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STATUTORY INSTRUMENTS

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**2010 No. 875**

**SOCIAL SECURITY**

**The Employment and Support Allowance (Transitional  
Provisions, Housing Benefit and Council Tax  
Benefit) (Existing Awards) Regulations 2010**

*Made* - - - - *18th March 2010*  
*Laid before Parliament* *29th March 2010*  
*Coming into force in accordance with regulation 1(2)*  
*and (3)*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(d) and (e), 135(1), 137(1) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(1), section 79(4) of the Social Security Act 1998(2), paragraphs 4(4) and (6), 20(1) and 23(1) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000(3), sections 22, 24, 25(2), (3) and (5), 28(2) and 29 of, and paragraph 2 of Schedule 2 and paragraphs 1(1), 3(b), 7(1)(a) and (b), (2) and (3) and 8(1)(a) to (e) of Schedule 4 to, the Welfare Reform Act 2007(4).

In accordance with section 172(1) of the Social Security Administration Act 1992(5), the Secretary of State has referred these Regulations to the Social Security Advisory Committee.

In accordance with section 176(1) of the Social Security Administration Act 1992, consultation has taken place with organisations appearing to the Secretary of State to be representative of the authorities concerned.

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- (1) 1992 c. 4. Section 123(1)(e) was substituted by the Local Government Finance Act 1992 (c. 14), Schedule 9, paragraph 1(1). Section 137(1) is an interpretation provision and is cited for the definition of “prescribed”. Section 175(1) was amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 3, paragraph 29.
- (2) 1998 c. 14. Section 79(4) is applied to the provisions of the Child Support, Pensions and Social Security Act 2000 (c. 19) by Schedule 7, paragraph 20(3) of that Act.
- (3) 2000 c. 19. Paragraph 23(1) is an interpretation provision and is cited for the definition of “prescribed”.
- (4) 2007 c. 5. Section 24 is cited because of the meaning it gives to “prescribed” and “regulations”.
- (5) 1992 c. 5.

## PART 1

### GENERAL

#### Citation and commencement

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010.

(2) Subject to paragraph (3), these Regulations come into force on 1st October 2010.

(3) Regulations 24 (revocation of transitional claims provisions) and 25(2) (amendment of the 2008 Regulations) and paragraph 2 of Schedule 4 (consequential amendments to the 2008 Regulations) come into force on 31st January 2011.

#### Interpretation

2.—(1) In these Regulations—

“the 2007 Act” means the Welfare Reform Act 2007;

“the 2008 Regulations” means the Employment and Support Allowance Regulations 2008(6);

“benefit week” has the same meaning as in the 2008 Regulations;

“contributory allowance” means an employment and support allowance to which a person is entitled by virtue of these Regulations which was based on an award of incapacity benefit or severe disablement allowance to which the person was entitled(7);

“conversion decision”, in relation to a notified person, has the meaning given in regulation 5(2);

“effective date”, in relation to a conversion decision, is to be construed in accordance with regulation 13;

“enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978(8));

“income-related allowance” means an employment and support allowance to which a person is entitled by virtue of these Regulations which was based on an award of income support to which the person was entitled(9);

“notified person” has the meaning given in regulation 4(2);

“pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995(10);

“relevant deduction”, in relation to a person, includes such of the following deductions as fall to be made in relation to the person—

- (a) any deduction made under any of the following provisions of the Social Security (Claims and Payments) Regulations 1987(11)—
  - (i) regulation 34A (deductions of mortgage interest which shall be made from benefit and paid to qualified lenders);

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(6) [S.I. 2008/794](#).

(7) “Incapacity benefit” and “severe disablement allowance” are defined in paragraph 11 of Schedule 4 to the Welfare Reform Act 2007.

(8) [1978 c. 30](#).

(9) Awards of income support which are “existing awards” (being awards made to persons who are incapable of work or disabled) are specified in paragraph (c) of the definition of “existing award” in paragraph 11 of Schedule 4 to the Welfare Reform Act 2007.

(10) [1995 c. 26](#). Paragraph 1 of Schedule 4 was amended by paragraph 39 of Schedule 2 to the State Pension Credit Act 2002 (c. 16), paragraph 13 of Schedule 3 to the Welfare Reform Act 2007 and paragraph 4(2) to (6) of Schedule 3 to the Pensions Act 2007 (c. 22).

(11) [S.I.1987/1968](#). Relevant amending instruments are [S.I. 1988/522](#), [1992/1026](#), [2001/18](#), [2002/2441](#), [2002/3019](#) and [2002/3197](#).

- (ii) regulation 34B (deductions of mortgage interest which may be made from benefits and paid to qualified lenders in other cases); or
  - (iii) regulation 35 (deductions which may be made from benefit and paid to third parties);
  - (b) any deduction made under the Community Charges (Deductions from Income Support) (No.2) Regulations 1990(12) (deductions which may be made from benefit for meeting sums due in respect of community charges);
  - (c) any deduction made under the Fines (Deductions from Income Support) Regulations 1992(13) (deductions which may be made from an offender's benefit);
  - (d) any deduction made under the Council Tax (Deductions from Income Support) Regulations 1993(14) (deductions which may be made from benefit for meeting sums due in respect of council tax);
  - (e) any deduction in respect of overpayment recovery or recovery of social fund loans made under any of the following provisions of the Administration Act(15)—
    - (i) section 71 (overpayments-general),
    - (ii) section 74 (income support and other payments), or
    - (iii) section 78 (recovery of social fund awards).
- (2) A requirement under these Regulations to give a notice (or to notify) is a requirement to give notice in writing; and for that purpose—
- (a) a message sent by electronic communication shall be treated as a notice given in writing; and
  - (b) electronic communication has the meaning given in section 15(1) of the Electronic Communications Act 2000(16).
- (3) For the purposes of these Regulations, the conversion phase, in relation to any person entitled to an existing award or awards, is the period which—
- (a) begins in accordance with regulation 4(4); and
  - (b) ends in accordance with regulation 5(6).
- (4) In these Regulations, any reference to Step 1, 2 or 3, in relation to any person, is to be construed in accordance with regulation 8.

### **Persons to whom these Regulations apply**

**3.** These Regulations apply to any person who, on or after 1st October 2010, is entitled to an existing award(17).

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(12) S.I. 1990/545. These Regulations lapsed on the repeal of the enabling authority, as from 1st April 1993, except in relation to any community charge in respect of a day falling before that date or in relation to any financial year beginning before that date.

(13) S.I. 1992/2182.

(14) S.I. 1993/494.

(15) The "Administration Act" is defined in section 65 of the Welfare Reform Act 2007.

(16) 2000 c. 7. The definition of "electronic communication" in section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

(17) "Existing award" is defined in paragraph 11 of Schedule 4 to the Welfare Reform Act 2007.

## PART 2

### CONVERSION DECISIONS

#### **The notice commencing the conversion phase**

4.—(1) Subject to paragraph (5), the Secretary of State may at any time issue a notice to any person who is entitled to an existing award.

(2) Any person to whom such a notice is issued is referred to in these Regulations as a notified person.

(3) The notice must inform the notified person—

- (a) that an existing award is to be converted into an award of an employment and support allowance if certain conditions are satisfied;
- (b) that, if those conditions are not satisfied, the existing award will not be converted and will terminate by virtue of these Regulations;
- (c) of the requirements that must be met in order to satisfy those conditions; and
- (d) of such other matters as the Secretary of State considers appropriate.

(4) The issue of the notice to a notified person begins the conversion phase in relation to that person, with effect from the date of issue.

(5) No notice may be issued to any person—

- (a) who reaches pensionable age at any time before 6th April 2014; or
- (b) at any time when payment of the existing award to the person is subject to adjustment under regulation 4 of the Social Security (Transitional Payments) Regulations 2009<sup>(18)</sup> (adjustment of subsequent payments following an adjusting payment of benefit).

(6) Where a person is entitled to—

- (a) an existing award of incapacity benefit or severe disablement allowance; and
- (b) an existing award of income support,

the notice issued to the person under this regulation shall have effect in relation to both such awards.

#### **Deciding whether an existing award qualifies for conversion**

5.—(1) In relation to the existing award or awards to which a notified person (“P”) is entitled, the Secretary of State must, except where paragraph (8)(a) applies, make a conversion decision in accordance with these Regulations.

(2) A conversion decision is—

- (a) a decision that P’s existing award or awards qualify for conversion into an award of an employment and support allowance in accordance with regulation 7 (qualifying for conversion); or
- (b) a decision that P’s existing award or awards do not qualify for conversion into an award of an employment and support allowance.

(3) A notice of a conversion decision under paragraph (2)(a) must specify the amount of an employment and support allowance to which P is entitled on the effective date (subject to any relevant deductions).

(4) The amount referred to in paragraph (3) is to be determined in accordance with regulation 8 (amount of an employment and support allowance on conversion).

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<sup>(18)</sup> S.I. 2009/609.

- (5) The Secretary of State must notify P of the Secretary of State's conversion decision.
- (6) The conversion phase ends in relation to P—
  - (a) immediately before the effective date of the conversion decision notified to P; or
  - (b) if earlier, when P's entitlement to the award or awards to which the notice under regulation 4 (notice commencing the conversion phase) relates otherwise ceases to be subject to conversion (because entitlement to the award has terminated or for some other reason).
- (7) The effective date of any conversion decision is to be determined in accordance with regulation 13 (effective date of a conversion decision).
- (8) In the event that P's entitlement to an existing award ceases to be subject to conversion (for example, because P's entitlement to an award of income support has ceased to fall within paragraph (c) of the definition of "existing award" in paragraph 11 of Schedule 4 to the 2007 Act)—
  - (a) before a conversion decision is made, the Secretary of State must notify P that the conversion phase has ended without a conversion decision being made; or
  - (b) after the making of a conversion decision but before its effective date, the Secretary of State must notify P that the conversion decision shall not come into effect.
- (9) On the giving of a notice under paragraph (8)(b), the conversion decision to which it relates shall lapse with immediate effect.

#### **Application of certain enactments for purpose of making conversion decisions**

- 6.—(1) The enactments listed in paragraph (2) apply, subject to the modifications specified in Schedule 1, for the purposes of—
- (a) enabling the Secretary of State to make in relation to any person a conversion decision under this Part; and
  - (b) providing for the revision of such decisions at any time before the effective date.
- (2) The listed enactments are—
- (a) Part 1 of the 2007 Act;
  - (b) the 2008 Regulations;
  - (c) regulation 32(1) and (1A) of the Social Security (Claims and Payments) Regulations 1987<sup>(19)</sup> (information to be given);
  - (d) Chapter 2 of Part 1 of the Social Security Act 1998<sup>(20)</sup> (social security decisions and appeals); and
  - (e) the Social Security and Child Support (Decisions and Appeals) Regulations 1999<sup>(21)</sup>.
- (3) In the application of the enactments listed in paragraph (2)(d) and (e), the conversion decision is to be treated as if it were a decision as to a person's entitlement to an employment and support allowance which had been made on a claim.

#### **Qualifying for conversion**

7. For the purposes of regulation 5(2)(a) (deciding whether an existing award qualifies for conversion), an existing award or awards to which a notified person is entitled qualify for conversion into an award of an employment and support allowance only if the person satisfies the basic conditions set out in section 1(3)(a) to (d) and (f) of the 2007 Act.

