
STATUTORY INSTRUMENTS

2008 No. 1082

The Employment and Support Allowance
(Consequential Provisions) Regulations 2008

PART 3

The Housing Benefit Regulations 2006

General

4. The Housing Benefit Regulations 2006(1) are amended in accordance with this Part.

Amendment of regulation 2

- 5.—(1) Regulation 2 (interpretation) is amended as follows.
- (2) In paragraph (1)—
- (a) in the definition of “appropriate DWP office” for “or a jobseeker’s allowance” substitute “, a jobseeker’s allowance or an employment and support allowance”;
 - (b) in the definition of “the benefit Acts” for “and the Jobseekers Act” substitute “, the Jobseekers Act and the Welfare Reform Act”;
 - (c) after the definition of “the Consequential Provisions Regulations” insert—
““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;”;
 - (d) after the definition of “employed earner” insert—
““Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008(2);”;
 - (e) after the definition of “an 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;”;
 - (f) after the definition of “the Macfarlane Trust” insert—
““main phase employment and support allowance” means an employment and support allowance where the calculation of the amount payable in respect of the claimant includes a component under section 2(1)(b) or 4(2)(b) of the Welfare Reform Act;”;
 - (g) in the definition of “qualifying contributory benefit”(3) after sub-paragraph (b) add—
“(c) contributory employment and support allowance;”;
 - (h) in the definition of “qualifying income-related benefit” after sub-paragraph (b) add—

(1) [S.I. 2006/213](#).

(2) [S.I. 2008/794](#).

(3) Definitions of “qualifying contributory benefit” and “qualifying income-related benefit” were inserted by [S.I. 2008/959](#).

- “(c) income-related employment and support allowance;”;
- (i) after the definition of “water charges” insert—
 - ““Welfare Reform Act” means the Welfare Reform Act 2007;”.
- (3) After paragraph (3) insert—
 - “(3A) For the purposes of these Regulations, a person is on an income-related employment and support allowance on any day in respect of which an income-related employment and support allowance is payable to him and on any day—
 - (a) in respect of which he satisfies the conditions for entitlement to an income-related employment and support allowance but where the allowance is not paid in accordance with section 18 of the Welfare Reform Act (disqualification); or
 - (b) which is a waiting day for the purposes of paragraph 2 of Schedule 2 to that Act and which falls immediately before a day in respect of which an income-related employment and support allowance is payable to him or would be payable to him but for section 18 of that Act.”.

Amendment of regulation 5

6. In regulation 5(1)(b) (persons who have attained the qualifying age for state pension credit) for “or on an income-based jobseeker’s allowance” substitute “, on an income-based jobseeker’s allowance or on an income-related employment and support allowance”.

Amendment of regulation 6

7. In regulation 6(6) (remunerative work) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”.

Amendment of regulation 10

8. In regulation 10(3B)(k)(4) (persons from abroad) for “or on an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or on an income-related employment and support allowance”.

Amendment of regulation 11

- 9. In regulation 11 (eligible housing costs)—
 - (a) in 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” ; and
 - (b) in paragraph (4) 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”.

Amendment of regulation 19

10. In regulation 19(2)(a)(5) (persons of prescribed description) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”.

(4) Paragraph (3B) was substituted by S.I. 2006/1026 and amended by S.I. 2006/2528 and 3341.

(5) Sub-paragraph (a) was amended by S.I. 2006/718.

Amendment of regulation 22

11. In regulation 22 (applicable amounts) after sub-paragraph (d) add—
- “(e) the amount of either the—
 - (i) work-related activity component; or
 - (ii) the support component,which may be applicable to him in accordance with Part 5 of Schedule 3 (the components).”.

Amendment of regulation 23

12. In regulation 23 (polygamous marriages) after sub-paragraph (e) add—
- “(f) the amount of either the—
 - (i) work-related activity component; or
 - (ii) the support component,which may be applicable to him in accordance with Part 5 of Schedule 3 (the components).”.

Amendment of regulation 26

13. In regulation 26(1) (circumstances in which income of non-dependant is to be treated as claimant's) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance”.

Amendment of regulation 28

14. In regulation 28 (treatment of child care charges)—
- (a) in paragraph (2)—
 - (i) after sub-paragraph (b) insert—
 - “(ba) is paid an employment and support allowance;” and
 - (ii) in sub-paragraph (d) after “incapacity for work” insert “ or limited capability for work”;
 - (b) in paragraph (3)(a) after “short-term incapacity benefit” insert “, an employment and support allowance”;
 - (c) in paragraph (11)(6)—
 - (i) in sub-paragraph (a) after “incapacity” add “or the support component or the work-related activity component on account of the other member having limited capability for work”;
 - (ii) after sub-paragraph (b) insert—
 - “(ba) the claimant's applicable amount would include the support component or the work-related activity component on account of the other member having limited capability for work but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations;”;
 - (iii) after sub-paragraph (c) insert—

(6) Paragraph (11) was amended by [S.I. 2008/1042](#).

