
STATUTORY INSTRUMENTS

2008 No. 1554

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

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⁽¹⁾ are amended in accordance with this Chapter.

Amendment of regulation 2

10. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of “electronic communication”⁽²⁾ insert—

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

(ii) after the definition of “joint-claim couple”⁽³⁾ 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;”;

(b) in paragraph (2)(b)⁽⁴⁾ 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”.

Amendment of regulation 3

11. In regulation 3 (claims not required for entitlement to benefit in certain cases)—

(a) in paragraph (h)(ii)⁽⁵⁾ after “allowance” insert “or an income-related employment and support allowance”; and

(1) [S.I. 1987/1968](#).

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

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

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

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

(b) after paragraph (i)(6) 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.”.

Amendment of regulation 4

12. In regulation 4(10)(7) (making a claim for benefit), after “state pension credit” insert “or an employment and support allowance”.

Claims for employment and support allowance

13. After regulation 4F(8) (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,

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

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

(8) Regulation 4F was inserted by [S.I. 2002/3019](#).

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.”.

Amendment of regulation 6

14. In regulation 6 (date of claim) after paragraph (1E)(9) 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.”.

Amendment of regulation 7

15. In regulation 7(4)(10) (evidence and information) for “or state pension credit” substitute “, state pension credit or employment and support allowance”.

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)(11) 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(12), and for which he has been informed in writing by his employer that there is no entitlement to statutory sick pay.”.

Amendment of regulation 11

17. In regulation 11(13) (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

(9) Paragraph (1E) was inserted by S.I. 2006/832 and amended by S.I. 2007/2911.

(10) Paragraph (4) was added by S.I. 1995/2303 and amended by S.I. 1996/1460, 1999/2572 and 2002/3019.

(11) Paragraph (1) was amended by S.I. 1994/2943.

(12) S.I. 1982/894.

(13) Regulation 11 was amended by S.I. 1994/2943 and 1997/793.

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

Amendment of regulation 13

- 18.** In regulation 13(9)(**14**) (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).”.

Amendment of regulation 16

- 19.** In regulation 16(4)(**15**) (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”.

Amendment of regulation 16A

- 20.** In regulation 16A(2)(a)(**16**) (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”.

Payment

- 21.** After regulation 26B(**17**) (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—

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

(14) Paragraph (9) was added by S.I. 2007/1331.

(15) Paragraph (4) was amended by S.I. 1988/522, 1994/2943, 1996/1460 and 2002/3019.

(16) Regulation 16A was inserted by S.I. 2002/3019.

(17) Regulation 26B was inserted by S.I. 2002/3019.

(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.”.

Amendment of regulation 32

22. In regulation 32(3)(18) (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”.

Amendment of regulation 36

23. In regulation 36(2)(b)(19) (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”.

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”(20) for “or severe disablement allowance” substitute “, severe disablement allowance or employment and support allowance”.

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”(21) 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.”.

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

(19) Paragraph (2) was added by S.I. 2002/2660 and amended by S.I. 2005/2877.

(20) Entry was amended by S.I. 1994/2943.

(21) 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”(22) 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”(23) 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”(24) 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”(25) 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.”.

(22) Definition was substituted by S.I. 1996/1460 and amended by S.I. 2002/3019 and 2005/777.

(23) Definition was substituted by S.I. 1996/1460 and amended by S.I. 2002/3019.

(24) Definition was amended by S.I. 1991/2284, 1996/1460 and 2002/3019.

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

- (3) In paragraph 3(2A)(**26**) (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)(**27**)—
 - (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)(**28**)—
 - (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)(**29**) (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”.

(26) Sub-paragraph (2A) was inserted by S.I. 1992/1026 and amended by S.I. 1995/1613 and 2927, 1996/1460 and 2002/3019.

(27) Sub-paragraph (1) was amended by S.I. 1989/136, 1992/3147, 1996/1460, 1999/3178, 2002/398, 2003/2325 and 2005/2687.

(28) Sub-paragraph (2) was substituted by S.I. 2003/2325 and amended by S.I. 2005/2687.

(29) Paragraph 4A was inserted by S.I. 1991/2284 and sub-paragraph (6) was substituted by S.I. 1996/1460.

- (6) In paragraph 7B(30) (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)(31) (eligible loans) after sub-paragraph (iii) add—
“(iv) employment and support allowance.”.
- (8) In paragraph 8(4)(a)(32) (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”.

Amendment of Schedule 9A

27.—(1) Schedule 9A(33) (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”(34)—
- (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)(35) (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)(36) 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)(37)—

(30) Paragraph 7B was inserted by S.I. 1996/2344 and amended by S.I. 1999/3178.

(31) Paragraph 7C was inserted by S.I. 2006/3188.

(32) Sub-paragraph (4) was inserted by S.I. 2006/2377.

(33) Schedule 9A was inserted by S.I. 1992/1026.

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

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

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

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

- (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)(38) (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(39) (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)(40) (recovery of sums wrongly paid) after “Jobseeker’s Allowance Regulations” insert “, or paragraph 13 of Schedule 6 to the Employment and Support Allowance Regulations”.

Amendment of Schedule 9B

28.—(1) Schedule 9B(41) (deductions from benefit in respect of child support maintenance etc.) is amended as follows.

(2) In paragraph 2(1)(42) (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)(43) (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)(44) (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)(45) (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”.

(38) Paragraph 4 was amended by S.I. 1995/1613, 1996/1460, 1997/827 and 2002/3019.

(39) Paragraph 10 was amended by S.I. 1996/1460, 1997/2305 and 2002/3019

(40) Paragraph 11 was amended by S.I. 1995/1613, 1996/1460, 2002/3197 and 2004/2825.

(41) Schedule 9B was inserted by S.I. 2001/18.

(42) Sub-paragraph (1) was amended by S.I. 2002/3019.

(43) Sub-paragraph (1) was amended by S.I. 2002/3019.

(44) Paragraph (1) was amended by S.I. 2002/3019.

(45) Paragraph (1) was amended by S.I. 2002/3019.

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