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<sup>(19)</sup> S.I. 1987/1968. Regulation 32(1) and (1A) were substituted by S.I. 2003/1050.

<sup>(20)</sup> 1998 c. 14.

<sup>(21)</sup> S.I. 1999/991.

### **Amount of an employment and support allowance on conversion**

8. For the purposes of regulation 5(3), the amount of an employment and support allowance to which a notified person is entitled shall be determined as follows.

#### *Step 1*

Determine in accordance with Part 1 of the 2007 Act and the 2008 Regulations the amount (if any) of an employment and support allowance to which the notified person would be entitled if, on a claim made by that person—

- (a) it had been determined that the person was entitled to an award of an employment and support allowance; and
- (b) the assessment phase had ended.

#### *Step 2*

Determine in accordance with regulations 9 to 12—

- (a) whether the notified person is entitled to a transitional addition; and
- (b) if so, the amount of the transitional addition.

#### *Step 3*

Aggregate the amounts (if any) which result from Steps 1 and 2.

### **Determining entitlement to a transitional addition**

9.—(1) In relation to any notified person whose existing award or awards qualify for conversion into an employment and support allowance—

- (a) the person's entitlement (if any) to a transitional addition; and
- (b) the amount of any such transitional addition,

are to be determined in accordance with regulation 10(2) (transitional addition: incapacity benefit or severe disablement allowance) or 11(2) (transitional addition: income support).

(2) The amount of transitional addition to which a notified person is entitled is subject to reduction in accordance with regulations 18 to 20.

(3) The entitlement of a notified person to any transitional addition terminates in accordance with regulation 21 (termination of transitional addition).

### **Transitional addition: incapacity benefit or severe disablement allowance**

10.—(1) This regulation applies to any notified person who is entitled to an existing award of incapacity benefit or severe disablement allowance (and for these purposes it is irrelevant whether the person is also entitled to any existing award of income support).

(2) In any case falling within paragraph (1)—

- (a) the notified person shall be entitled to a transitional addition if Amount A exceeds Amount B; and
- (b) the amount of transitional addition to which the notified person is entitled under this paragraph shall be equal to the amount of any such excess.

(3) Amount A is the amount of the weekly rate of the existing award applicable to the notified person.

(4) To calculate Amount B—

- (a) take the amount prescribed under paragraph (2) of regulation 67 of the 2008 Regulations (prescribed amounts for purpose of calculating a contributory allowance) which is applicable to the notified person; and

- (b) add the amount of the applicable component determined in accordance with regulation 12(5).
- (5) In paragraph (3), the reference to the weekly rate of an existing award applicable to the notified person is to—
- (a) in the case of incapacity benefit, the weekly rate payable—
    - (i) under section 30B(2), (6) or (7) of the Contributions and Benefits Act(22) (incapacity benefit: rate),
    - (ii) under section 40(5) or 41(4) of the Contributions and Benefits Act(23) (long-term incapacity benefit for widows and for widowers),
    - (iii) by virtue of regulation 11(4) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995(24) (former sickness benefit), or
    - (iv) by virtue of regulation 17(1) of those Regulations (former invalidity benefit);
  - (b) in the case of severe disablement allowance, the weekly rate payable under sections 68(7) and 69(1) of the Contributions and Benefits Act (as they have effect by virtue of article 4 of the Welfare Reform and Pensions Act 1999 (Commencement No.9 and Transitional and Savings Provisions) Order 2000(25)).

#### **Transitional addition: income support**

**11.**—(1) This regulation applies to any notified person who is entitled to an existing award of income support (and for these purposes it is irrelevant whether the person is also entitled to any existing award of incapacity benefit or severe disablement allowance).

- (2) In any case falling within paragraph (1)—
- (a) the notified person shall be entitled to a transitional addition if Amount C exceeds Amount D; and
  - (b) the amount of transitional addition to which the notified person is entitled under this paragraph shall be equal to the amount of any such excess.
- (3) To calculate Amount C—
- (a) take the notified person’s weekly applicable amount under regulation 17 or 18 of, and Schedule 2 to, the Income Support (General) Regulations 1987(26) (applicable amounts);
  - (b) disregard any amount determined in accordance with (as the case may be) regulation 17(1) (e) or 18(1)(f) of, and Schedule 3 to, those Regulations (housing costs); and
  - (c) disregard any amount included in the person’s applicable amount—
    - (i) under regulation 17(1)(b), (c) or (d) of those Regulations(27) in respect of a child or young person who is a member of the notified person’s family, or

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(22) 1992 c. 4. “Contributions and Benefits Act” is defined in section 65 of the Welfare Reform Act 2007. Section 30B was inserted by section 2(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18) and is to be repealed by paragraph 9(5) of Schedule 3 to the Welfare Reform Act 2007.

(23) Sections 40 and 41 were substituted by paragraphs 8 and 9 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994. They are to be repealed by Schedule 8 to the Welfare Reform Act 2007.

(24) S.I. 1995/310.

(25) S.I. 2000/2958 (C. 89).

(26) S.I. 1987/1967. Regulation 17 was amended by S.I. 1988/910 and 1445, 1989/1678, 1991/387, 1992/3147, 1996/206, 2003/455 and 1121, 2005/2687 and 2006/588. Regulation 18 was amended by S.I. 1988/1228 and 1445, 1989/1034, 1992/3147, 1996/206, 2001/3767, 2003/455 and 1121 and 2006/588.

(27) Regulations 17(1)(b) and (c) and 18(1)(c) and (d) of, and paragraphs 2, 3 and 6(1)(c) of Schedule 2 to, the Income Support (General) Regulations 1987 (“the 1987 Regulations”) (amounts for child or young person, family premium and disabled child premium) were revoked by S.I. 2003/455. Paragraph 13A(b) and (2)(a) of the 1987 Regulations (which provide for enhanced disability premium) were also amended by S.I. 2003/455 so as to exclude children or young persons from the list of persons to whom such premiums may relate. The revocations and amendments are subject to savings in accordance with regulations 1 and 7 of S.I. 2003/455, as amended by regulation 2(2) of S.I. 2005/2294.

- (ii) under regulation 18(1)(b), (c), (d) or (e) of those Regulations in respect of a child or young person who is a member of the same household as the notified person, as those provisions have effect by virtue of regulations 1 and 7 of the Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendment) Regulations 2003(28).
- (4) To calculate Amount D—
  - (a) take the amount prescribed under regulation 67(1) or 68(1) of the 2008 Regulations (prescribed amounts for purpose of calculating an income-related allowance) which is applicable to the notified person;
  - (b) disregard any amount determined in accordance with (as the case may be) regulation 67(1) (c) or 68(1)(d) (housing costs) of the 2008 Regulations; and
  - (c) add the amount of the applicable component determined in accordance with regulation 12(5) of these Regulations.

### **Regulations 10 and 11: supplementary**

**12.**—(1) This regulation has effect for the purposes of applying regulations 10 and 11 in relation to any notified person.

- (2) Subject to paragraphs (3) and (4)—
  - (a) Amounts A and C are to be calculated in respect of the benefit week which ends immediately before the effective date of the notified person’s conversion decision; and
  - (b) Amounts B and D are to be calculated in respect of the benefit week the first day of which is the effective date of the notified person’s conversion decision.
- (3) Where—
  - (a) by virtue of an order made under section 150 of the Administration Act (annual up-rating of benefits), there is an increase in—
    - (i) the weekly rate which, in accordance with regulation 10(3) (transitional addition: incapacity benefit or severe disablement allowance), is to be used to calculate Amount A, or
    - (ii) the applicable amount which, in accordance with regulation 11(3) (transitional addition: income support), is to be used to calculate Amount C; and
  - (b) that increase takes effect from any day in the benefit week referred to in paragraph (2)(b), the calculation of Amount A or C is to be made using the increased weekly rate or applicable amount (as the case may be).
- (4) Where—
  - (a) there is a change of circumstances in relation to a notified person which, but for sub-paragraph (b), would have resulted in an increase or decrease of the weekly rate or applicable amount referred to in paragraph (3)(a)(i) or (ii); and
  - (b) that increase or decrease would have taken effect from any day in the benefit week referred to in paragraph (2)(b), the calculation of Amount A or C is to be made using the weekly rate or applicable amount (as the case may be) which would have been payable in respect of the existing award if it had not been subject to conversion under these Regulations.

- (5) The “applicable component”, in relation to the notified person, means—

- (a) the work-related activity component, if it has been determined in accordance with the enactments applied by regulation 6 (application of certain enactments for purpose of making conversion decisions) that the notified person does not have and is not to be treated as having limited capability for work-related activity; or
- (b) the support component, if it has been determined in accordance with those enactments that the notified person has or is to be treated as having limited capability for work-related activity.

### **The effective date of a conversion decision**

**13.**—(1) For the purposes of determining the date on which a conversion decision takes effect in relation to any notified person—

- (a) take the date on which the person is notified of the conversion decision; and
- (b) unless paragraph (2) applies, determine the first complete fortnightly period in respect of which the person’s existing benefit is payable after that date,

and the effective date of the person’s conversion decision is the first day of the benefit week immediately following the end of the fortnightly period referred to in sub-paragraph (b).

(2) Where existing benefit is payable to the notified person in respect of a period other than a fortnight—

- (a) determine the second complete benefit week in respect of which the person’s existing benefit is payable after the date on which the person is notified of the conversion decision; and
- (b) the effective date of the person’s conversion decision is the first day of the benefit week immediately following the end of that second complete benefit week.

(3) “Existing benefit”, in relation to a notified person, means the benefit in respect of the person’s existing award or awards.

### **Conversion decision that existing award qualifies for conversion**

**14.**—(1) Paragraphs (2) and (3) apply in any case where the conversion decision is a decision that a notified person’s (“P”) existing award or awards qualify for conversion into an employment and support allowance.

(2) On the effective date of the conversion decision—

- (a) P’s existing award; or
- (b) both of P’s existing awards (as the case may be),

are by virtue of this paragraph converted into, and shall have effect on and after that date as, a single award of an employment and support allowance of such amount as is specified in the conversion decision.

(3) Where immediately before the effective date of the conversion decision, any relevant deduction was made from the existing award or awards, an equivalent deduction shall be made from the employment and support allowance to which P is entitled by virtue of these Regulations.

(4) Paragraphs (2) and (3) are subject to regulation 17.

### **Conversion decision that existing award does not qualify for conversion**

**15.**—(1) Subject to paragraph (4), paragraphs (2) and (3) apply in any case where the conversion decision is a decision that a notified person’s (“P”) existing award or awards do not qualify for conversion into an employment and support allowance.

(2) P's entitlement to one or both of—

- (a) an existing award of incapacity benefit or severe disablement allowance; or
- (b) an existing award of income support (being an award made to a person incapable of work or disabled),

shall terminate by virtue of this paragraph immediately before the effective date of P's conversion decision.

(3) Where, immediately before that date, P is entitled to be credited with any earnings under regulation 8B(2)(a) of the Social Security (Credits) Regulations 1975<sup>(29)</sup> (credits for incapacity for work), P shall not be entitled to be so credited under that regulation on or after that date.

