “or state pension credit” substitute “ , state pension credit or employment and support allowance ”; and
- (b) in paragraph (3)(c) <sup>M207</sup> after “state pension credit” insert “ , employment and support allowance ”.
- (3) In regulation 3 (reduction of income support)—
- (a) in the heading after “income support” add “ and income-related employment and support allowance ”;
- (b) in paragraph (1) after “income support” the first time it occurs insert “ or an income-related employment and support allowance ”;
- (c) in paragraph (4) after “income support” each time it occurs insert “ or an income-related employment and support allowance ”;
- (d) in paragraph (5) after “income support” insert “ or an income-related employment and support allowance ”; and
- (e) in paragraph (6) after “Regulations” add “ or, as the case may be, regulation 2(1) of the Employment and Support Allowance Regulations 2008 ”.

#### Marginal Citations

**M205** S.I. 2001/4022.

**M206** Paragraph (1) was amended by S.I. 2002/486 and 1792.

**M207** Paragraph (3) was amended by S.I. 2002/1792.

## CHAPTER 4

### Child Support

#### Amendment of the Child Support (Maintenance Assessment Procedure) Regulations 1992

**57.**—(1) The Child Support (Maintenance Assessment Procedure) Regulations 1992 <sup>M208</sup> are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)—

- (a) in the definition of “benefit week” after “Jobseeker's Allowance Regulations,” insert “ in relation to employment and support allowance has the same meaning as in the Employment and Support Allowance Regulations 2008, ”;
- (b) after the definition of “family credit” insert—  
““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act 2007;”;
- (c) in the definition of “relevant benefit” after “income-based jobseeker's allowance,” insert “ income-related employment and support allowance ”.

(3) In paragraph (3)(c) for “or income-based jobseeker's allowance” substitute “ , income-based jobseeker's allowance or income-related employment and support allowance ”.

(4) In regulation 8D(8) <sup>M209</sup> (miscellaneous provisions in relation to interim maintenance assessments) “income support” each time it occurs insert “ , an income-related employment and support allowance ”.

(5) In regulation 30A(5) <sup>M210</sup> (effective dates of new maintenance assessments in particular cases) for “or an income-based jobseeker's allowance” each time it occurs substitute “ , an income-based jobseeker's allowance or an income-related employment and support allowance ”.

#### Marginal Citations

**M208** S.I. 1992/1813 which was revoked with savings by S.I. 2000/157.

**M209** Regulation 8D was inserted by S.I. 1995/3261 and paragraph (8) was amended by S.I. 1996/3196 and 2003/2779.

**M210** Regulation 30A was inserted by S.I. 1995/3261 and paragraph (5) was inserted by S.I. 1996/3196 and amended by S.I. 1996/3196, 1999/1047 and 2003/2779.

#### Amendment of the Child Support (Maintenance Assessments and Special Cases) Regulations 1992

**58.**—(1) The Child Support (Maintenance Assessments and Special Cases) Regulations 1992 <sup>M211</sup> are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation) after the definition of “weekly council tax” insert—

““the Welfare Reform Act” means the Welfare Reform Act 2007;”.

(3) In regulation 7(1)(b) (net income: calculation or estimation of N) for “or the Jobseekers Act” substitute “, the Jobseekers Act or the Welfare Reform Act”.

(4) In regulation 28(1) (amount payable where absent parent is in receipt of income support or other prescribed benefit) after “income-based jobseeker's allowance” insert “, income-related employment and support allowance under Part 1 of the Welfare Reform Act,”.

(5) In Schedule 1 (calculation of N and M) in paragraph 6(2) of Part II (benefit payments) for “or the Jobseekers Act” substitute “, the Jobseekers Act or the Welfare Reform Act”.

