
STATUTORY INSTRUMENTS

2008 No. 1082

**The Employment and Support Allowance
(Consequential Provisions) Regulations 2008**

PART 4

**The Housing Benefit (Persons who have attained the
qualifying age for state pension credit) Regulations 2006**

General

28. The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(1) are amended in accordance with this Part.

Amendment of regulation 2

29.—(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” after “the Jobseekers Act” insert “, the Welfare Reform Act”;
- (c) after the definition of “employed earner” insert—
““Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;”;
- (d) 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;”;
- (e) 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 includes an addition under section 2(1)(b) or 4(2)(b) of the Welfare Reform Act;”;
- (f) in the definition of “qualifying contributory benefit” (2) after sub-paragraph (b) add—
“(c) contributory employment and support allowance;”;
- (g) in the definition of “qualifying income-related benefit” after sub-paragraph (b) add—
“(c) income-related employment and support allowance;”;
- (h) after the definition of “water charges” insert—

(1) [S.I. 2006/214](#).

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

““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

30. In regulation 5(2) (persons who have attained the qualifying age for state pension credit) 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 6

31. 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 19

32. In regulation 19(2)(a)(3) (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”.

Amendment of regulation 29

33. In regulation 29(4) (meaning of “income”) after sub-paragraph (c) add—

- “(d) section 3 of the Welfare Reform Act (deductions from contributory employment and support allowance in respect of pensions and councillor’s allowances).”.

Amendment of regulation 31

34. In regulation 31 (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”;

(3) Paragraph (2) was amended by [S.I. 2006/718](#).

(c) in paragraph (11)(4)—

(i) 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;”;

(ii) after sub-paragraph (c) insert—

“(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;”;

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

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

(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 48

35. In regulation 48 (diminishing notional capital rule)—

(a) in paragraph (3) after sub-paragraph (d) add—

“(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)(5) 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 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)(a)—

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

(5) Paragraph (4) was amended by [S.I. 2007/2869](#).

- (i) for “and (d)” substitute “, (d) and (e)”; and
- (ii) in paragraph (i) after “state pension credit” insert “, an income-related employment and support allowance”.

Amendment of regulation 54

- 36.** In regulation 54 (continuing payments where state pension credit claimed)—
- (a) in paragraph (1)(c)(i) after “income-based jobseeker’s allowance” insert “or income-related employment and support allowance”;
 - (b) in paragraph (2)(a)(ii) after “jobseeker’s allowance” insert “or income-related employment and support allowance” ;
 - (c) in paragraph (3) after “income support” insert “, income-related employment and support allowance”.

Amendment of regulation 55

37. In regulation 55(8)(6) (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 64

- 38.** In regulation 64(5)(7) (time and manner in which claims are to be made) —
- (a) in sub-paragraph (a) for “or a jobseeker’s allowance” substitute “, a jobseeker’s allowance or an employment and support allowance”; and
 - (b) in sub-paragraph (c) for “or a jobseeker’s allowance” substitute “, a jobseeker’s allowance or an employment and support allowance”;

Amendment of regulation 86

39. In regulation 86(1) (recovery of overpayments from prescribed benefits) after sub-paragraph (e) add—

“(f) an employment and support allowance.”.

Amendment of Schedule 4

- 40.** In paragraph 5(1)(a) of Schedule 4 (sums disregarded from claimant’s earnings)—
- (a) in paragraph (v), at the end, omit “or”; and
 - (b) after paragraph (vi) add—
- “(vii) main phase employment and support allowance; or”.

Amendment of Schedule 6

- 41.** In Schedule 6 (capital to be disregarded)—
- (a) in paragraph 21(2)—

(6) Paragraph (8) was substituted by [S.I. 20072868](#).
(7) Paragraph (5) was amended by [S.I. 2006/2976](#) and [2007/2911](#).

- (i) in paragraph (k)(8) omit “or”; and
- (ii) after sub-paragraph (1) add—
 - “or
 - (m) income-related employment and support allowance.”; and
- (b) in paragraph 22(2) after sub-paragraph (d) add—
 - “(e) paragraph 11(2) of Schedule 9 to the Employment and Support Allowance Regulations.”.