(4) Paragraph (5) applies where—

- (a) a conversion decision within the meaning of regulation 5(2)(b) ("the earlier conversion decision") is made by virtue of either of the following provisions of the 2008 Regulations (as they apply by virtue of regulation 6)—
  - (i) regulation 22(1) (failure to provide information or evidence requested in relation to limited capability for work), or
  - (ii) regulation 23(2) (failure to attend for a medical examination to determine whether the claimant has limited capability for work); and
- (b) after P is notified of the earlier conversion decision, the Secretary of State is satisfied (or where the conversion decision is appealed to the First-tier Tribunal, that tribunal determines) that P had good cause for failing to—
  - (i) provide the information requested, or
  - (ii) attend for or submit to the medical examination for which P was called.

(5) Where this paragraph applies—

- (a) the earlier conversion decision is treated as never having been made;
- (b) any entitlement of P—
  - (i) to an existing award which was terminated by virtue of paragraph (2), or
  - (ii) to be credited with earnings which was terminated by virtue of paragraph (3),

shall be reinstated with effect from the effective date of the earlier conversion decision;

- (c) the Secretary of State must make a conversion decision ("the new conversion decision") in accordance with regulation 5 (deciding whether an existing award qualifies for conversion) in relation to the existing award or awards to which P is entitled;
- (d) the notice issued under regulation 4 (notice commencing the conversion phase) has effect in relation to that existing award or those existing awards; and
- (e) with the exception of regulation 4 (notice commencing the conversion phase), the remaining provisions of this Part, including this regulation, apply to the new conversion decision.

(6) Paragraphs (2) and (3) are subject to regulation 17 (changes of circumstances before the effective date).

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<sup>(29)</sup> S.I. 1975/556. Regulation 8B was inserted by SI 1996/2367 and amended by S.I. 2008/1554.

## PART 3

### AFTER THE CONVERSION PHASE

#### Application of other enactments applying to employment and support allowances

**16.**—(1) The enactments listed in paragraph (2) apply, subject to the modifications specified in Schedule 2, for the purposes of—

- (a) providing for the revision or supersession of any person’s conversion decision at any time on or after that decision’s effective date; and
- (b) enabling any other matter to be determined in connection with any person’s entitlement or continuing entitlement to an award of an employment and support allowance by virtue of these Regulations.

(2) The listed enactments are—

- (a) Part 1 of the 2007 Act;
- (b) Chapter 2 of Part 1 of the Social Security Act 1998<sup>(30)</sup> (social security decisions and appeals);
- (c) any other Act which is amended by Schedule 3 to the 2007 Act;
- (d) the Social Security (Recovery of Benefits) Act 1997<sup>(31)</sup>; and
- (e) the following regulations—
  - (i) this Part of these Regulations,
  - (ii) the 2008 Regulations, and
  - (iii) the Regulations listed in Schedule 3 to these Regulations (being regulations consequentially amended by regulations made under Part 1 of the 2007 Act).

(3) In the application of those enactments, the conversion decision is to be treated as if it were a decision as to a person’s entitlement to an employment and support allowance which had been made on a claim.

#### Changes of circumstances before the effective date

**17.** Where, on or after the effective date of any person’s conversion decision, the Secretary of State is notified of any change of circumstances or other relevant event which occurred before that date, the Secretary of State—

- (a) must treat any award converted by virtue of regulation 14(2) (conversion decision that existing award qualifies for conversion) or terminated by virtue of regulation 15(2) (conversion decision that existing award does not qualify for conversion) as if it had not been converted or terminated;
- (b) must take account of the change of circumstances or other relevant event for the purposes of determining whether to revise or supersede a decision (“the earlier decision”) relating to the award or awards in respect of which the conversion decision was made;
- (c) in an appropriate case, must revise or supersede the earlier decision;
- (d) if any earlier decision is revised or superseded, must determine whether to revise the conversion decision made in relation to P; and
- (e) in an appropriate case, must revise that conversion decision.

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<sup>(30)</sup> 1998 c. 14.

<sup>(31)</sup> 1997 c. 27.

### **Reducing the transitional addition: general rule**

**18.**—(1) The amount of any transitional addition to which a person is entitled by virtue of these Regulations shall be reduced (but not below nil) by a sum equal to the aggregate amount of all relevant increases which occur on or after the effective date in the amount payable to the person by way of an employment and support allowance.

(2) For the purposes of paragraph (1), a relevant increase is—

- (a) in relation to a person entitled to a contributory allowance, an increase in any amount applicable to the person under regulation 67(2)(a) or (3) of the 2008 Regulations<sup>(32)</sup>; and
- (b) in relation to a person entitled to an income-related allowance, an increase in any amount applicable to the person under regulation 67(1)(a) or (b) or (3) or 68(1)(a), (b) or (c) of the 2008 Regulations,

which is not excluded by paragraph (3).

(3) In relation to any person, the excluded increases are—

- (a) any increase applicable to the benefit week the first day of which is the effective date of the person's conversion decision; and
- (b) any increase resulting from the reversal (on appeal or otherwise) of any decision made by the Secretary of State that a person who was previously entitled to the support component has become entitled to the work-related activity component.

### **Reducing the transitional addition: increases for dependent children**

**19.**—(1) Paragraphs (2) and (3) apply to any person ("T") who—

- (a) on the day before the effective date of T's conversion decision, was entitled in connection with an existing award of incapacity benefit or severe disablement allowance to an increase under section 80 of the Contributions and Benefits Act (beneficiary's dependent children), as that section has effect by virtue of article 3 of the Tax Credits (Commencement No.3 and Transitional Provisions and Savings) Order 2003<sup>(33)</sup>; and
- (b) on and after the effective date, is entitled by virtue of these Regulations to an employment and support allowance which includes an amount by way of a transitional addition.

(2) The amount of the transitional addition shall be reduced in accordance with paragraph (3) on the termination, on or after the effective date, of T's entitlement to child benefit in respect of the child or qualifying young person—

- (a) for whom; or
- (b) for whose care by an adult dependant,

T was entitled to the increase referred to in paragraph (1)(a).

(3) The amount of the transitional addition shall be reduced (but not below nil) by a sum equal to the amount which, on the day before the effective date, was the amount of the increase referred to in paragraph (1)(a) to which T was entitled.

### **Reducing the transitional addition: increases for adult dependants**

**20.**—(1) Paragraphs (2) and (3) apply to any person ("T") who—

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<sup>(32)</sup> The reference to regulation 67(2)(a) of the 2008 Regulations is to that regulation as modified by paragraph 12(b) of Schedule 2 to these Regulations.

<sup>(33)</sup> S.I. 2003/938.

- (a) on the day before the effective date of T's conversion decision, was entitled in connection with an existing award of incapacity benefit or severe disablement allowance to an increase under—
    - (i) section 86A of the Contributions and Benefits Act(34) (incapacity benefit: increases for adult dependants), or
    - (ii) section 90 of the Contributions and Benefits Act (adult dependants of beneficiaries in receipt of severe disablement allowance); and
  - (b) on and after the effective date, is entitled by virtue of these Regulations to an employment and support allowance which includes an amount by way of a transitional addition.
- (2) The amount of the transitional addition shall be reduced in accordance with paragraph (3) on the occurrence, on or after the effective date, of any of the following events—
- (a) the death of the adult dependant in respect of whom T was entitled to the increase referred to in paragraph (1)(a);
  - (b) the permanent separation of T and that adult dependant;
  - (c) the termination of the entitlement of either T or that adult dependant to child benefit; or
  - (d) the award to that adult dependant of a personal benefit (within the meaning of the Social Security (Overlapping Benefits) Regulations 1979(35)) which is equal to or more than the amount which, on the day before the effective date, was the amount of the increase referred to in paragraph (1)(a) to which T was entitled.
- (3) The amount of the transitional addition shall be reduced (but not below nil) by a sum equal to the amount which, on the day before the effective date, was the amount of the increase referred to in paragraph (1)(a) to which T was entitled.

### **Termination of transitional addition**

**21.**—(1) Any entitlement to a transitional addition which a person (“T”) may have by virtue of these Regulations terminates on whichever is the earlier of—

- (a) the reduction in accordance with regulations 18 to 20 (reducing the transitional addition: general rule and increases for dependent children and adult dependants) of the amount of the transitional addition to nil;
- (b) subject to paragraphs (2) and (3), the termination in accordance with the enactments applied by regulation 16 of T's entitlement to an employment and support allowance; and
- (c) 5th April 2020.

(2) Nothing in paragraph (1)(b) prevents reinstatement of a person's entitlement to a transitional addition following the reversal on appeal of any determination which results in the termination of the person's entitlement to an employment and support allowance.

(3) Any termination of T's entitlement to a transitional addition by virtue of paragraph (1)(b) shall instead have effect as a suspension of that entitlement in Case 1 or Case 2.

(4) Case 1 is where—

- (a) on a subsequent claim made by T for an employment and support allowance, a period of limited capability for work is treated under regulation 145(1) or (2) of the 2008 Regulations (linking rules) as a continuation of an earlier period of limited capability for work; and
- (b) T's entitlement to an employment and support allowance which is referred to in paragraph (1)(b) (“T's old entitlement”) was in respect of that earlier period.

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(34) Section 86A was inserted by section 2(5) of the Social Security (Incapacity for Work) Act 1994.

(35) S.I. 1979/597.

(5) Case 2 is where—

- (a) T's old entitlement was to an income-related allowance;
- (b) the reason for terminating that entitlement was that the condition set out in paragraph 6(1)(f) of Schedule 1 to the 2007 Act had ceased to be satisfied in T's case (no entitlement to income-related allowance where other member of a couple engages in remunerative work); and
- (c) on a subsequent claim for an income-related allowance, T's entitlement to such an allowance commences before the end of the 12 week period which begins with the date of termination of T's old entitlement.

(6) In Cases 1 and 2, the amount of the transitional addition which becomes payable on commencement of T's entitlement to an employment and support allowance is to be determined by reference to the amount of the transitional addition that was payable on the termination of T's old entitlement, subject to any subsequent adjustment of that amount that would have been made under this Part.

## PART 4

### MISCELLANEOUS

#### **Disapplication of certain enactments following conversion decision**

**22.** Where a conversion decision has been made in relation to any person, the following enactments shall not apply to that person with effect from the conversion decision's effective date—

- (a) sections 30A, 40 or 41 of the Contributions and Benefits Act(**36**) (incapacity benefit);
- (b) section 68 of the Contributions and Benefits Act (as it has effect by virtue of article 4 of the Welfare Reform and Pensions Act 1999 (Commencement No. 9, and Transitional and Savings Provisions) Order 2000(**37**));
- (c) regulation 13(2)(b) or (bb) of, or paragraph 7(a) or (b), 10, 12 or 13 of Schedule 1B to, the Income Support (General) Regulations 1987(**38**) (prescribed category of persons for the purposes of entitlement on grounds of incapacity or disability);
- (d) the Income Support Transitional Regulations 1987(**39**); and
- (e) the Incapacity Benefit Transitional Regulations 1995(**40**).