**Marginal Citations**

**M211** [S.I. 1992/1815](#) which is revoked with savings by [S.I. 2001/155](#).

**Amendment of the Social Security Benefits (Maintenance Payments and Consequential Amendments) Regulations 1996**

**59.**—(1) The Social Security Benefits (Maintenance Payments and Consequential Amendments) Regulations 1996 <sup>M212</sup> are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation) after the definition of “the Act” insert—

““the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;”.

(3) In regulation 2(c) (interpretation for the purposes of section 74A of the Act) after (ii) add—  
“or

(iii) any income which is taken into account under Part 10 of the Employment and Support Allowance Regulations for the purposes of calculating the amount of employment and support allowance to which the claimant is entitled.”.

(4) In regulation 3 (persons of a prescribed description) after sub-paragraph (b) add—  
“or

(c) is referred to as a “young person” in the Employment and Support Allowance Regulations by virtue of regulation 2(1) of those Regulations.”;

(5) In regulation 5 (circumstances in which persons are to be treated as being members of the same household)—

(a) omit “either”; and

(b) after “Jobseeker's Allowance Regulations” insert “ or regulation 156 of the Employment and Support Allowance Regulations”.

**Marginal Citations**

**M212** [S.I. 1996/940](#).

**Amendment of the Child Support Departure Direction and Consequential Amendments Regulations 1996**

**60.**—(1) The Child Support Departure Direction and Consequential Amendments Regulations 1996 <sup>M213</sup> are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation) after the definition of “effective date” insert—

““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance);”.

(3) In regulation 9<sup>M214</sup> (departure directions and persons in receipt of income support, state pension credit, income-based jobseeker's allowance, or working tax credit)—

- (a) in the heading after “state pension credit ” insert “ , income-related employment and support allowance, ”; and
- (b) after “state pension credit” each time it occurs insert “ , income-related employment and support allowance ”.

(4) In regulation 12 (meaning of “benefit” for the purposes of section 28E of the Act) after “income-based jobseeker's allowance” insert “ , income-related employment and support allowance, ”.

#### Marginal Citations

**M213** [S.I. 1996/2907](#) which is revoked with savings by [S.I. 2001/156](#)..

**M214** [Regulation 9](#) was substituted by [S.I. 1998/58](#).

### Amendment of the Child Support (Maintenance Calculations and Special Cases) Regulations 2000

**61.**—(1) The Child Support (Maintenance Calculations and Special Cases) Regulations 2000<sup>M215</sup> are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation) after the definition of “war widower's pension”<sup>M216</sup> insert—

““the Welfare Reform Act” means the Welfare Reform Act 2007;”.

(3) In regulation 4 (flat rate)—

(a) in paragraph (1)<sup>M217</sup>—

(i) after sub-paragraph (f) omit “and”; and

(ii) after sub-paragraph (g) add—

“and

(h) contributory employment and support allowance under section 2 of the Welfare Reform Act.”;

(b) in paragraph (2)<sup>M218</sup> after sub paragraph (c) add—

“and

(d) income-related employment and support allowance under section 4 of the Welfare Reform Act.”.

(4) In regulation 5(d)<sup>M219</sup> (nil rate) for “or income-based jobseeker's allowance” each time it occurs substitute “ , income-based jobseeker's allowance or income-related employment and support allowance ”.

#### Marginal Citations

**M215** [S.I. 2001/155](#).

**M216** Definition was inserted by [S.I. 2003/2779](#) and amended by [S.I. 2005/2877](#).

**M217** Paragraph (1) was amended by [S.I. 2002/2497](#), [2003/2779](#), [2005/785](#) and [2005/2877](#).

**M218** Paragraph (2) was amended by [S.I. 2002/3019](#).

**M219** Regulation 5(d) was amended by S.I. 2002/3019, 2003/1195, 2003/2779, 2004/2415 and 2005/785.

### **Amendment of the Child Support (Variations) Regulations 2000**

**62.** In regulation 32 of the Child Support (Variations) Regulations 2000 <sup>M220</sup> (meaning of “benefit” for the purposes of section 28E <sup>M221</sup> of the Act) after “income-based jobseeker's allowance,” insert “ income-related employment and support allowance under Part 1 of the Welfare Reform Act 2007 ”.

