

## SCHEDULE 2

Regulation 7(2)

### Transitional and savings provisions

## PART 1

### Employment and Support Allowance: transitional and savings provisions

#### **Transitional and savings provisions: General**

**1.**—(1) The amendments made by regulations 2 and 3, paragraphs 1 to 9 of Schedule 1 and by section 15(1) to (3) of the Welfare Reform and Work Act 2016 (which amend sections 2 and 4 of the Welfare Reform Act 2007) do not apply where any of the circumstances in paragraphs 2 to 7 apply.

(2) In this Part—

“assessment phase” has the same meaning as in the Welfare Reform Act 2007(1);

“a claim” means making a claim for an employment and support allowance in accordance with regulations 4ZC, 4G, 4H and 4I of the Social Security (Claims and Payments) Regulations 1987(2) or regulations 13 to 17 of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013(3);

“employment and support allowance” means an allowance under Part 1 of the Welfare Reform Act 2007;

“ESA Regulations 2008” means the Employment and Support Allowance Regulations 2008(4);

“ESA Regulations 2013” means the Employment and Support Allowance Regulations 2013(5).

#### **Claimants who have made a claim for employment and support allowance before 3rd April 2017**

**2.** The first circumstance is where the claimant has made or is treated as having made a claim for an employment and support allowance before 3rd April 2017 and that claim results in an award of employment and support allowance.

#### **Claimants who had been found to have limited capability for work before 3rd April 2017**

**3.** The second circumstance is where the claimant’s period of limited capability for work began on or after 3rd April 2017 and is treated as a continuation of an earlier period of limited capability for work which began before 3rd April 2017 by virtue of—

(a) regulation 145 of the ESA Regulations 2008; or

(b) regulation 86 of the ESA Regulations 2013.

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(1) [2007 c.5](#).

(2) [S.I. 1987/1968](#); relevant amending instruments are [S.I. 1997/793](#), [2003/492](#), [2003/2800](#) and [2008/1554](#).

(3) [S.I. 2013/380](#).

(4) [S.I. 2008/794](#); relevant amending instruments are [S.I. 2010/840](#), [2012/919](#), [2013/2536](#) and [2015/339](#).

(5) [S.I. 2013/379](#), amended by [S.I. 2015/339](#).

**Claimants on Incapacity Benefits who have or will become notified persons**

4. The third circumstance is where the claimant is or becomes a notified person within the meaning of regulation 4 of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010<sup>(6)</sup> and a determination is effective as to whether that person—

- (a) has or is to be treated as having limited capability for work under Part 5 of the ESA Regulations 2008;
- (b) has or is to be treated as having limited capability for work under Part 5 of the ESA Regulations 2013;
- (c) has or is to be treated as having limited capability for work-related activity under Part 6 of the ESA Regulations 2008; or
- (d) has or is to be treated as having limited capability for work-related activity under Part 6 of the ESA Regulations 2013.

**Claimants where their award becomes payable before 3rd April 2017**

5. The fourth circumstance is where the claimant becomes entitled to an employment and support allowance before 3rd April 2017 by virtue of—

- (a) regulation 19(1) and paragraph 16 of Schedule 4 to the Social Security (Claims and Payments) Regulations 1987; or
- (b) regulation 28 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013<sup>(7)</sup>.

**Claimants where their assessment phase begins before 3rd April 2017**

6. The fifth circumstance is where the first day of the claimant's assessment phase began before 3rd April 2017 by virtue of—

- (a) regulation 5 of the ESA Regulations 2008; or
- (b) regulation 6 of the ESA Regulations 2013.

**Claimants where they have been entitled to maternity allowance**

7. The sixth circumstance is where—

- (a) a claimant was entitled to a maternity allowance under section 35 of the Social Security Contributions and Benefits Act 1992<sup>(8)</sup> and the end of that award is within 12 weeks beginning with the date that the claim for an employment and support allowance is made; and
- (b) immediately prior to their entitlement to a maternity allowance beginning the claimant was previously entitled to an employment and support allowance before 3rd April 2017.

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<sup>(6)</sup> [S.I. 2010/1907](#).

<sup>(7)</sup> [S.I. 2013/380](#).

<sup>(8)</sup> 1992 c.4; amended by [S.I. 2014/606](#), section 53(1) of the Welfare Reform and Pensions Act 1999 (c. 30), paragraphs 4(1) and (2) of Schedule 7 to the Employment Act 2002 (c. 22), section 63(2) of the Welfare Reform Act 2012 (c. 5), paragraph 6 of Schedule 1 to the Work and Families Act 2006 (c. 18), section 120(2) and (3) of the Children and Families Act 2014 (c. 6), and section 2(1) of the Still-Birth (Definition) Act 1992 (c. 29).

## PART 2

### Universal Credit: transitional and savings provisions

#### Transitional and savings provisions: General

**8.**—(1) The amendments made by regulations 4 and 5 and paragraphs 13, 16 and 17 of Schedule 1 do not apply—

- (a) where a claimant has an award of universal credit in any of the circumstances in the following paragraphs; and
- (b) for so long as the claimant continues to be entitled to universal credit and to have limited capability for work.