#### **Treatment of claims until coming into force of regulation 24**

**23.** In sub-paragraphs (a), (b) and (c) of regulation 2(2) of the Employment and Support Allowance (Transitional Provisions) Regulations 2008(**41**) (claim for existing award), for "a claim" substitute "a claim made in respect of a period commencing before 31st January 2011".

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(36) Section 30A was inserted by section 1(1) of the Social Security (Incapacity for Work) Act 1994 and is to be repealed by paragraph 9(5) of the Welfare Reform Act 2007. Section 40 was substituted, and section 41 inserted, by paragraphs 8 and 9 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 and are to be repealed by Schedule 8 to the Welfare Reform Act 2007.

(37) S.I. 2000/2958 (C. 89).

(38) S.I. 1987/1967. Relevant amending instruments are S.I. 1996/206, 2000/1981 and 2006/718. The enactments referred to in regulation 22(c) are revoked, subject to savings, by S.I. 2009/3152 with effect from 30th December 2009.

(39) S.I. 1987/1969.

(40) S.I. 1995/310.

(41) S.I. 2008/795.

### **Revocation of transitional claims provisions**

24. In regulation 2(2) of the Employment and Support Allowance (Transitional Provisions) Regulations 2008, sub-paragraphs (a) to (c) are revoked.

### **Amendment of the 2008 Regulations**

25.—(1) Regulation 31 of the 2008 Regulations (claimant who claims jobseeker's allowance to be treated as not having limited capability for work) is revoked.

(2) In regulation 144(2)(a) of the 2008 Regulations (which sets out exceptions from the requirement to serve a period of waiting days at the beginning of a period of limited capability for work), between “income support,” and “state pension credit” insert “incapacity benefit, severe disablement allowance,”.

### **Consequential amendments**

26. Schedule 4 (which makes amendments consequential on these Regulations) has effect.

### **Amendments to legislation relating to Housing Benefit and Council Tax Benefit**

27. Schedule 5 (which makes amendments to legislation relating to Housing Benefit and Council Tax Benefit) has effect.

Signed by authority of the Secretary of State for Work and Pensions.

18th March 2010

*Jonathan Shaw*  
Parliamentary Under Secretary of State,  
Department for Work and Pensions

## SCHEDULES

### SCHEDULE 1

Regulation 6(1)

Modification of enactments: making conversion decisions

#### PART 1

#### MODIFICATION OF PART 1 OF THE 2007 ACT

1. Any reference to a claimant is to be read as if it were a reference to a notified person.
2. Section 1 is to be read as if—
  - (a) for subsection (2), there were substituted—

“(2) Subject to the provisions of this Part, a notified person is entitled to an employment and support allowance if the person satisfies the basic conditions and—

    - (a) is entitled to an existing award of incapacity benefit or severe disablement allowance;
    - (b) is entitled to an existing award of income support and satisfies the conditions set out in Part 2 of Schedule 1, unless subsection (2)(c) applies; or
    - (c) is entitled to an existing award of income support by virtue of paragraph 10 (disabled students) or 12 (deaf students) of Schedule 1B to the Income Support (General) Regulations 1987 and satisfies the conditions set out in Part 2 of Schedule 1, with the exception of the condition in paragraph 6(1)(g).”; and
  - (b) subsection (3)(e) were omitted.
3. Section 2 is to be read as if, in subsections (2)(a) and (3)(a), references to the assessment phase were to the conversion phase.
4. Section 4 is to be read as if, in subsections (4)(a) and (5)(a), references to the assessment phase were to the conversion phase.
5. Section 5 does not apply.
6. Schedule 1 to the 2007 Act is to be read as if—
  - (a) paragraphs 1 to 5 were omitted; and
  - (b) in paragraph 6, after sub-paragraph (1), there were inserted—

“(1A) Paragraphs (1B) and (1C) apply in relation to any person (“P”) whose existing award of income support is subject to conversion under the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 (“the 2010 Regulations”).

(1B) In determining for the purposes of paragraph (1)(a) whether P’s income exceeds the applicable amount, any amount to which P may become entitled by way of a transitional addition under Part 2 of the 2010 Regulations shall be disregarded.

(1C) But where—

- (a) P's existing award would qualify for conversion under Part 2 of the 2010 Regulations but for the fact that the condition set out in paragraph (1)(a) is not satisfied in P's case; and
  - (b) P would otherwise be entitled to an amount of transitional addition under Part 2 of the 2010 Regulations as a result of carrying out Step 2,
- the condition set out in paragraph (1)(a) shall be treated as having been satisfied and the amount of an employment and support allowance which applies to P as a result of Step 1 shall be nil.”.

## PART 2

### MODIFICATION OF THE 2008 REGULATIONS

- 7. Any reference to a claimant is to be read as if it were a reference to the notified person.
- 8. Part 2 (which makes provision about the assessment phase) does not apply.
- 9. Part 3 (which makes provision about contribution conditions which do not apply by virtue of modifications contained in these Regulations) does not apply.
- 10. Regulation 30 (which provides for payment of the allowance pending determination of limited capability for work) does not apply.
- 11. Regulation 75 (payments treated as not being payments to which section 3 of the 2007 Act applies) is to be read as if—
  - (a) the existing provisions were renumbered as paragraph (1);
  - (b) at the end of that paragraph there were added—
    - “(g) any pension payment or PPF periodic payment which is made to a notified person and which falls within paragraph (2).”; and
  - (c) after that paragraph there were added—
    - “(2) This paragraph applies to any pension payment or PPF periodic payment made to the notified person where, immediately before the effective date of the person's conversion decision, section 30DD(1) of the Contributions and Benefits Act(42) (incapacity benefit: reduction for pension payments and PPF periodic payments)—
      - (a) did not apply to the notified person by virtue of regulation 26 of the Social Security (Incapacity Benefit) Regulations 1994(43) (persons whose benefit is not to be reduced under section 30DD(1)); or
      - (b) was not treated as applying to the notified person by virtue of—
        - (i) regulation 19(1)(c) or (2)(c) of those Regulations (persons formerly entitled to severe disablement allowance); or
        - (ii) article 3 of the Welfare Reform and Pensions Act 1999 (Commencement No.9, and Transitional and Savings Provisions) Order 2000(44) (transitional provision in relation to incapacity benefit).”.
- 12. Regulation 144 (requirement to serve a period of waiting days at the beginning of a period of limited capability for work) does not apply.

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(42) Section 30DD was inserted by section 63 of the Welfare Reform and Pensions Act 1999 (c. 30) and amended by S.I. 2006/343.

(43) S.I. 1994/2946.

(44) S.I. 2000/2958.

### PART 3

#### MODIFICATION OF OTHER SECONDARY LEGISLATION

##### *Social Security (Claims and Payments) Regulations 1987*

**13.** Regulation 32 of the Social Security (Claims and Payments) Regulations 1987<sup>(45)</sup> (information to be given and changes to be notified) is to be read as if it were modified so as to enable the Secretary of State to require from any person entitled to an existing award—

- (a) under paragraph (1), information or evidence for determining whether a decision on an existing award should be converted into an award of an employment and support allowance; and
- (b) under paragraph (1A), information or evidence in connection with payment of benefit in the event that an existing award is converted into an award of an employment and support allowance.

#### SCHEDULE 2

Regulation 16(1)

##### Modification of enactments: after the conversion phase

#### PART 1

##### MODIFICATION OF PART 1 OF THE 2007 ACT

**1.** Any reference to a claimant is to be read as if it were a reference to a person in relation to whom a conversion decision has been made under these Regulations.

**2.** Section 1 (employment and support allowance) is to be read as if—

(a) for subsection (2), there were substituted—

“(2) Subject to the provisions of this Part, a person is entitled to an employment and support allowance if the person satisfies the basic conditions and—

(a) in accordance with Part 2 of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010, the effect of the conversion decision that was made in relation to the person was to convert the person’s existing award or awards into a single award of an employment and support allowance; and

(b) that conversion decision has come into effect.”; and

(b) for subsection (7), there were substituted—

“(7) In this Part—

“contributory allowance” means an employment and support allowance to which a person is entitled by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 which was based on an award of incapacity benefit or severe disablement allowance to which the person was entitled; and

“income-related allowance” means an employment and support allowance to which a person is entitled by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing

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<sup>(45)</sup> S.I. 1987/1968. Regulation 32(1) and (1A) were inserted by S.I. 2003/1050.

Awards) Regulations 2010 which was based on an award of income support to which the person was entitled.”.

3. Section 2 (amount of contributory allowance) is to be read as if—
  - (a) in subsection (1)(a), after the words “such amount” there were inserted “, or the aggregate of such amounts,”; and
  - (b) except for the purposes of applying regulation 147A of the 2008 Regulations (claimants appealing a decision), in subsections (2)(a) and (3)(a), references to the assessment phase were to the conversion phase.
4. Section 4 (amount of income-related allowance), except for the purposes of applying regulation 147A of the 2008 Regulations as modified by paragraph 15 of this Schedule, is to be read as if, in subsections (4)(a) and (5)(a), references to the assessment phase were to the conversion phase.

## PART 2

### MODIFICATION OF OTHER PRIMARY LEGISLATION

#### *Social Security Act 1998*

5. Schedule 3 to the Social Security Act 1998(46) (decisions against which an appeal lies) is to be read as if, after paragraph 8D, there were inserted—

“Conversion of certain existing awards into awards of an employment and support allowance

**8E.** A conversion decision within the meaning of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010.”.

#### *Social Security Contributions and Benefits Act 1992*

6. Section 44B of the Social Security Contributions and Benefits Act 1992(47) (deemed earnings factors: 2010-11 onwards) is to be read as if, after subsection (5), there were inserted—

“(5A) In determining whether Condition C is satisfied in relation to any pensioner, the following entitlements of the pensioner to an earnings factor credit may be aggregated if the weeks to which they relate comprise a continuous period—

- (a) any entitlement arising by virtue of—
  - (i) section 44C(3)(c) below (eligibility for earnings factor enhancement in respect of a week in which severe disablement allowance was payable), or
  - (ii) section 44C(3)(d) below (eligibility for earnings factor enhancement in respect of a week in which long-term incapacity benefit was, or would have been, payable); and
- (b) where an award of severe disablement allowance or long-term incapacity benefit was converted into an award of an employment and support allowance by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010, any entitlement arising by virtue of regulation 5A(2)(ba) of the Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations

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(46) 1998 c. 14. Paragraphs 8A to 8D of Schedule 3 were inserted by paragraph 12 of Schedule 1 to the State Pension Credit Act 2002 (c. 16).

(47) 1992 c. 4. Section 44B was inserted by section 9(1) of the Pensions Act 2007 (c. 22) and amended by paragraph 5 of Schedule 1 to the National Insurance Act 2008 (c. 16).

2001(48) (earnings factor credits eligibility for pensioners to whom employment and support allowance was payable).”.

### PART 3

#### MODIFICATION OF THE 2008 REGULATIONS

7. Any reference to a claimant is to be read as if it were a reference to a person in relation to whom a conversion decision has been made under these Regulations.

8. Part 2 (which makes provision about the assessment phase) does not apply, except for the purposes of applying regulation 147A of the 2008 Regulations.

9. Part 3 (which makes provision about contribution conditions which do not apply by virtue of modifications contained in these Regulations) does not apply.