“(ca) the claimant (within the meaning of regulation 2(1)) has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period;” and

(iv) in sub-paragraph (d) after (vi) add—

“(vii) main phase employment and support allowance;” and

(d) after paragraph (12) insert—

“(12A) For the purposes of paragraph (11), once paragraph (11)(ca) applies to the claimant, if he then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is, on his again having, or being treated as having, limited capability for work at the end of that period, immediately thereafter to apply to him for so long as he has, or is treated as having, limited capability for work.”

Amendment of regulation 40

15. In regulation 40 (calculation of income other than earnings) after paragraph (5) insert—

“(5A) Where the claimant or, where the claimant is a member of a couple, his partner is receiving a contributory employment and support allowance and 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.”

Amendment of regulation 50

16. In regulation 50 (diminishing notional capital rule)—

(a) in paragraph (3)—

(i) at the end of paragraph (c) omit “and”; and

(ii) after sub-paragraph (d) add—

“and

(e) where the claimant has also claimed an employment and support allowance, the amount of an income-related employment and support allowance to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations (notional capital).”;

(b) in paragraph (4)(7) after sub-paragraph (d) add—

“(e) if the claimant would, but for regulation 115 of the Employment and Support Allowance Regulations, have been entitled to an income-related employment and support allowance in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount must be determined by dividing the amount of the income-related employment and support allowance to which he would have been so entitled by

(7) Paragraph (4) was amended by [S.I. 2007/2868](#).

the number equal to the number of days in that part-week and multiplying the quotient so obtained by 7.”; and

- (c) in paragraph (8)(b)—
 - (i) for “and (d)” substitute “, (d) and (e)”;
 - (ii) in paragraph (i) after “income support” insert “, an income-related employment and support allowance”.

Amendment of regulation 56

17. In regulation 56(2)(8) (full-time students to be treated as not liable to make payments in respect of a dwelling)—

- (a) in sub-paragraph (a) 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) after sub-paragraph (e) insert—
 - “(ea) who has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period;”.

Amendment of regulation 74

18. In regulation 74(8)(9) (non-dependant deductions) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance which does not include an amount under section 4(2)(b) of the Welfare Reform Act (the support component and the work-related activity component)”.

Amendment of regulation 83

19. In regulation 83 (time and manner in which claims are to be made)—

- (a) in paragraph (4)(10)—
 - (i) in sub-paragraph (a) for “or a jobseeker’s allowance” substitute “, a jobseeker’s allowance or an employment and support allowance”;
 - (ii) in sub-paragraph (c) for “or a jobseeker’s allowance” substitute “, a jobseeker’s allowance or an employment and support allowance”;
- (b) in paragraph (5)(11)—
 - (i) in sub-paragraph (a)—
 - (aa) 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”;
 - (bb) for “or jobseeker’s allowance” substitute “, jobseeker’s allowance or employment and support allowance”; and
 - (cc) omit “ and for the purposes of” to the end; and

(8) Paragraph (2) was amended by [S.I. 2006/718](#) and [2008/1042](#).

(9) Paragraph (8) was substituted by [S.I. 2007/2868](#).

(10) Paragraph (4) was amended by [S.I. 2006/2967](#) and [2007/2911](#).

(11) Paragraph (5) was amended by [S.I. 2007/2911](#).

- (ii) 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
- (c) after paragraph (5) insert—
 - “(5A) For the purposes only of sub-paragraph (5)(a) a person who has been awarded an income-based jobseeker’s allowance or an income-related employment and support allowance is to be treated as entitled to that allowance for any days which immediately precede the first day in that award and on which he would have been entitled to that allowance but for regulations made under—
 - (a) in the case of income-based jobseeker’s allowance, paragraph 4 of Schedule 1 to the Jobseekers Act (waiting days); or
 - (b) in the case of income-related employment and support allowance, paragraph 2 of Schedule 2 to the Welfare Reform Act (waiting days).”.

Amendment of regulation 88

- 20.** In regulation 88(3)(d)(12) (duty to notify changes of circumstances)—
 - (a) for “or income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”; and
 - (b) 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”.

Amendment of regulation 95

- 21.** In regulation 95(1)(a) (circumstances in which payment is to be made to a landlord) for “or a jobseeker’s allowance” substitute “, a jobseeker’s allowance or an employment and support allowance”.

Amendment of regulation 105

- 22.** In regulation 105(1) (recovery of overpayments from prescribed benefits) after sub-paragraph (e) add—
 - “(f) an employment and support allowance.”.