#### **Marginal Citations**

**M220** S.I. 2001/156.

**M221** Section 28E of the Child Support Act 1991 was substituted by the [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#).

### **Amendment of the Child Support (Maintenance Calculation Procedure) Regulations 2000**

**63.** In Schedule 1 (meaning of “child” for the purposes of the Act) in paragraph 1(3)(b) (persons of 16 or 17 years of age who are not in full-time non-advanced education) of the Child Support (Maintenance Calculation Procedure) Regulations 2000 <sup>M222</sup> for “or an income-based jobseeker's allowance” substitute “ , an income-based jobseeker's allowance or income-related employment and support allowance ” .

#### **Marginal Citations**

**M222** S.I. 2001/157.

## CHAPTER 5

### Miscellaneous Amendments

### **Amendment of the Social Security (Benefit) (Married Women and Widows Special Provisions) Regulations 1974**

**64.—(1)** The Social Security (Benefit) (Married Women and Widows Special Provisions) Regulations 1974 <sup>M223</sup> are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)—

(a) after the definition of “the Industrial Injuries Act” insert—

““the Welfare Reform Act” means the Welfare Reform Act 2007;”;

(b) after the definition of “appropriate weekly rate” insert—

““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;”.

(3) In regulation 3 <sup>M224</sup> (modifications, etc.)—

(a) in the heading after “short-term incapacity benefit” insert “ , contributory employment and support allowance ”;

(b) in paragraph (1)—

- (i) in sub-paragraph (a) after “the Act” add “ or, in relation to contributory employment and support allowance, she shall be deemed to have satisfied the first condition referred to in paragraph 1(1) of Schedule 1 to the Welfare Reform Act ”; and
- (ii) in sub-paragraph (b) after “the Act” insert “ or, in relation to contributory employment and support allowance, she shall be deemed to have satisfied the second condition referred to in paragraph 2(1) of Schedule 1 to the Welfare Reform Act ”; and
- (c) in paragraph (5) after “short-term incapacity benefit” each time it appears insert “ , contributory employment and support allowance ”.

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**Marginal Citations**

**M223** [S.I. 1974/2010](#).

**M224** [Regulation 3](#) was amended by [S.I. 1978/508](#), 1989/893, 1995/829 and 1996/1345.

**Amendment of the Social Security (Airmen's Benefits) Regulations 1975**

**65.**—(1) The Social Security (Airmen's Benefits) Regulations 1975 <sup>M225</sup> are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation) after the definition of “the Act” insert—

““the Welfare Reform Act” means the Welfare Reform Act 2007;”.

(3) In regulation 2 <sup>M226</sup> (removal of disqualification etc.)

(a) in paragraph (1)—

- (i) after “of the Act” insert “ or section 18(1) of the Welfare Reform Act ”; and
- (ii) after “incapacity benefit” insert “ , employment and support allowance ”.

(b) in paragraph (2)—

- (i) after “incapacity benefit” insert “ , employment and support allowance ”; and
- (ii) after “incapable of work” insert “ or to have limited capability for work as defined in section 1(4) of the Welfare Reform Act ”.

(4) In regulation 3 <sup>M227</sup> (application of the Act and regulations) after “thereunder” the second time it occurs insert “ and Part 1 of the Welfare Reform Act and regulations made under it ”.

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**Marginal Citations**

**M225** [S.I. 1975/494](#).

**M226** [Regulation 2](#) was amended by [S.I. 1984/1303](#) and 1995/829.

**M227** [Regulation 3](#) was amended by [S.I. 1996/1345](#).

**Amendment of the Social Security (Benefit) (Members of the Forces) Regulations 1975**

**66.** In regulation 2 (unemployment etc.) of the Social Security (Benefit) (Members of the Forces) Regulations 1975 <sup>M228</sup> after “jobseeker's allowance” insert “ , an employment and support allowance ”.

