
STATUTORY INSTRUMENTS

2008 No. 1554

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

PART 2

INCOME-RELATED BENEFITS

Amendment of the Jobseeker's Allowance Regulations 1996

- 3.**—(1) The Jobseeker's Allowance Regulations 1996(1) are amended as follows.
- (2) In regulation 1(3) (citation, commencement and interpretation)—
- (a) after the definition of “the Eileen Trust” insert—
- ““the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;” and
- (b) after the definition of “week”(2) insert—
- ““the Welfare Reform Act” means the Welfare Reform Act 2007;”.
- (3) In regulation 11(2) (part-time students) for “or incapacity benefit” each time it occurs substitute “, incapacity benefit or employment and support allowance”.
- (4) In regulation 14(1) (circumstances in which a person is to be treated as available)—
- (a) in paragraphs (I) and (II)(3) after “capable of work” insert “or as not having limited capability for work”; and
- (b) in paragraph (o)(ii) after “incapacity benefit” insert “, employment and support allowance”.
- (5) In regulation 19(1)(4) (circumstances in which a person is to be treated as actively seeking employment) in sub-paragraphs (I) and (II) after “capable of work” insert “or as not having limited capability for work”.
- (6) In regulation 46(1)(5) (waiting days)—
- (a) in sub-paragraph (a) after “incapacity benefit” insert “, employment and support allowance”; and
- (b) in sub-paragraph (d) after “incapacity benefit” insert “, employment and support allowance”.
- (7) In regulation 48(2)(6) (linking periods) after sub-paragraph (b) insert—

(1) S.I. 1996/207.

(2) Definition was amended by S.I. 1996/1517 and 1997/454.

(3) Paragraphs 1 and 2 were amended by S.I. 1996/1517, 1997/563, 1999/3087, 2000/3336, 2004/1869, 2006/1402 and 2008/698.

(4) Paragraph 1 was amended by S.I. 1996/1517, 1997/563, 1998/1274, 1999/3087, 2000/3336, 2004/1869 and 2006/1402.

(5) Paragraph 1 was amended by S.I. 2000/1978 and 2003/511.

(6) Paragraph 2 was amended by S.I. 1996/2538, 1997/454 and 2863, 2000/724, 2001/1029, 2002/2314, and 2003/511.

- “(bb) any period throughout which the claimant has, or is treated as having, limited capability for work for the purposes of Part 1 of the Welfare Reform Act;”.
- (8) In regulation 49 (persons approaching retirement and the jobseeking period)—
- (a) in paragraph (2)(7) for “(3) and (4)” substitute “(3), (4) and (4A)”; and
- (b) after paragraph (4) insert—
- “(4A) Any day which, for the purposes of Part 1 of the Welfare Reform Act, is a day where the person has limited capability for work falling within a period of limited capability for work shall not be a day on which the person is treated as satisfying the conditions referred to in paragraph (2).”.
- (9) In regulation 55 (short periods of sickness)—
- (a) in paragraph (1)(8)—
- (i) in sub-paragraph (c) after “capable of work” insert “or not having limited capability for work”;
- (ii) after “capable of work” the second time it occurs insert “or as not having limited capability for work”; and
- (iii) after “incapacity benefit” insert “, employment and support allowance,”; and
- (b) in paragraph (4) after “within” insert “ 12 weeks of an entitlement of his to employment and support allowance or”.
- (10) In regulation 55A(1)(9) (periods of sickness and persons receiving treatment outside Great Britain)—
- (a) in sub-paragraph (d) after “capable of work” insert “or not having limited capability for work”;
- (b) after “capable of work” the second time it occurs insert “or as not having limited capability for work”; and
- (c) after “incapacity benefit” insert “, employment and support allowance”.
- (11) In regulation 61 (other young persons in prescribed circumstances)—
- (a) in paragraph (1)(10) after sub-paragraph (f) add—
- “(g) who has limited capability for work for the purposes of Part 1 of the Welfare Reform Act.”; and
- (b) in paragraph (2)(b)(11) for “1(b) or (c)” each time it occurs substitute “1(b), (c) or (g)”.
- (12) In regulation 76(2)(12) (persons of a prescribed description)—
- (a) in sub-paragraph (d) after “applies” add—
- “or
- (e) entitled to an income-related employment and support allowance or would, but for paragraph 6(1)(d) of Schedule 1 to the Welfare Reform Act (conditions of entitlement to income-related employment and support allowance), be so entitled.”.

(7) Paragraph 2 substituted by S.I. 1996/1517.