Amendment of Schedule 3

- 23.** In Schedule 3 (applicable amounts)—
 - (a) in Part 1 (personal allowances) for sub-paragraphs (1) to (3) of paragraph 1(13) substitute—

<i>“Column (1)”</i>		<i>Column (2)”</i>	
<i>Person or couple</i>		<i>Amount</i>	
(1)	A single claimant who—	(1)	

(12) Regulation 88 was amended by [S.I. 2008/1042](#).
 (13) Paragraph 1 was amended by [SI. 2006/217](#) and [645](#) and [2007/688](#).

<i>“Column (1)</i>		<i>Column (2)</i>	
<i>Person or couple</i>		<i>Amount</i>	
	(a) is entitled to main phase employment and support allowance;	(a)	£60.50;
	(b) is aged not less than 25;	(b)	£60.50;
	(c) is aged less than 25.	(c)	£47.95.
(2)	Lone parent who—	(2)	
	(a) is entitled to main phase employment and support allowance;	(a)	£60.50;
	(b) is aged not less than 18; or	(b)	£60.50;
	(c) is aged less than 18.	(c)	£47.95.
(3)	Couple where—	(3)	
	(a) the claimant is entitled to main phase employment and support allowance;	(a)	£94.95;
	(b) at least one member is aged not less than 18;	(b)	£94.95;
	(c) both members are aged less than 18.	(c)	£72.35.”

- (b) in Part 3 (premiums) after sub-paragraph (8) of paragraph 13(14) (additional conditions for the Disability Premium) add—

“(9) The claimant is not entitled to the disability premium if the claimant has, or is treated as having, limited capability for work within the meaning of section 1(4) of the Welfare Reform Act.”;

- (c) in paragraph 15 (enhanced disability premium) for sub-paragraph (1) substitute—

“(1) Subject to sub-paragraph (2), the condition is that—

- (a) the claimant’s applicable amount includes the support component under paragraph 24; or
- (b) the care component of disability living allowance is, or would, but for a suspension of benefit in accordance with regulations made under section 113(2) of the Act or but for an abatement as a consequence of hospitalisation be payable at the highest rate prescribed under section 72(3) of the Act in respect of—
- (i) the claimant; or
- (ii) a member of the claimant’s family,
who is aged less than 60.”

- (d) after Part 4 (amounts of premiums specified in Part 3) add—

“PART 5

The components

21. Subject to paragraph 22 the claimant is entitled to one, but not both, of the following components if the claimant, or the claimant’s partner satisfies the conditions in paragraph 23 or 24.

22. The claimant has no entitlement under paragraph 23 or 24 if the claimant is entitled to the disability premium under paragraphs 12 and 13.

The work-related activity component

23. The claimant is entitled to the work-related activity component if the Secretary of State has decided that the claimant or, where the claimant is a member of a couple, the claimant’s partner has limited capability for work in accordance with section 8 of the Welfare Reform Act.

The support component

24. The claimant is entitled to the support component if the Secretary of State has decided that the claimant or, where the claimant is a member of a couple, the claimant’s partner has limited capability for work-related activity in accordance with section 9 of that Act.

PART 6

Amount of components

25. The amount of the work-related activity component is £24.00.

26. The amount of the support component is £29.00.”.

Amendment of Schedule 4

24. In Schedule 4 (sums to be disregarded in the calculation of earnings)—

- (a) in paragraph 3(2) for “or severe disability premium” substitute “, severe disability premium, work-related activity component or support component”;
- (b) in paragraph 12 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 paragraph 17(2)(b)(iv)(**15**)—
 - (i) for paragraph (aa) substitute—
 - “(aa) the claimant’s applicable amount includes a disability premium under paragraph 12, the work-related activity component under paragraph 23 or the support component under paragraph 24 of Schedule 3 respectively;” and
 - (ii) in paragraph (bb) for “or disability premium” substitute “, a disability premium, the work-related activity component or the support component”.

Amendment of Schedule 5

- 25.** In Schedule 5 (sums to be disregarded in the calculation of income other than earnings)—
- (a) in paragraph 4 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 paragraph 7 after sub-paragraph (c) add—
 - “(d) an income-related employment and support allowance.”.

Amendment of Schedule 6

- 26.** In Schedule 6 (capital to be disregarded)—
- (a) in paragraph 5 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 paragraph 9(1) after sub-paragraph (e) add—
 - “(f) an income-related employment and support allowance.”.

Amendment of Schedule 9

- 27.** In Schedule 9 (matters to be included in decision notice)—
- (a) in paragraph 9—
 - (i) in the heading, for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance, an income-related employment and support allowance”; and
 - (ii) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”;
 - (b) in paragraph 10—
 - (i) in the heading for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”; and
 - (ii) for “or on an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or on an income-related employment and support allowance”; and
 - (c) in paragraph 14(a)(ii) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”.