**Marginal Citations**

**M228 S.I. 1975/493.** Regulation 2 was amended by **S.I. 1984/1303** and 1996/1345.

**Amendment of the Social Security (Mariners' Benefits) Regulations 1975**

**67.**—(1) The Social Security (Mariners' Benefits) Regulations 1975 <sup>M229</sup> are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)—

(a) after the definition of “Contributions Regulations” insert—

““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;” and

(b) after the definition of “on-shore share fisherman” insert—

““the Welfare Reform Act” means the Welfare Reform Act 2007;”.

(3) In regulation 4 (removal of disqualification etc.)—

(a) after “of the Act” insert “ or section 18(1) of the Welfare Reform Act 2007, ”; and

(b) after “incapacity benefit” each time it occurs insert “ , contributory employment and support allowance ”;

(4) In regulation 5 (evidence of unemployment or incapacity)—

(a) in the heading for “or incapacity” substitute “ , incapacity for work or limited capability for work ”; and

(b) after “incapacity benefit” insert “ , contributory employment and support allowance ”.

(5) In regulation 6 (special provisions etc.)—

(a) in the heading for “or incapacity for work” substitute “ , incapacity for work or limited capability for work ”;

(b) in paragraph (2)—

(i) after “incapacity benefit” insert “ , contributory employment and support allowance ”; and

(ii) after “incapable of work” insert “ or as having limited capability for work as defined in section 1(4) of the Welfare Reform Act ”.

**Marginal Citations**

**M229 S.I. 1975/529.**

**Amendment of the Social Security (Medical Evidence) Regulations 1976**

**68.**—(1) The Social Security (Medical Evidence) Regulations 1976 <sup>M230</sup> are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation) after the definition of “the Contributions and Benefits Act”<sup>M231</sup> insert—

““the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;

“limited capability for work” has the meaning given in section 1(4) of the Welfare Reform Act 2007;

“limited capability for work assessment” means the assessment of whether a person has limited capability for work as set out in regulation 19(2) of, and in Schedule 2 to, the Employment and Support Allowance Regulations;”.

- (3) In regulation 2 (evidence of incapacity for work and confinement)—
- (a) in the heading, after “incapacity for work” insert “, limited capability for work ”;
  - (b) in paragraph (1) <sup>M232</sup>—
    - (i) after “incapable of work” insert “ or having limited capability for work ”;
    - (ii) after “personal capability assessment” each time it occurs insert “ or the limited capability for work assessment ”;
    - (iii) after “evidence of such incapacity” insert “ or limited capability for work ”; and
    - (iv) in sub-paragraph (c) after “incapable of work” insert “ or whether a person has or does not have limited capability for work ”; and
  - (c) in paragraph (2) <sup>M233</sup> after “personal capability assessment” insert “ or the limited capability for work assessment ”.
- (4) In regulation 5 <sup>M234</sup> (self-certificate for first 7 days of a spell of incapacity for work)—
- (a) in the heading after “incapacity for work” insert “ or limited capability for work ”;
  - (b) in paragraph (1)—
    - (i) after “incapacity” insert “ or limited capability for work ”;
    - (ii) after sub-paragraph (a) omit “or”;
    - (iii) after sub-paragraph (b) insert—
      - “(c) for a period of limited capability for work which lasts less than 8 days; or
      - (d) in respect of any of the first 7 days of a longer period of limited capability for work;”;
  - (c) in paragraph (2) for the definition of “self-certificate” substitute—
 

““self-certificate” means either—

    - (i) a declaration made by the claimant in writing, on a form approved for the purpose by the Secretary of State; or
    - (ii) where the claimant has made a claim for employment and support allowance in accordance with regulation 4G of the Social Security (Claims and Payments) Regulations 1987, an oral declaration by the claimant,

that the claimant has been unfit for work from a date or for a period specified in the declaration and may include a statement that the claimant expects to continue to be unfit for work on days subsequent to the date on which it is made;”.