(2) For the purposes of sub-paragraph (1)(b), the reference to continuous entitlement to universal credit includes where an award has terminated and a further award is made and—

- (a) immediately before the further award commences, the previous award has terminated because the claimant ceased to be a member of a couple or became a member of a couple; or
- (b) within the six months beginning with the date that the further award commences, the previous award has terminated because the financial condition in section 5(1)(b) or, if it was a joint claim, section 5(2)(b), of the Welfare Reform Act 2012 was not met.

(3) In this Part—

“employment and support allowance” means an employment and support allowance under Part 1 of the Welfare Reform Act 2007<sup>(9)</sup>;

“LCW element” and “LCWRA element” have the meanings in regulation 27 of the Universal Credit Regulations 2013<sup>(10)</sup> as it has effect apart from the amendments made by regulation 4(4) (which remove references to the LCW element);

“limited capability for work” has the meaning given in section 37(1) of the Welfare Reform Act 2012<sup>(11)</sup>.

(4) The Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013<sup>(12)</sup> apply for the purpose of deciding the date on which a claim for universal credit is made or is to be treated as made.

#### Claimants entitled to the LCW element before 3rd April 2017

**9.** The first circumstance is where immediately before 3rd April 2017 the award included the LCW element, or would have but for regulation 28(1) of the Universal Credit Regulations 2013, as it has effect apart from the amendments made by regulation 4(5)(a) (which removes the reference to the LCW element).

#### Claimants entitled to the LCWRA element before 3rd April 2017

**10.** The second circumstance is where—

- (a) immediately before 3rd April 2017 the award included the LCWRA element;
- (b) on or after 3rd April 2017 a determination that the claimant has limited capability for work is made; and

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<sup>(9)</sup> 2007 c. 5.

<sup>(10)</sup> S.I. 2013/376.

<sup>(11)</sup> 2012 c. 5.

<sup>(12)</sup> S.I. 2013/380.

- (c) the claimant had limited capability for work and work-related activity throughout the period beginning immediately before 3rd April 2017 and ending with the date on which the determination that the claimant has limited capability for work is made.

### **Claimants who are providing evidence of having limited capability for work before 3rd April 2017**

#### **11. The third circumstance is where—**

- (a) before 3rd April 2017—
  - (i) it falls to be determined whether the claimant has limited capability for work; and
  - (ii) the claimant has provided evidence of having limited capability for work in accordance with the Social Security (Medical Evidence) Regulations 1976<sup>(13)</sup>; and
- (b) on or after 3rd April 2017 a determination that the claimant has limited capability for work is made on the basis of an assessment under Part 5 of the Universal Credit Regulations 2013, on revision under section 9 of the Social Security Act 1998<sup>(14)</sup> or on appeal.

### **Claimants who appeal or seek revision of a decision relating to employment and support allowance**

#### **12. The fourth circumstance is where—**

- (a) the claimant appeals or seeks revision under section 9 of the Social Security Act 1998 of a decision relating to the entitlement of the claimant to an employment and support allowance, where the claim for employment and support allowance was made or treated as made before 3rd April 2017; and
- (b) on or after 3rd April 2017, in accordance with article 24 of the Welfare Reform Act 2012 (Commencement No 9 and Transitional and Transitory Provisions and Commencement No 8 and Savings and Transitional Provisions (Amendment)) Order 2013<sup>(15)</sup>, the Secretary of State considers it appropriate to revise under section 9 of the Social Security Act 1998 an award of universal credit so as to include the LCW element.

### **Claimants entitled to employment and support allowance before 3rd April 2017**

**13.** The fifth circumstance is where immediately before 3rd April 2017 the claimant was entitled to employment and support allowance and remains so entitled throughout the period beginning with 3rd April 2017 and ending with the date on which the claim for universal credit is made or treated as made.

### **Claimants entitled to be credited with earnings under the Social Security (Credits) Regulations 1975 before 3rd April 2017**

#### **14. The sixth circumstance is where—**

- (a) immediately before 3rd April 2017—
  - (i) the claimant entitled to the award was entitled to be credited with earnings equal to the lower earnings limit then in force in respect of a week to which regulation 8B(2) (a)(iv), (iva) or (v) of the Social Security (Credits) Regulations 1975<sup>(16)</sup> applies; and
  - (ii) paragraph 13 does not apply to that claimant; and

<sup>(13)</sup> S.I. 1976/615.

<sup>(14)</sup> 1998 c. 14. Section 9 is amended by Part 8 of Schedule 14 to the Welfare Reform Act 2012 (c. 5).

<sup>(15)</sup> S.I. 2013/983, amended by S.I. 2014/1452.

<sup>(16)</sup> S.I. 1975/556; relevant amending instruments are S.I. 1996/2367, 2010/385 and 2012/913.

- (b) the claimant is so entitled in respect of each week that falls in the period beginning with 3rd April 2017 and ending with the date on which the claim for universal credit is made or treated as made.

**Claimants entitled to income support or other incapacity benefits before 3rd April 2017**

**15.** The seventh circumstance is where regulation 22, 23, 24, 26 or 27 of the Universal Credit (Transitional Provisions) Regulations 2014<sup>(17)</sup> applies to the claimant throughout the period beginning immediately before 3rd April 2017 and ending with the date on which the claim for universal credit is made or treated as made.

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<sup>(17)</sup> [S.I. 2014/1230](#), amended by [S.I. 2014/1626](#).