10. In its application to a person who has made and is pursuing an appeal against a conversion decision which embodies a determination that the person does not have limited capability for work, regulation 30 (which provides for payment of the allowance pending determination of limited capability for work) is to be read as if, after paragraph (3), before “decision” there were inserted “conversion”.

11. Regulation 45 (exempt work) is to be read as if, for the definition of “specified work” in paragraph (10), there were substituted—

““specified work” means—

- (a) work done in accordance with paragraph (4);
- (b) work done in accordance with regulation 17(4)(a) of the Social Security (Incapacity for Work) (General) Regulations 1995(49); or
- (c) work done in accordance with regulation 17(1A) of those Regulations, as then in force.”.

12. Regulation 67 (prescribed amounts) is to be read as if—

(a) in paragraph (1), after sub-paragraph (c) there were added—

“(d) the amount of any transitional addition to which the person is entitled under regulation 11 of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010.”;

(b) in paragraph (2), for the words from “is the amount” to the end, there were substituted “are such of the following amounts as may apply in the person’s case—

- “(a) the amount determined in accordance with paragraph 1(1) of Schedule 4; and
- (b) the amount of any transitional addition to which the person is entitled under regulation 10 of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010.”.

13. Regulation 68 (polygamous marriages) is to be read as if, in paragraph (1), after sub-paragraph (d) there were added—

“(e) the amount of any transitional addition to which the person is entitled under regulation 11 of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010.”.

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(48) S.I. 2001/1323. Regulation 5A was inserted by S.I. 2009/2206. The reference to regulation 5A(2)(ba) is to the modification made by paragraph 26 of Schedule 2 to these Regulations.

(49) S.I. 1995/311. Regulation 17(1A) was in force from 8th April 2002 to 9th April 2006. Regulation 17 was substituted by S.I. 2006/757 with effect from 10th April 2006.

14. Regulation 75 (payments treated as not being payments to which section 3 of the 2007 Act applies) is to be read subject to the same modifications as are specified in paragraph 11 of Schedule 1 to these Regulations.

15. In its application to a person who has made and is pursuing an appeal against a conversion decision which embodies a determination that the person does not have limited capability for work, Regulation 147A(50) (claimants appealing a decision) is to be read as if there were substituted—

**“Claimants appealing a decision**

**147A.**—(1) This regulation applies where a person has made and is pursuing an appeal against a conversion decision which embodies a determination that the person does not have limited capability for work.

(2) Subject to paragraph (3), where this regulation applies, a determination of limited capability for work by the Secretary of State under regulation 19 shall not be made until the appeal is determined by the First-tier Tribunal.

(3) Paragraph (2) does not apply where either—

- (a) the claimant suffers from some specific disease or bodily or mental disablement from which the claimant was not suffering when entitlement began; or
- (b) a disease or bodily or mental disablement from which the claimant was suffering at that date has significantly worsened.

(4) Where this regulation applies and the Secretary of State makes a determination—

- (a) in a case to which paragraph (3) applies (including where the determination is not the first such determination) that the claimant does not have, or by virtue of regulation 22 or 23 is to be treated as not having, limited capability for work; or
- (b) subsequent to a determination that the claimant is to be treated as having limited capability for work by virtue of a provision of these Regulations other than regulation 30, that the claimant is no longer to be so treated,

this regulation and regulation 30 apply as if that determination had not been made.

(5) Where this regulation applies and—

- (a) the claimant is entitled to an employment and support allowance by virtue of being treated as having limited capability for work in accordance with regulation 30;
- (b) neither of the circumstances in paragraph (3) applies or, subsequent to the application of either of those circumstances, the claimant has been determined not to have limited capability for work; and
- (c) the claimant’s appeal is dismissed, withdrawn or struck out,

the claimant is to be treated as not having limited capability for work from the first day of the benefit week following the date on which the Secretary of State was notified by the First-tier Tribunal that the appeal is dismissed, withdrawn or struck out.

(6) Where a claimant’s appeal is successful, any entitlement to which this regulation applies shall terminate on the first day of the benefit week following the date on which the Secretary of State was notified by the First-tier Tribunal of that decision.”.

16. Schedule 5 (prescribed amounts in special case) is to be read as if any reference to the amount

- (a) applicable to a person under regulation 67(1)(a); or
- (b) to which a person is entitled under regulation 67(1)(a),

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(50) Regulation 147A was inserted by [S.I. 2010/840](#), regulation 9(15).

included the amount of any transitional addition to which the person is entitled under regulation 67(1)(d) (see modification made by paragraph 12(a) of this Schedule).

#### PART 4

#### MODIFICATION OF OTHER SECONDARY LEGISLATION

##### *Social Security (Claims and Payments) Regulations 1987*

**17.** The Social Security (Claims and Payments) Regulations 1987<sup>(51)</sup> are to be read subject to the modifications set out in paragraphs 18 to 21 of this Schedule.

**18.** Regulation 3 (claims not required for entitlement to benefits in certain cases) is to be read as if—

(a) after the words “was made” in paragraph (j)(ii)<sup>(52)</sup>, there were inserted—

“; or

(iii) the beneficiary has made and is pursuing an appeal against a conversion decision made by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 which embodies a determination that the beneficiary does not have limited capability for work; or

(iv) the beneficiary was entitled to an employment and support allowance by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 and has made and is pursuing an appeal against a later decision which embodies a determination that the beneficiary does not have limited capability for work”; and

(b) after paragraph (j), there were added—

“(k) in the case of an employment and support allowance where the beneficiary is entitled to an existing award which is subject to conversion under the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010.”.

**19.** In regulation 26C<sup>(53)</sup> (employment and support allowance) any reference to an employment and support allowance includes any transitional addition to which the beneficiary is entitled under the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010.

**20.** Regulation 32(1B) (information to be given and changes to be notified) is to be read as if—

(a) the word “or” at the end of sub-paragraph (a) were omitted; and

(b) after that sub-paragraph, there were inserted—

“(ab) the amount of any transitional addition to which the beneficiary is entitled under the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010; or”.

**21.** Schedule 9 (deductions from benefit and direct payments to third parties) is to be read as if—

(a) in paragraph 1 (interpretation)—

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<sup>(51)</sup> S.I. 1987/1968. Regulation 3(j) was inserted by S.I. 2008/1554. Regulation 32(1B) was inserted by S.I. 2003/1050 and amended by S.I. 2003/3209. Paragraphs 1(3) and 8(4)(a)(iv) of Schedule 9 were inserted by S.I. 2008/1554.

<sup>(52)</sup> Paragraph (j)(ii) was substituted by regulation 2 of S.I. 2010/840.

<sup>(53)</sup> Regulation 26C was inserted by S.I. 2008/1554, regulation 21.

(i) in sub-paragraph (3), after the words ““employment and support allowance” means”, there were inserted “(subject to sub-paragraph (4))”, and

(ii) after sub-paragraph (3), there were added—

“(4) In the application of sub-paragraph (3) to a beneficiary whose award of an employment and support allowance is by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 (“the 2010 Regulations”), any reference to an employment and support allowance includes any transitional addition to which the beneficiary is entitled under those Regulations.

(5) Where a specified benefit awarded to a beneficiary is subject to conversion under the 2010 Regulations and—

(a) immediately before the effective date of the conversion decision made in relation to the beneficiary, any deduction is being made in accordance with this Schedule from sums payable to the beneficiary by way of the specified benefit; and

(b) with effect from that date, the award of specified benefit is converted into an award of an employment and support allowance under the 2010 Regulations,

any deduction falling within paragraph (a) shall have effect as a deduction from the employment and support allowance to which the beneficiary is entitled.”.

(b) in paragraph 8—

(i) in sub-paragraph (4), for paragraph (a)(iv), there were substituted—

“(iv) in the case of an employment and support allowance, the applicable amount for the family as is awarded under the provisions specified in sub-paragraph (5); or”, and

(ii) after sub-paragraph (4) there were added—

“(5) The specified provisions are—

(a) where the person is entitled to an employment and support allowance by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 (“the 2010 Regulations”)—

(i) paragraph (1)(a), (b) and (d) of regulation 67 (prescribed amounts);  
or

(ii) paragraph (1)(a), (b), (c) and (e) of regulation 68 (polygamous marriages),

of the Employment and Support Allowance Regulations (as modified by paragraphs 12 and 13 of Schedule 2 to the 2010 Regulations); and

(b) in any other case, paragraph (1)(a) and (b) of regulation 67 or paragraph (1) (a) to (c) of regulation 68 of the Employment and Support Allowance Regulations.”.

**22.** Schedule 9B (deductions from benefit in respect of child support maintenance and payment to persons with care)(54) is to be read as if—

(a) in paragraph (1) (interpretation), the existing provision becomes sub-paragraph (1); and

(b) there were added—

(54) Schedule 9B was inserted by S.I. 2001/18, regulation 2. It has been amended but not in a way material to these Regulations.

“(2) In the application of this Schedule to a beneficiary whose award of an employment and support allowance is by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 (“the 2010 Regulations”), any reference to an employment and support allowance includes any transitional addition to which the beneficiary is entitled under those Regulations.

(3) Where a specified benefit awarded to a beneficiary is subject to conversion under the 2010 Regulations and—

- (a) immediately before the effective date of the conversion decision made in relation to the beneficiary, any deduction is being made in accordance with this Schedule from sums payable to the beneficiary by way of the specified benefit; and
- (b) with effect from that date, the award of specified benefit is converted into an award of an employment and support allowance under the 2010 Regulations, any deduction falling within paragraph (a) shall have effect as a deduction from the employment and support allowance to which the beneficiary is entitled.”.

*Community Charges (Deductions from Income Support) (No. 2) Regulations 1990*

**23.** Regulation 1 of the Community Charges (Deductions from Income Support) (No. 2) Regulations 1990<sup>(55)</sup> (citation, commencement and interpretation) is to be read as if, after paragraph (2), there were inserted—

“(2A) In the application of these Regulations to a debtor whose entitlement to an employment and support allowance is by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 (“the 2010 Regulations”), any reference to an employment and support allowance includes any transitional addition to which the debtor is entitled under those Regulations.

(2B) Where a debtor’s award of income support is subject to conversion under the 2010 Regulations and—

- (a) immediately before the effective date of the conversion decision made in relation to the debtor, any deduction is being made under these Regulations from sums payable to the debtor by way of income support; and
- (b) with effect from that date, the award of income support is converted into an award of an employment and support allowance under the 2010 Regulations, any deduction falling within sub-paragraph (a) shall have effect as a deduction from the employment and support allowance to which the debtor is entitled.”.

*Fines (Deductions from Income Support) Regulations 1992*

**24.** Regulation 1 of the Fines (Deductions from Income Support) Regulations 1992<sup>(56)</sup> (citation, commencement and interpretation) is to be read as if, after paragraph (2), there were inserted—

“(2A) In the application of these Regulations to an offender whose entitlement to an employment and support allowance is by virtue of the Employment and Support Allowance

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<sup>(55)</sup> *S.I. 1990/545.* These Regulations lapsed on the repeal of the enabling authority, as from 1st April 1993, except in relation to any community charge in respect of a day falling before that date or in relation to any financial year beginning before that date.

