

## SCHEDULES

### 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(1) 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).”.
- (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

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(1) [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](#).

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(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.

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(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—

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- (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(2) 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 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).”.
- (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—

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(2) [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](#).

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(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 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 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.

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## 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>(3)</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—

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(3) [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](#)).



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- “(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 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;

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- (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.”.