
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; and

(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 subparagraph (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) (arrears of child support maintenance)—
- after “jobseeker’s allowance” each time it occurs insert “or contributory employment and support allowance”; and
 - 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)—
- in sub-paragraph (ii) omit “or”; and
 - 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)—
- after paragraph (c) omit “and”; and
 - after paragraph (d) add—

“and
 - 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)—
- 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
 - 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”.

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(**46**) are amended in accordance with this Chapter.

Amendment of regulation 1

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

- (a) in paragraph (a) of the definition of “claimant”(**47**) 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”(**48**) insert—
““the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008(**49**);
“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”(**50**) 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”(**51**) insert—
““the Welfare Reform Act” means the Welfare Reform Act 2007;”.

Amendment of regulation 3

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

(2) In paragraph (5)—

(46) S.I. 1999/991.

(47) Definition amended by S.I. 1999/1662 and 2002/3019.

(48) Definition substituted by S.I. 2002/1703.

(49) S.I. 2008/794

(50) Definition was inserted by S.I. 2005/2677.

(51) Definition inserted by S.I. 2000/3185.

- (a) in sub-paragraph (c)(52)—
 - (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)(53)—
 - (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)(54)—
 - (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)(55) 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)(56)—
 - (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)(57)—
 - (a) after sub-paragraph (a) omit “nor”; and
 - (b) after sub-paragraph (b) insert—

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

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

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

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

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

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

“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.”.

Amendment of regulation 6

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

(2) In paragraph (2)(**58**)—

- (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)(**59**) after “Income Support Regulations” insert “, regulation 137 of the Employment and Support Allowance Regulations”.

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)(**60**)—

- (a) after “(2)(b)” insert “or (be)”; and
- (b) for “and 3B” substitute “, 3B and 3C”.

(3) In paragraph (2)(**61**)—

- (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)(**62**) insert—

(**58**) 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.

(**59**) Paragraph (6) was amended by S.I. 1999/2677 and 2005/337.

(**60**) 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.

(**61**) 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.

(**62**) 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.

“(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)(**63**) 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)(**64**)—

- (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)(**65**)—

- (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)(**66**) 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

(63) Paragraph (3) was amended by [S.I. 2002/3019](#).

(64) Paragraph (7) was substituted by [S.I. 2006/832](#).

(65) Paragraph (3)(a) was amended by [S.I. 2002/3019](#).

(66) Paragraph (17C) was inserted by [S.I. 2002/3197](#) and substituted by [S.I. 2004/647](#).

- (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)(**67**)—

- (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)(**68**) 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.”.

(67) Paragraph (23) was substituted by [S.I. 2002/3197](#) and amended by [S.I. 2004/647](#).

(68) Paragraph (34) was inserted by [S.I. 2005/337](#).

Amendment of regulation 7A

- 34.**—(1) Regulation 7A⁽⁶⁹⁾ (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;”; and
 - (c) in the definition of “payee” after “incapacity benefit decision” insert “or “employment and support allowance decision””.

Amendment of regulation 7B

- 35.** In regulation 7B(23)⁽⁷⁰⁾ (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”.

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—

⁽⁶⁹⁾ Regulation 7A was inserted by S.I. 1999/1623 and amended by 2000/1596

⁽⁷⁰⁾ Regulation 7B was inserted by S.I. 2000/3185.

“(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(71) (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”.

Amendment of regulation 14A

39.—(1) Regulation 14A(72) (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.”.

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.”.

(71) Regulation 13 was amended by S.I. 2002/3019.

(72) Regulation 14A was inserted by S.I. 2002/1379.

Amendment of regulation 19

- 41.** In regulation 19(1)(73) (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”.

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(74) (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

(73) Regulation 19 was amended by S.I. 1999/2570 and 2007/1626.

(74) Schedule 3B was inserted by S.I. 2002/3019.

- (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).".