<sup>(56)</sup> *S.I. 1992/2182. S.I. 2008/1554* added an employment and support allowance to the benefits from which deductions may be made, inserted definitions of “contributory employment and support allowance”, “income related employment and support allowance” and made other relevant amendments.

(Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 (“the 2010 Regulations”), any reference to an employment and support allowance includes any transitional addition to which the offender is entitled under those Regulations.

(2B) Where an offender’s award of income support is subject to conversion under the 2010 Regulations and—

- (a) immediately before the effective date of the conversion decision made in relation to the offender, any deduction is being made under these Regulations from sums payable to the offender by way of income support; and
- (b) with effect from that date, the award of income support is converted into an award of an employment and support allowance under the 2010 Regulations,

any deduction falling within sub-paragraph (a) shall have effect as a deduction from the employment and support allowance to which the offender is entitled.”.

*Council Tax (Deductions from Income Support) Regulations 1993*

**25.** Regulation 1 of the Council Tax (Deductions from Income Support) Regulations 1993(**57**) (citation, commencement and interpretation) is to be read as if, after paragraph (2), there were inserted—

“(2A) In the application of these Regulations to a debtor whose entitlement to an employment and support allowance is by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 (“the 2010 Regulations”), any reference to an employment and support allowance includes any transitional addition to which the debtor is entitled under those Regulations.

(2B) Where a debtor’s award of income support is subject to conversion under the 2010 Regulations and—

- (a) immediately before the effective date of the conversion decision made in relation to the debtor, any deduction is being made under these Regulations from sums payable to the debtor by way of income support; and
- (b) on that date, the award of income support is converted into an award of an employment and support allowance under the 2010 Regulations,

any deduction falling within sub-paragraph (a) shall have effect as a deduction from the employment and support allowance to which the debtor is entitled.”.

*Additional Pension and Social Security Pensions  
(Home Responsibilities) (Amendment) Regulations 2001*

**26.** Regulation 5A of the Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2001(**58**) (earnings factor credits eligibility for pensioners to whom employment and support allowance was payable) is to be read as if—

- (a) the word “or” at the end of paragraph (2)(b) were omitted; and
- (b) after that paragraph (2)(b), there were inserted—

“(ba) that allowance was an employment and support allowance to which the pensioner was entitled by virtue of the Employment and Support Allowance

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(57) [S.I. 1993/494](#), [S.I. 2008/1554](#) added an employment and support allowance to the benefits from which deductions may be made, inserted definitions of “contributory employment and support allowance”, “income related employment and support allowance” and made other relevant amendments.

(58) [S.I. 2001/1323](#). Regulation 5A was inserted by [S.I. 2009/2206](#).

(Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 and either—

- (i) long-term incapacity benefit or severe disablement allowance was payable to the pensioner immediately before its conversion into an employment and support allowance in accordance with those Regulations; or
- (ii) the condition in sub-paragraph (b) was satisfied; or ”.

### SCHEDULE 3

Regulation 16(2)(e)(iii)

List of regulations that apply after the conversion phase

The regulations referred to in regulation 16(2)(e)(iii) are—

- The Social Security (Benefit) (Married Women and Widows Special Provisions) Regulations 1974(**59**)
- The Social Security (Benefit) (Members of the Forces) Regulations 1975(**60**)
- The Social Security (Airmen’s Benefits) Regulations 1975(**61**)
- The Social Security (Mariners’ Benefits) Regulations 1975(**62**)
- The Social Security (Credits) Regulations 1975(**63**)
- The Social Security (Medical Evidence) Regulations 1976(**64**)
- The Social Security (Overlapping Benefits) Regulations 1979(**65**)
- The Statutory Sick Pay (General) Regulations 1982(**66**)
- The Statutory Maternity Pay (General) Regulations 1986(**67**)
- The Income Support (General) Regulations 1987(**68**)
- The Social Security (Claims and Payments) Regulations 1987(**69**)
- The Social Fund (Recovery by Deductions from Benefits) Regulations 1988(**70**)
- The Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988(**71**)
- The Social Fund Cold Weather Payments (General) Regulations 1988(**72**)
- The Community Charges (Deductions from Income Support) (No.2) Regulations 1990(**73**)
- The Child Support (Maintenance Assessment Procedure) Regulations 1992(**74**)

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(59) S.I. 1974/2010.

(60) S.I. 1975/493.

(61) S.I. 1975/494.

(62) S.I. 1975/529.

(63) S.I. 1975/556.

(64) S.I. 1976/615.

(65) S.I. 1979/597.

(66) S.I. 1982/894.

(67) S.I. 1986/1960.

(68) S.I. 1987/1967.

(69) S.I. 1987/1968.

(70) S.I. 1988/35.

(71) S.I. 1988/664.

(72) S.I. 1988/1724.

(73) S.I. 1990/545.

(74) S.I. 1992/1813.

- The Child Support (Maintenance Assessments and Special Cases) Regulations 1992**(75)**  
The Fines (Deductions from Income Support) Regulations 1992**(76)**  
The Council Tax (Deductions from Income Support) Regulations 1993**(77)**  
The Jobseeker's Allowance Regulations 1996**(78)**  
The Social Security Benefits (Maintenance Payments and Consequential Amendments) Regulations 1996**(79)**  
The Child Support Departure Direction and Consequential Amendments Regulations 1996**(80)**  
The Social Security and Child Support (Decisions and Appeals) Regulations 1999**(81)**  
The Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000**(82)**  
The Social Fund Winter Fuel Payment Regulations 2000**(83)**  
The Child Support (Maintenance Calculations and Special Cases) Regulations 2000**(84)**  
The Child Support (Variations) Regulations 2000**(85)**  
The Child Support (Maintenance Calculation Procedure) Regulations 2000**(86)**  
The Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001**(87)**  
The Children (Leaving Care) Social Security Benefits Regulations 2001**(88)**  
The Social Security (Loss of Benefit) Regulations 2001**(89)**  
The State Pension Credit Regulations 2002**(90)**  
The Social Security (Jobcentre Plus Interviews for Partners) Regulations 2003**(91)**  
The Age-Related Payments Regulations 2005**(92)**  
The Social Fund Maternity and Funeral Expenses (General) Regulations 2005**(93)**

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**(75)** S.I. 1992/1815.  
**(76)** S.I. 1992/2182.  
**(77)** S.I. 1993/494.  
**(78)** S.I. 1996/207.  
**(79)** S.I. 1996/940.  
**(80)** S.I. 1996/2907.  
**(81)** S.I. 1999/991.  
**(82)** S.I. 2000/636.  
**(83)** S.I. 2000/729.  
**(84)** S.I. 2001/155.  
**(85)** S.I. 2001/156.  
**(86)** S.I. 2001/157.  
**(87)** S.I. 2001/769.  
**(88)** S.I. 2001/3074.  
**(89)** S.I. 2001/4022.  
**(90)** S.I. 2002/1792.  
**(91)** S.I. 2003/1886.  
**(92)** S.I. 2005/1983.  
**(93)** S.I. 2005/3061.

## SCHEDULE 4

Regulation 26

## Consequential amendments

*The Social Security (Claims and Payments) Regulations 1987*

1. In paragraph 8 of Schedule 9 to the Social Security (Claims and Payments) Regulations 1987<sup>(94)</sup> (deductions from benefit and direct payments to third parties), in sub-paragraph (4), for paragraph (a)(iv) substitute—

“(iv) in the case of an employment and support allowance, the applicable amount for the family as is awarded under paragraph (1)(a) and (b) of regulation 67 (prescribed amounts) or paragraph (1)(a) to (c) of regulation 68 (polygamous marriages) of the Employment and Support Allowance Regulations; or”.

*The Employment and Support Allowance (Transitional Provisions) Regulations 2005*

2. In regulation 2(3) of the Employment and Support Allowance (Transitional Provisions) Regulations 2008<sup>(95)</sup> (claim for existing award), omit the words “severe disablement allowance,”.

## SCHEDULE 5

Regulation 27

## Amendments to legislation relating to Housing Benefit and Council Tax Benefit

## PART 1

## AMENDMENT OF THE HOUSING BENEFIT REGULATIONS 2006

1.—(1) The Housing Benefit Regulations 2006<sup>(96)</sup> are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “contributory employment and support allowance” insert—

““converted employment and support allowance” means an employment and support allowance which is not income-related and to which a person is entitled as a result of a conversion decision within the meaning of the Employment and Support Allowance (Existing Awards) Regulations;” and

(b) after the definition of “Employment and Support Allowance Regulations” insert—

““Employment and Support Allowance (Existing Awards) Regulations” means the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010;”.

(3) In regulation 22 (applicable amounts) after paragraph (e) add—

“(f) the amount of any transitional addition which may be applicable to him in accordance with Parts 7 and 8 of Schedule 3 (transitional addition).”.

(4) In regulation 23 (polygamous marriages) after paragraph (f) add—

“(g) the amount of any transitional addition which may be applicable to him in accordance with Parts 7 and 8 of Schedule 3 (transitional addition).”.

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<sup>(94)</sup> Paragraph 8(4)(a)(iv) of Schedule 9 was inserted by [S.I. 2008/1554](#).

<sup>(95)</sup> [S.I. 2008/795](#). Regulation 2(2) was amended by [S.I. 2008/2783](#).

<sup>(96)</sup> [S.I. 2006/213](#). Regulations 2, 21 and 22 were amended, and Parts 5 and 6 of Schedule 3 inserted, by [S.I. 2008/1082](#) (as amended by [S.I. 2008/2428](#)). Paragraph 1A of Schedule 3 was inserted by [S.I. 2009/583](#).

(5) In Schedule 3 (applicable amounts)—

(a) for paragraph 1A substitute—

“**1A.** For the purposes of paragraph 1 a claimant is entitled to main phase employment and support allowance if—

(a) each of the conditions in paragraph 21 is satisfied in relation to the claimant personally; or

(b) the claimant personally is entitled to a converted employment and support allowance.”;

(b) after paragraph 21 insert—

“**21A.**—(1) Subject to paragraph 22, the claimant is entitled to one, but not both, of the components in paragraphs 23 or 24 if the claimant or the claimant’s partner is entitled to a converted employment and support allowance.”; and

(c) after Part 6 (amount of components) add—

“PART 7

Transitional Addition

**27.**—(1) The claimant is entitled to the transitional addition calculated in accordance with paragraph 30 where the claimant or the claimant’s partner (“the relevant person”)—

(a) is entitled to a converted employment and support allowance; or

(b) is appealing a conversion decision as described in regulation 5(2) (b) of the Employment and Support Allowance (Existing Awards) Regulations and—

(i) is treated as having limited capability for work by virtue of regulation 30 of the Employment and Support Allowance Regulations as modified by the Employment and Support Allowance (Existing Awards) Regulations; and

(ii) is not in receipt of an income-related employment and support allowance,

unless the amount of the transitional addition calculated in accordance with paragraph 30 would be nil.

(2) The claimant’s entitlement to a transitional addition by virtue of this paragraph ends on any of the following—

(a) the reduction of the transitional addition to nil in accordance with paragraph 31;

(b) the termination of the claimant’s award of housing benefit;

(c) the relevant person ceasing to meet the requirements of sub-paragraph (1)(a) or (b), as the case may be;

(d) the claimant or the claimant’s partner becoming entitled to an income-related employment and support allowance, an income-based jobseeker’s allowance or income support;

(e) 5th April 2020.