#### Marginal Citations

**M230** S.I. 1976/615.

**M231** Definition was inserted by S.I. 1994/2975.

**M232** Paragraph (1) was amended by S.I. 1982/699, 1992/247, 1994/2975, 1995/987 and 2000/590.

**M233** Paragraph (2) was amended by S.I. 1994/2975 and 1999/3190.

**M234** Regulation 5 was inserted by S.I. 1982/699 and amended by S.I. 1994/2975.



### **Amendment of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000**

**69.**—(1) The Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 <sup>M235</sup> are amended as follows.

(2) In regulation 1(3) (citation, commencement and interpretation)—

(a) after the definition of “the Disability Living Allowance Regulations” insert—

““the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;” and

(b) after the definition of “the Severe Disablement Allowance Regulations” add—

““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance).”

(3) In regulation 2 (persons not excluded from specified benefits under section 115 of the Immigration and Asylum Act 1999 <sup>M236</sup>)—

(a) in paragraph (1) after “Benefits Acts” insert “ income-related employment and support allowance, ”;

(b) in paragraph (4)(a) after “Benefits Act,” insert “ or income-related employment and support allowance, ”; and

(c) in paragraph (5) after “Jobseeker's Allowance Regulations (urgent cases) insert “ , to employment and support allowance by virtue of regulation 162 of the Employment and Support Allowance Regulations (urgent cases) ”;

(4) In regulation 12 (transitional arrangements and savings) in paragraph (3) after “Income Support Regulations” insert “ , regulation 162 of the Employment and Support Allowance Regulations ”.

(5) In the heading to Part 1 of the Schedule (persons not excluded from certain benefits etc.) after “Income Support,” insert “ Income-Related Employment and Support Allowance, ”.

#### **Marginal Citations**

**M235** [S.I. 2000/636](#)

**M236** 1999 C. 33.

### **Amendment of the Children (Leaving Care) Social Security Benefits Regulations 2001**

**70.** In regulation 2(1) of the Children (Leaving Care) Social Security Benefits Regulations 2001 <sup>M237</sup> (entitlement to benefits) for “or income-based jobseeker's allowance” substitute “ , income-based jobseeker's allowance or income-related employment and support allowance ”.

#### **Marginal Citations**

**M237** [S.I. 2001/3074](#).

### **Amendment of the Social Security (Jobcentre Plus Interviews for Partners) Regulations 2003**

**71.**—(1) In regulation 11(4) of the Social Security (Jobcentre Plus Interviews for Partners) Regulations 2003 <sup>M238</sup> (failure to take part in an interview) after sub-paragraph (a) insert—

“(aa) an income-related employment and support allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance);”.

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**Marginal Citations**

**M238** [S.I. 2003/1886](#).

**Amendment of the Age-Related Payments Regulations 2005**

72. In regulation 2(3)(a) of the Age-Related Payments Regulations 2005<sup>M239</sup> (entitlement: basic cases) for “or income support” substitute “ , income support or income-related employment and support allowance under Part 1 of the Welfare Reform Act 2007 ”.

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**Marginal Citations**

**M239** [S.I. 2005/1983](#).

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

Department for Work and Pensions

*Stephen.C.Timms*  
Minister of State,

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Regulations contained in this Instrument are either made by virtue of, or are consequential upon, provisions in Part 1 of the Welfare Reform Act 2007 (c.5). This Instrument is made before the expiry of the period of 6 months beginning with the coming into force of those provisions; the regulations in it are therefore exempt in accordance with section 173(5) of the Social Security Administration Act 1992 from the requirement in section 172(1) of that Act to refer proposals to make Regulations to the Social Security Advisory Committee and are made without reference to that Committee.

