

---

STATUTORY INSTRUMENTS

---

**2008 No. 1082**

The Employment and Support Allowance  
(Consequential Provisions) Regulations 2008

PART 5

Council Tax Benefit Regulations 2006

**General**

42. The Council Tax Benefit Regulations 2006<sup>(1)</sup> are amended in accordance with this Part.

**Amendment of regulation 2**

43.—(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;”;
- (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 includes an addition under section 2(1)(b) or 4(2)(b) of the Welfare Reform Act;”;
- (g) in the definition of “qualifying contributory benefit” (2) 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—  
“(c) income-related employment and support allowance;”;

---

(1) [S.I. 2006/215](#).

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

- (i) after the definition of “water charges” insert—
  - ““Welfare Reform Act” means the Welfare Reform Act 2007;”.
- (3) After paragraph (4) insert—
  - “(4A) 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**

**44.** 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**

**45.** 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 7**

**46.** In regulation 7(4A)(k)(3) (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 9**

**47.** In regulation 9(2)(a)(4) (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 12**

- 48.** In regulation 12 (applicable amounts) after sub-paragraph (d) add—
  - “(e) the amount of either the—
    - (i) work-related activity component; or
    - (ii) the support componentwhich may be applicable to him in accordance with Part 5 of Schedule 1 (the components).”.

---

(3) Paragraph (4A) was substituted by [S.I. 2006/1026](#) and amended by [2006/2528](#) and [3341](#).

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

### **Amendment of regulation 13**

**49.** In regulation 13 (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 1 (the components).”.

### **Amendment of regulation 16**

**50.** In regulation 16(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 18**

**51.** In regulation 18 (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)(5)—

(i) in sub-paragraph (a) after “incapacity” add “or the support component or the work-related activity component on account of his 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—

“(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;”;

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

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

(d) after paragraph (12) insert—

---

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

“(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 apply to him for so long as he has, or is treated as having, limited capability for work.”.

### **Amendment of regulation 30**

**52.** In regulation 30 (calculation of income other than earning) after paragraph (5) insert—

“(5A) Where the claimant or, where he 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 40**

**53.** In regulation 40 (diminishing notional capital rule)—

(a) in paragraph (3)—

(i) at the end of sub-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 whole or part of 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)—

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

(ii) after sub-paragraph (d) add—

“and

(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)(iii)—

(i) for “and (d)” substitute “, (d) and (e)”; and

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

#### **Amendment of regulation 45**

- 54.** In regulation 45(3)(6) (students excluded from entitlement to council tax benefit)—
- (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 58**

- 55.** In regulation 58(8)(a) (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.”.

#### **Amendment of regulation 69**

- 56.** In regulation 69 (time and manner in which claims are to be made)—
- (a) in paragraph (4)(7)—
    - (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)—
    - (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
    - (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”;
  - (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 must be treated as entitled to that allowance for any days which immediately precede the first day in that award and on which he would, but for regulations made under—

---

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

(7) Paragraph (4) was amended by [S.I. 2006/6967](#) and [2007/2911](#).

- (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),
- have been entitled to that allowance.”.

**Amendment of regulation 74**

57. In regulation 74 (duty to notify changes of circumstances)—

- (a) in paragraph (3)(d) 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”; and
- (b) 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”.

**Amendment of regulation 90**

58. In regulation 90(1) (recovery of excess benefit from prescribed benefits) after sub-paragraph (d) add—

- “(e) an employment and support allowance.”.

**Amendment of Schedule 1**

59. In Schedule 1 (applicable amounts)—

- (a) in Part 1 (personal allowances) for sub-paragraph 1(1)(8) substitute—

“(1)	A single claimant who—	(1)	
	(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 not less than 18 but less than 25.	(c)	£47.95.”

- (b) in Part 3 (premiums) after sub-paragraph (9)(9) of paragraph 13 (additional conditions for the Disability Premium) add—

“(10) 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)

(8) Paragraph 1 was amended by S.I.2007/688.

(9) Paragraph (9) was amended by S.I. 2008/1042.

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 (amount of premiums specified in Part 3) add—

## “PART 5

### The components

**21.** Subject to paragraph 22 the claimant may be entitled to one, but not both, of the following components if the claimant, or where the claimant is a member of a couple, 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 2**

**60.** In the table in paragraph 1(10) of Schedule 2 (amount of alternative maximum council tax benefit) in column 1—

- (a) in sub-paragraph (a) after “income support” insert “, an income-related employment and support allowance”;
- (b) in sub-paragraph (b) after “income support” insert “, an income-related employment and support allowance”; and

- (c) in sub-paragraph (c) after “state pension credit” insert “, an income-related employment and support allowance”.

### **Amendment of Schedule 3**

- 61.** In Schedule 3 (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”; and
  - (c) in paragraph 16(2)(b)(iv)(**11**)—
    - (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 1 respectively;”;
    - (ii) in sub-paragraph (bb) after “disability premium” insert “or either of the components”.

### **Amendment of Schedule 4**

- 62.** In Schedule 4 (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 8 after sub-paragraph (c) add—
    - “(d) an income-related employment and support allowance.”.

### **Amendment of Schedule 5**

- 63.** In Schedule 5 (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 8**

- 64.** In Schedule 8 (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 or 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”;

---

(11) Paragraph 16 was amended by [S.I. 20081042](#).



- (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 an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”;
- (c) in paragraph 12(a)(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
- (d) in paragraph 13(e) after “income support” insert “, an income-related employment and support allowance”.