**28.**—(1) This paragraph applies where—

- (a) the claimant's entitlement to a transitional addition ends, by virtue of the termination of the claimant's award of housing benefit, under—
  - (i) paragraph 27(2)(b);
  - (ii) sub-paragraph (3)(b) of this paragraph; or
  - (iii) paragraph 29(3)(b);
- (b) within 104 weeks of that termination but before 5th April 2020 the claimant again becomes entitled to housing benefit;
- (c) in the benefit week in which the claimant again becomes entitled to housing benefit the relevant person is entitled to an employment and support allowance which is not income-related;
- (d) if the period between the events mentioned in paragraphs (a) and (b) is more than 12 weeks, the intervening period is one to which regulation 145(2) (linking period where claimant is a work or training beneficiary) of the Employment and Support Allowance Regulations applies in respect of the relevant person; and
- (e) at the date on which the claimant again becomes entitled to housing benefit, neither the claimant nor the claimant's partner is entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support.

(2) Where this paragraph applies, the claimant is entitled, with effect from the day on which the claimant again becomes entitled to housing benefit, to a transitional addition of the amount of the transitional addition that would have applied had the claimant's entitlement to a transitional addition not ended (but taking account of the effect which any intervening change of circumstances would have had by virtue of paragraph 31), unless the amount of the transitional addition would be nil.

(3) The claimant's entitlement to a transitional addition by virtue of this paragraph ends on any of the following—

- (a) the reduction of the transitional addition to nil in accordance with paragraph 31;
- (b) the termination of the claimant's award of housing benefit;
- (c) the relevant person no longer being entitled to the employment and support allowance referred to in sub-paragraph (1)(c);
- (d) the claimant or the claimant's partner becoming entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support;
- (e) 5th April 2020.

**29.—(1)** This paragraph applies where—

- (a) the claimant's entitlement to a transitional addition ends, by virtue of the relevant person ceasing to be entitled to an employment and support allowance, under—
  - (i) paragraph 27(2)(c);
  - (ii) paragraph 28(3)(c); or
  - (iii) sub-paragraph (3)(c) of this paragraph;

- (b) before 5th April 2020 the relevant person again becomes entitled to an employment and support allowance which is not income-related;
- (c) either—
  - (i) at the date on which the relevant person again becomes entitled to an employment support allowance which is not income-related regulation 145(1) of the Employment and Support Allowance Regulation applies to the relevant person; or
  - (ii) the period between the events mentioned in paragraphs (a) and (b) is one to which regulation 145(2) of the Employment and Support Allowance Regulations applies in respect of the relevant person; and
- (d) at the date on which the relevant person again becomes entitled to an employment support allowance which is not income-related, neither the claimant nor the claimant's partner is entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support.

(2) Where this paragraph applies, the claimant is entitled, with effect from the day that the relevant person's entitlement to employment and support allowance takes effect for housing benefit purposes, to a transitional addition of the amount of the transitional addition that would have applied had the claimant's entitlement to a transitional addition not ended (but taking account of the effect which any intervening change of circumstances would have had by virtue of paragraph 31), unless the amount of the transitional addition would be nil.

(3) The claimant's entitlement to a transitional addition by virtue of this paragraph ends on any of the following—

- (a) the reduction of the transitional addition to nil in accordance with paragraph 31;
- (b) the termination of the claimant's award of housing benefit;
- (c) the relevant person no longer being entitled to the employment and support allowance referred to in sub-paragraph (1)(b);
- (d) the claimant or the claimant's partner becoming entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support;
- (e) 5th April 2020.

## PART 8

### Amount of transitional addition

**30.—**(1) Subject to paragraph 31, the amount of the transitional addition is the amount by which Amount A exceeds Amount B.

(2) Where a conversion decision as described in regulation 5(2)(a) of the Employment and Support Allowance (Existing Awards) Regulations is made in respect of the relevant person—

- (a) Amount A is the basic amount that would have applied on the day that decision took effect had that decision not been made; and
- (b) Amount B is the basic amount that applied on that day as a result of that decision.

(3) Where the relevant person is appealing a conversion decision as described in regulation 5(2)(b) of the Employment and Support Allowance (Existing Awards) Regulations and is treated as having limited capability for work by virtue of regulation 30 of the Employment and Support Allowance Regulations as modified by the Employment and Support Allowance (Existing Awards) Regulations—

- (a) Amount A is the basic amount that would have applied on the day the relevant person was first treated as having limited capability for work if the relevant person had not been so treated; and
- (b) Amount B is the basic amount that applied on that day as a result of the relevant person being so treated.

(4) In this paragraph and paragraph 31, “basic amount” means the aggregate of such amounts as may apply in the claimant’s case in accordance with regulation 22(a) to (e) or regulation 23(a) to (f).

**31.—(1)** Subject to sub-paragraph (2), where there is a change of circumstances which leads to an increase in the claimant’s basic amount, the transitional addition that applies immediately before the change of circumstances shall be reduced by the amount by which Amount C exceeds Amount D.

(2) If Amount C exceeds Amount D by more than the amount of the transitional addition that applies immediately before the change of circumstances, that transitional addition shall be reduced to nil.

(3) Amount C is the basic amount that applies as a result of the increase.

(4) Amount D is the basic amount that applied immediately before the increase.”.

## PART 2

### AMENDMENT OF THE COUNCIL TAX BENEFIT REGULATIONS 2006

**2.—(1)** The Council Tax Benefit Regulations 2006<sup>(97)</sup> are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “contributory employment and support allowance” insert—

““converted employment and support allowance” means an employment and support allowance which is not income-related and to which a person is entitled as a result of a conversion decision within the meaning of the Employment and Support Allowance (Existing Awards) Regulations;”;

(b) after the definition of “Employment and Support Allowance Regulations” insert—

““Employment and Support Allowance (Existing Awards) Regulations” means the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010;”.

(3) In regulation 12 (applicable amounts) after paragraph (e) add—

“(f) the amount of any transitional addition which may be applicable to him in accordance with Parts 7 and 8 of Schedule 1 (transitional addition).”.

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<sup>(97)</sup> *S.I. 2006/215*. The definitions of “contributory employment and support allowance” and “the Employment and Support Allowance Regulations” were inserted into regulation 2(1) by *S.I. 2008/1082* (as amended by *S.I. 2008/2428*). Regulations 21 and 22 were amended, and Parts 5 and 6 of Schedule 3, inserted by *S.I. 2008/1082* (as amended by *S.I. 2008/2428*). Paragraph 1A of Schedule 3 was inserted by *S.I. 2009/583*.

- (4) In regulation 13 (polygamous marriages) after paragraph (f) add—
- “(g) the amount of any transitional addition which may be applicable to him in accordance with Parts 7 and 8 of Schedule 1 (transitional addition).”.
- (5) In Schedule 1 (applicable amounts)—
- (a) for paragraph 1A substitute—
- “1A. For the purposes of paragraph 1 a claimant is entitled to main phase employment and support allowance if—
- (a) paragraph 21 is satisfied in relation to the claimant; or
- (b) the claimant is entitled to a converted employment and support allowance.”;
- (b) after paragraph 21 insert—
- “21A. Subject to paragraph 22, the claimant is entitled to one, but not both, of the components in paragraphs 23 and 24 if the claimant or his partner is entitled to a converted employment and support allowance.”; and
- (c) after Part 6 (amount of components) add—

“PART 7

Transitional Addition

**27.—(1)** The claimant is entitled to the transitional addition calculated in accordance with paragraph 30 where the claimant or the claimant’s partner (“the relevant person”)—

- (a) is entitled to a converted employment and support allowance; or
- (b) is appealing a conversion decision as described in regulation 5(2)(b) of the Employment and Support Allowance (Existing Awards) Regulations and—
- (i) is treated as having limited capability for work by virtue of regulation 30 of the Employment and Support Allowance Regulations as modified by the Employment and Support Allowance (Existing Awards) Regulations; and
- (ii) is not in receipt of an income-related employment and support allowance,

unless the amount of the transitional addition calculated in accordance with paragraph 30 would be nil.

(2) The claimant’s entitlement to a transitional addition by virtue of this paragraph ends on any of the following—

- (a) the reduction of the transitional addition to nil in accordance with paragraph 31;
- (b) the termination of the claimant’s award of council tax benefit;
- (c) the relevant person ceasing to meet the requirements of subparagraph (1)(a) or (b), as the case may be;
- (d) the claimant or the claimant’s partner becoming entitled to an income-related employment and support allowance, an income-based jobseeker’s allowance or income support;
- (e) 5th April 2020.

**28.—(1)** This paragraph applies where—

- (a) the claimant's entitlement to a transitional addition, ends by virtue of the termination of the claimant's award of council tax benefit, under—
  - (i) paragraph 27(2)(b);
  - (ii) sub-paragraph (3)(b) of this paragraph; or
  - (iii) paragraph 29(3)(b);
- (b) within 104 weeks of that termination but before 5th April 2020 the claimant again becomes entitled to council tax benefit;
- (c) in the benefit week in which the claimant again becomes entitled to council tax benefit the relevant person is entitled to an employment and support allowance which is not income-related;
- (d) if the period between the events mentioned in paragraphs (a) and (b) is more than 12 weeks, the intervening period is one to which regulation 145(2) (linking period where claimant is a work or training beneficiary) of the Employment and Support Allowance Regulations applies in respect of the relevant person; and
- (e) at the date on which the claimant again becomes entitled to council tax benefit, neither the claimant nor the claimant's partner is entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support.

(2) Where this paragraph applies, the claimant is entitled, with effect from the day on which the claimant again becomes entitled to council tax benefit, to a transitional addition of the amount of the transitional addition that would have applied had the claimant's entitlement to a transitional addition not ended (but taking account of the effect which any intervening change of circumstances would have had by virtue of paragraph 31), unless the amount of the transitional addition would be nil.

(3) The claimant's entitlement to a transitional addition by virtue of this paragraph ends on any of the following—

- (a) the reduction of the transitional addition to nil in accordance with paragraph 31;
- (b) the termination of the claimant's award of council tax benefit;
- (c) the relevant person no longer being entitled to the employment and support allowance referred to in sub-paragraph (1)(c);
- (d) the claimant or the claimant's partner becoming entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support;
- (e) 5th April 2020.

**29.—(1)** This paragraph applies where—

- (a) the claimant's entitlement to a transitional addition ends, by virtue of the relevant person ceasing to be entitled to an employment and support allowance, under—
  - (i) paragraph 27(2)(c);
  - (ii) paragraph 28(3)(c); or
  - (iii) sub-paragraph (3)(c) of this paragraph;

- (b) before 5th April 2020 the relevant person again becomes entitled to an employment and support allowance which is not income-related;
- (c) either—
  - (i) at the date on which the relevant person again becomes entitled to an employment support allowance which is not income-related regulation 145(1) of the Employment and Support Allowance Regulation applies to the relevant person; or
  - (ii) the period between the events mentioned in paragraphs (a) and (b) is one to which regulation 145(2) of the Employment and Support Allowance Regulations applies in respect of the relevant person; and
- (d) at the date on which the relevant person again becomes entitled to an employment support allowance which is not income-related, neither the claimant nor the claimant's partner is entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support.