(8) Paragraph 1 was amended by S.I. 1996/1517, 1999/2860 and 2000/1978.

(9) Regulation was inserted by S.I. 2004/1869.

(10) Paragraph 1 was amended by S.I. 2000/1978 and 2001/652.

(11) Paragraph 2 was amended by S.I. 2000/1978.

(12) Paragraph 2 was amended by S.I. 2001/3070 and 2006/718.

(13) In regulation 78(6)(13) (circumstances in which a person is to be treated as being or not being a member of the household) after “income support” insert “or an income-related employment and support allowance”.

(14) In regulation 96(2) (date on which income is treated as paid) for “or jobseeker’s allowance” substitute “, jobseeker’s allowance or employment and support allowance”.

(15) In regulation 97(4)(b) (calculation of weekly amount of income) for “or income support” substitute “, income support or employment and support allowance”.

(16) In regulation 103 (calculation of income other than earnings) after paragraph (5A)(14) insert—

“(5B) Where the claimant—

- (a) is a member of a couple;
- (b) his partner is receiving a contributory employment and support allowance; and
- (c) 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.”.

(17) In regulation 140(3)(15) (meaning of “person in hardship”) after “income support” insert “or an income-related employment and support allowance”.

(18) In regulation 146A(3)(16) (meaning of “couple in hardship”) after “income support” add “or an employment and support allowance”.

(19) In regulation 149(1)(a)(ii) (assessment of income and capital in urgent cases) after “Income Support Regulations” insert “or of employment and support allowance under regulation 164 of the Employment and Support Allowance Regulations”.

(20) In regulation 150(1)(b) (amount of jobseeker’s allowance payable) in the definition of “B” for “or severe disablement allowance” substitute “, severe disablement allowance or employment and support allowance”.

(21) In regulation 153(b)(17) (modification in the calculation of income) after “Benefits Act” insert “or employment and support allowance”.

(22) In regulation 171(b)(18) (trade disputes: exemptions from section 15 of the Act)—

- (a) after paragraph (i) omit “or”; and
- (b) after paragraph (ii) add—
“or
(iii) has limited capability for work.”.

(23) In Schedule A1(19) (categories of members of a joint-claim couple etc.)—

- (a) after paragraph 6 (member incapable of work) insert—

“Member has limited capability for work

6A. A person who—

(13) Paragraph 6 was amended by [S.I. 1996/1516](#).

(14) Paragraph 5A was inserted by [S.I. 1997/65](#).

(15) Paragraph 3 was amended by [S.I. 1996/1517](#).

(16) Regulation was inserted by [S.I. 2000/1978](#).

(17) Regulation was amended by [S.I. 2000/1978](#).

(18) Regulation was amended by [S.I. 1996/1516](#).

(19) Schedule was inserted by [S.I. 2000/1978](#) and [2001/518](#).

- (a) has limited capability for work under section 8 of the Welfare Reform Act; or
 - (b) is treated as having limited capability for work under regulations made under paragraph 1 of Schedule 2 to that Act; or
 - (c) is treated as not having limited capability for work under regulations made under section 18(1) of that Act (disqualification).”; and
- (b) in paragraph 12 (pregnancy) after “incapable of work” insert “or who has limited capability for work”.
- (24) In Schedule 1 (applicable amounts) in paragraph 1(3)—
- (a) in paragraph (a)—
 - (i) in sub-paragraph (iii) after “income support” insert “or an income-related employment and support allowance”; and
 - (ii) in sub-paragraph (vii) after “income support” insert “or an income-related employment and support allowance”;
 - (b) in paragraph (f)(iii) after “income support” insert “or an income-related employment and support allowance”;
 - (c) in paragraph (g)(iii) after “income support” insert “or an income-related employment and support allowance”;
 - (d) in paragraph (h)(iii) after “income support” insert “or an income-related employment and support allowance”; and
 - (e) in paragraph 20H(1)(20) (additional conditions for higher pensioner and disability premium) after sub-paragraph (e) insert—
 - “(ee) has had limited capability for work or has been treated as having limited capability for work for a continuous period of not less than—
 - (i) 196 days in the case of a member of a joint-claim couple who is terminally ill within the meaning of regulation 2(1) of the Employment and Support Allowance Regulations; or
 - (ii) 364 days in any other case,
 and for these purposes any two or more periods of limited capability for work separated by a break of not more than 12 weeks is to be treated as one continuous period.”
- (25) In Schedule 2 (housing costs)—
- (a) in paragraph 1 (housing costs)—
 - (i) in sub-paragraph (3)—
 - (aa) after (c) omit “or”; and
 - (bb) and after (d) add—
 - “or
 - (e) who is in receipt of an employment and support allowance which includes an amount under section 2(2) or (3) or 4(4) or (5) of the Welfare Reform Act (components).”; and
 - (ii) in sub-paragraph (4) after “disqualification etc.)” add “or disqualified for receiving employment and support allowance or treated as not having limited capability for work in accordance with regulations made under section 18 of the Welfare Reform Act (disqualification)”.