Part 2 makes consequential amendments to income-related benefits. Regulation 2 makes consequential changes to the Income Support (General) Regulations 1987. Regulation 3 makes consequential amendments to the Jobseeker's Allowance Regulations 1996. Regulation 4 makes consequential amendments to the State Pension Credit Regulations 2002.

Part 3 makes changes to the Social Fund scheme so as to extend entitlement to certain payments to applicants who are entitled to an employment and support allowance.

Part 4 makes consequential changes in relation to administrative provisions.

Chapter 1 makes changes to the Social Security (Claims and Payments) Regulations 1987 so as to make separate provision for claims for, and payment of, state pension credit.

Regulation 13 provides for the manner of making a claim for employment and support allowance which may be by telephone or by written claim.

Regulations 14 to 20 and regulations 22 and 23 apply provisions currently in the Social Security (Claims and Payments) Regulations 1987 to employment and support allowance.

Regulation 21 provides for the day on which employment and support allowance is to be paid to the claimant.

Regulation 24 provides that a claim for employment and support allowance may be made in addition to or in the alternative to other benefits.

Regulation 25 provides that a claim for employment and support allowance may be made within 3 months of the date for which the claim is made.

Regulations 26, 27 and 28 provide that deductions may be made from employment and support allowance and paid direct to third parties.

Chapter 2 applies the Social Security and Child Support (Decisions and Appeals) Regulations 1999 to employment and support allowance.

Regulation 31 provides additional circumstances in which a decision relating to employment and support allowance may be revised.

Regulations 32, 33 and 34 provide additional circumstances in which a decision relating to employment and support allowance may be superseded and for the effective date of that supersession.

Part 5 makes miscellaneous amendments.

Chapter 1 makes consequential amendments in relation to statutory sick pay and statutory maternity pay to prevent duplication of payments.

Chapter 2 makes consequential amendments in relation to national insurance contributions and credits.

Chapter 3 adds references to employment and support allowance to—

- the Social Security (Recovery of Benefits) Act 1997;
- the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988;
- the Community Charges (Deductions From Income Support) (No. 2) Regulations 1990;

**Changes to legislation:** There are currently no known outstanding effects for the *The Employment and Support Allowance (Consequential Provisions) (No. 2) Regulations 2008*. (See end of Document for details)

- the Fines (Deductions From Income Support) Regulations 1992;
- the Council Tax (Deductions From Income Support) Regulations 1993;
- the Social Security (Loss of Benefit) Regulations 2001.

Chapter 4 makes consequential amendments in relation to child support by adding references to employment and support allowance to—

- the Child Support (Maintenance Assessment Procedure) Regulations 1992;
- the Child Support (Maintenance Assessment and Special Cases) Regulations 1992;
- the Social Security Benefits (Maintenance Payments and Consequential Amendments) Regulations 1996;
- the Child Support Departure Directions and Consequential Amendments Regulations 1996;
- the Child Support (Maintenance Calculations and Special Cases) Regulations 2000;
- the Child Support (Variations) Regulations 2000;
- the Child Support (Maintenance Calculation Procedure) Regulations 2000.

Chapter 5 makes miscellaneous amendments by adding the references to employment and support allowance to—

- the Social Security (Benefit) (Married Women and Widows Special Provisions) Regulations 1974;
- the Social Security (Airmen's Benefits) Regulations 1975;
- the Social Security (Benefit) (Members of the Forces) Regulations 1975;
- the Social Security (Mariner's Benefits) Regulations 1975;
- the Social Security (Medical Evidence) Regulations 1976;
- the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000;
- the Children (Leaving Care) Social Security Benefits Regulations 2001;
- the Social Security (Jobcentre Plus Interviews For Partners) Regulations 2003;
- the Age-Related Payments Regulations 2005.

These Regulations have no impact on the cost of business, charities or the voluntary sector and an Impact Assessment has not been published.

**Changes to legislation:**

There are currently no known outstanding effects for the The Employment and Support Allowance (Consequential Provisions) (No. 2) Regulations 2008.