(2) Where this paragraph applies, the claimant is entitled, with effect from the day that the relevant person's entitlement to employment and support allowance takes effect for council tax benefit purposes, to a transitional addition of the amount of the transitional addition that would have applied had the claimant's entitlement to a transitional addition not ended (but taking account of the effect which any intervening change of circumstances would have had by virtue of paragraph 31), unless the amount of the transitional addition would be nil.

(3) The claimant's entitlement to a transitional addition by virtue of this paragraph ends on any of the following—

- (a) the reduction of the transitional addition to nil in accordance with paragraph 31;
- (b) the termination of the claimant's award of council tax benefit;
- (c) the relevant person no longer being entitled to the employment and support allowance referred to in sub-paragraph (1)(b);
- (d) the claimant or the claimant's partner becoming entitled to an income-related employment and support allowance, an income-based jobseeker's allowance or income support;
- (e) 5th April 2020.

## PART 8

### Amount of transitional addition

**30.—**(1) Subject to paragraph 31, the amount of the transitional addition is the amount by which Amount A exceeds Amount B.

(2) Where a conversion decision as described in regulation 5(2)(a) of the Employment and Support Allowance (Existing Awards) Regulations is made in respect of the relevant person—

- (a) Amount A is the basic amount that would have applied on the day that decision took effect had that decision not been made; and
- (b) Amount B is the basic amount that applied on that day as a result of that decision.

(3) Where the relevant person is appealing a conversion decision as described in regulation 5(2)(b) of the Employment and Support Allowance (Existing Awards) Regulations and is treated as having limited capability for work by virtue of regulation 30 of the Employment and Support Allowance Regulations as modified by the Employment and Support Allowance (Existing Awards) Regulations—

- (a) Amount A is the basic amount that would have applied on the day the relevant person was first treated as having limited capability for work if the relevant person had not been so treated; and
- (b) Amount B is the basic amount that applied on that day as a result of the relevant person being so treated.

(4) In this paragraph and paragraph 31, “basic amount” means the aggregate of such amounts as may apply in the claimant’s case in accordance with regulation 12(a) to (e) or regulation 13(a) to (f).

**31.—(1)** Subject to sub-paragraph (2), where there is a change of circumstances which leads to an increase in the claimant’s basic amount, the transitional addition that applies immediately before the change of circumstances shall be reduced by the amount by which Amount C exceeds Amount D.

(2) If Amount C exceeds Amount D by more than the amount of the transitional addition that applies immediately before the change of circumstances, that transitional addition shall be reduced to nil.

(3) Amount C is the basic amount that applies as a result of the increase.

(4) Amount D is the basic amount that applied immediately before the increase.”.

### PART 3

#### AMENDMENT OF THE HOUSING BENEFIT AND COUNCIL TAX BENEFIT (DECISIONS AND APPEALS) REGULATIONS 2001

**3.—(1)** The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001<sup>(98)</sup> are amended as follows.

(2) In regulation 7(2) (decisions superseding earlier decisions)—

- (a) in sub-paragraph (i) after “sub-paragraph (o)” insert “, (p) or (q)”;
- (b) after sub-paragraph (o) add—

“(p) where—

- (i) the claimant has been awarded entitlement to housing benefit or council tax benefit;
- (ii) the claimant or the claimant’s partner has had an award of benefit converted to an employment and support allowance in accordance with regulation 5(2)(a) of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010; and
- (iii) subsequent to the first day of the period to which that entitlement to housing benefit or council tax benefit relates, the Secretary of State

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<sup>(98)</sup> S.I. 2001/1002. Regulation 7(2)(i) was inserted by S.I. 2003/2275 and amended by S.I. 2008/1082 (as amended by S.I. 2008/2428). Regulations 7(2)(o) and 8(14D) were inserted by S.I. 2008/1082 (as amended by S.I. 2008/2428).

- makes a decision to supersede the award of employment and support allowance to award a different component;
- (q) where the claimant has been awarded entitlement to housing benefit or council tax benefit and subsequent to the first day of the period to which that entitlement relates—
- (i) a conversion decision of the kind set out in regulation 5(2)(a) of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 takes effect in respect of the claimant or the claimant's partner; or
  - (ii) the claimant is appealing a conversion decision as described in regulation 5(2)(b) of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 and is treated as having limited capability for work by virtue of regulation 30 of the Employment and Support Allowance Regulations 2008 as modified by the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010.”.
- (3) In regulation 8 (date from which a decision superseding an earlier decision takes effect)—
- (a) in paragraph (14D)—
    - (i) after “regulation 7(2)(o)” insert “or (p)”; and
    - (ii) in sub-paragraph (a) after “regulation 7(2)(o)(iii)” insert “or (p)(iii)”; and
  - (b) after paragraph (14D) insert—

“(14E) Where a decision is superseded in accordance with regulation 7(2)(q) the decision shall take effect—

    - (a) where the decision made in accordance with the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 takes effect on or after 1st April in any year but before 16th April of that year—
      - (i) from 1st April for a council tax benefit award;
      - (ii) from 1st April for a housing benefit award in which the claimant's weekly amount of eligible rent falls to be calculated in accordance with regulation 80(2)(b) or (c) of the Housing Benefit Regulations or, as the case may be, regulation 61(2)(b) or (c) of the Housing Benefit (State Pension Credit) Regulations;
      - (iii) from the first Monday in April for a housing benefit award to which sub-paragraph (a)(ii) does not apply;
    - (b) in any other case, from the day the decision made in accordance with the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 takes effect.”.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make transitional provision in relation to the introduction of employment and support allowance and apply to persons entitled to any existing award (which is defined in Schedule 4 to the Welfare Reform Act 2007 in terms of incapacity benefit, severe disablement allowance and income support on grounds of disability). The Regulations set out the process for determining whether existing awards are to be converted into awards of an employment and support allowance. An award may be converted only if certain conditions are satisfied in relation to the person entitled to the award.

The Regulations also make related amendments to the Housing Benefit Regulations 2006, Council Tax Benefit Regulations 2006 and the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (“the Decisions and Appeals Regulations”).

Part 2 of, and Schedule 1 to, the Regulations set out the process for determining whether or not a person’s existing award is to be converted into an award of an employment and support allowance. The conversion process operates on an individual basis and, in each case, begins when the Secretary of State sends a notice under regulation 4 to a particular person. Where the person is entitled to more than one existing award the notice and conversion process apply to both awards. Regulation 5 requires the Secretary of State to determine whether or not the existing award (or awards) qualify for conversion and to notify the person accordingly. There is also provision for notification to be given in the event that an existing award ceases to be subject to conversion. Regulation 6 and Schedule 1 establish the statutory machinery to facilitate this determination, by cross-applying certain enactments that already have effect in relation to persons who make a claim for an employment and support allowance. Schedule 1 modifies these enactments to take account of the differences that arise because a person is already entitled to an existing award and is not required to make a claim. There is also provision to enable the Secretary of State to obtain information in order to make conversion decisions and to provide for conversion decisions to be revised before they come into effect.

Under regulation 7, a person’s existing award (or awards) qualify for conversion if the person satisfies the basic conditions for entitlement to an employment and support allowance, except for the condition that they are not entitled to income support. One of these basic conditions is that the person has limited capability for work. This will be determined on an individual basis, in accordance with the arrangements for work capability assessments set out in the Employment and Support Allowance Regulations 2008 (“the 2008 Regulations”) (as modified by Schedule 1 to these Regulations).

If an existing award (or awards) do qualify for conversion, the Secretary of State must determine in accordance with regulations 9 to 12 the amount to which the person is entitled. In broad terms, this is the aggregate of (a) the amount to which the person would have been entitled on a successful claim for an employment and support allowance, and (b) an additional amount, referred to in the Regulations as a “transitional addition”. The transitional addition is based on the difference between specified elements of the person’s existing award and specified elements of the employment and support allowance into which it is to be converted.

The date on which the Secretary of State’s decision about conversion comes into effect is provided for in regulation 13, and regulations 14 and 15 set out the consequences that follow from the decision. Where the decision is that a person’s award (or awards) do qualify for conversion, regulation 14 converts them into a single award of employment and support allowance. Where the decision is

that a person's existing award (or awards) do not qualify, regulation 15 provides that the award (or awards) terminate immediately before the effective date of the conversion decision.

Part 3 of, and Schedules 2 and 3 to, the Regulations set out the framework which has effect in relation to any person with effect from the effective date of their conversion decision under Part 2 of the Regulations. In relation to any matter to be determined in connection with a person's entitlement to an employment and support allowance (including a decision not to convert an award), regulation 16 and Schedules 2 and 3 cross-apply the enactments that already have effect in relation to an employment and support allowance made on a claim. This includes provision for revision, supersession and appeals in connection with conversion decisions which have come into effect. There are modifications of these enactments in Schedule 2. Regulation 17 makes provision about where the Secretary of State is notified of any change of circumstances occurring before the effective date of a conversion decision. Regulations 18 to 20 set out the circumstances in which the amount is to be reduced. Regulation 21 provides for termination when the amount is reduced to nil, when the person ceases to be entitled to an employment and support allowance or 5th April 2020 (whichever occurs first).

Part 4 of the Regulations contains miscellaneous provisions, including provision in regulation 24 which revokes the saving in regulation 2(2)(a), (b) and (c) of the Employment and Support Allowance (Transitional Provisions) Regulations 2008. This saving enables a person previously entitled to incapacity benefit, severe disablement allowance or income support on grounds of disability to make a repeat (linked) claim for that benefit in certain circumstances, rather than having to make a new claim for employment and support allowance. The revocation of this saving comes into force on 31st January 2011.

Regulation 25 revokes regulation 31 of the 2008 Regulations which provides that a claimant who claims a jobseeker's allowance and is able to show a reasonable prospect of obtaining employment is throughout that claim to be treated as not having limited capability to work. Regulation 25 also amends regulation 144 of the 2008 Regulations so that a person does not have to serve a period of waiting days in relation to a new claim for employment and support allowance if that person would have benefited from the saving revoked by regulation 24 if they had made a claim before 31st January 2011.

Schedule 4 provides for consequential amendments to two pieces of secondary legislation.

Schedule 5 provides for amendments to legislation relating to housing benefit and council tax benefit which complement the conversion process. Parts 1 and 2 make amendments to the Housing Benefit Regulations 2006 and the Council Tax Benefit Regulations 2006 respectively, providing for a transitional addition to a claimant's applicable amount where the claimant or the claimant's partner has had an award of benefit converted to an employment and support allowance in accordance with these Regulations or is appealing a decision not to convert an award to an employment and support allowance. Part 3 of Schedule 5 amends the Decisions and Appeals Regulations to make provision for the supersession of awards of housing benefit or council tax benefit to take account of conversion decisions.

A full impact assessment of the effect that this instrument will have on the public sector is available from the Department for Work and Pensions, Level 1, Caxton House, Tothill Street, London SW1H 9NA and is annexed to the Explanatory Memorandum which is available alongside this instrument on the OPSI website.