(20) Paragraph 20H was inserted by [S.I. 2000/1978](#) and sub-paragraph (1) was amended by [S.I. 2003/455](#).

- (b) in paragraph 1A**(21)** (previous entitlement to income support and state pension credit)—
 - (i) in the heading after “income support” insert “, income-related employment and support allowance”;
 - (ii) after “income support” each time it occurs insert “or income-related employment and support allowance”;
 - (iii) in sub-paragraph (1)(a) after “Income Support Regulations” add “or paragraphs 16 to 18 of Schedule 6 to the Employment and Support Allowance Regulations”; and
 - (iv) in sub-paragraph (1A)(a)**(22)** after “Income Support Regulations” add “or paragraphs 16 or 17 of schedule 6 to the Employment and Support Allowance Regulations”;
 - (c) in paragraph 6 (existing housing costs)—
 - (i) in sub-paragraph (3) for “or state pension credit” substitute “, state pension credit or income-related employment and support allowance”; and
 - (ii) in sub-paragraph (4) after “income support” insert “or income-related employment and support allowance”;
 - (d) in paragraph 7 (new housing costs)—
 - (i) in sub-paragraph (2A)**(23)** after “income support” insert “or income-related employment and support allowance”; and
 - (ii) in sub-paragraph (2B)**(24)** after “income support” insert “or income-related employment and support allowance”;
 - (e) in paragraph 13(6)(a) (linking rule) for “or incapacity benefit” substitute “, incapacity benefit or contributory employment and support allowance”;
 - (f) in paragraph 17(7) (non-dependant deductions)—
 - (i) after paragraph (g) omit “or”; and
 - (ii) after paragraph (h) add—
 - “or
 - (i) he is aged less than 25 and is in receipt of employment and support allowance which does not include an amount under section 2(2) or (3) or 4(4) or (5) of the Welfare Reform Act (components)”;
 - (g) in paragraph 18 (continuity with income support)—
 - (i) in the heading after “income support” add “or income-related employment and support allowance”; and
 - (ii) in sub-paragraph (1)—
 - (aa) after “income support” the first time it occurs insert “or income-related employment and support allowance”; and
 - (bb) in paragraph (c) after “income support” add “or income-related employment and support allowance”.
- (26) In paragraph 5(7) of Schedule 6 (sums to be disregarded in the calculation of earnings) for “or income support” each time it occurs substitute “, income support or an employment and support allowance”.

(21) Paragraph 1A was inserted by [S.I. 1997/2305](#) and amended by [S.I. 2007/3183](#).

(22) Sub-paragraph (1A) was inserted by [S.I. 2000/1978](#).

(23) Sub-paragraph (2A) was inserted by [S.I. 1997/2305](#).

(24) Sub-paragraph (2B) was inserted by [S.I. 2000/1978](#).

(27) In paragraph 1(5) of Schedule 6A**(25)** (sums to be disregarded in the calculation of earnings of members of joint-claim couples) for “income support” each time it occurs substitute “, income support or an employment and support allowance”.

(28) In Schedule 7 (sums to be disregarded in the calculation of income other than earnings)—

- (a) in paragraph 8(b) for “or income support” substitute “, income support or employment and support allowance”; and
- (b) in paragraph 14(1)(a)**(26)** for “or severe disablement allowance” substitute “, severe disablement allowance or employment and support allowance”.

(29) In paragraph 12**(27)** of Schedule 8 (capital to be disregarded)—

- (a) in sub-paragraph (1)(b) after “working tax credit” add “or an income-related employment and support allowance”; and
- (b) in sub-paragraph (3) for “or of income support” each time it occurs substitute “, income support or of an income-related employment and support allowance”.

(25) Schedule was inserted by [S.I. 2000/1978](#).

(26) Paragraph 14(1)(a) was amended by [S.I. 2004/565](#).

(27) Paragraph 12 was amended by [S.I. 1996/2538](#), [2001/2333](#), [2002/2380](#), [2003/455](#) and [2005/574](#).