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STATUTORY RULES OF NORTHERN IRELAND

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**2008 No. 286**

**SOCIAL SECURITY**

**The Employment and Support Allowance (Consequential Provisions) Regulations (Northern Ireland) 2008**

*Made - - - - 4th July 2008*

*Coming into operation in accordance with regulation 1*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 25(2) and 28(2) of the Welfare Reform Act (Northern Ireland) 2007(1).

**Citation and commencement**

1. These Regulations may be cited as the Employment and Support Allowance (Consequential Provisions) Regulations (Northern Ireland) 2008 and shall come into operation—

- (a) for the purposes of this regulation, regulations 13(1) to (12) and (14) to (20) and 22 on 27th July 2008; and
- (b) for all other purposes on 27th October 2008.

**Commencement Information**

**II** Reg. 1 in operation at 27.7.2008, see [reg. 1\(a\)](#)

**Amendment of the Social Security Contributions and Benefits Act**

2.—(1) The Social Security Contributions and Benefits (Northern Ireland) Act 1992(2) is amended in accordance with paragraphs (2) and (3).

(2) In section 44A(3) (deemed earnings factors)—

(a) in subsection (2)(d)—

- (i) after “incapacity benefit” insert “or qualifying employment and support allowance”,
- and

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(1) 2007 c. 2 (N.I.)

(2) 1992 c. 7

(3) Section 44A was inserted by section 29(3) of the [Child Support, Pensions and Social Security Act \(Northern Ireland\) 2000 \(c. 4 \(N.I.\)\)](#) and amended by paragraph 30 of Schedule 1 to the [National Insurance Contributions Act 2002 \(c. 19\)](#), paragraph 31 of Schedule 1 to the [Pensions Act \(Northern Ireland\) 2008 \(c. 1 \(N.I.\)\)](#) and Article 2(2)(a)(i) of S.R. 2002 No. 321

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(ii) in sub-paragraph (i) after “Schedule 3” add “or, as the case may be, paragraph 1 of Schedule 1 to the Welfare Reform Act (Northern Ireland) 2007”.

(b) after subsection (6) add—

“(7) In subsection (2)(d) “qualifying employment and support allowance” means contributory employment and support allowance where—

- (a) that allowance was payable for a continuous period of 52 weeks;
- (b) that allowance included the support component under section 2(2) of the Welfare Reform Act (Northern Ireland) 2007; or
- (c) in the case of—

(i) a man born between 6th April 1944 and 5th April 1947, or

(ii) a woman born between 6th April 1949 and 5th April 1951,

that allowance was payable for a continuous period of 13 weeks immediately following a period throughout which statutory sick pay was payable.”.

(3) In paragraph 2 of Schedule 11(4) (circumstances in which periods of entitlement to statutory sick pay do not arise) after sub-paragraph (d) insert—

“(dd) in the period of 85 days ending immediately before the relevant date the employee had at least one day on which he was entitled to an employment and support allowance (or would have been so entitled had he satisfied the requirements in section 1(2) of the Welfare Reform Act (Northern Ireland) 2007).”.

#### Commencement Information

**I2** Reg. 2 in operation at 27.10.2008, see [reg. 1\(b\)](#)

#### Amendment of the Social Security (Recovery of Benefits) Order

**3.—(1)** The Social Security (Recovery of Benefits) (Northern Ireland) Order 1997(5) is amended in accordance with paragraphs (2) and (3).

(2) In Article 2(2)(6) (interpretation) in the definition of “benefit” after “a jobseeker’s allowance” insert “, an employment and support allowance”.

(3) In Schedule 2 (calculation of compensation payment), in column (2) of paragraph 1, after the entry “Disablement pension payable under section 103 of the Contributions and Benefits Act” insert “Employment and support allowance”.

#### Commencement Information

**I3** Reg. 3 in operation at 27.10.2008, see [reg. 1\(b\)](#)

(4) Paragraph 2 was amended by paragraph 42(2) of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)), paragraph 1(a) of Schedule 2 to S.R. 2002 No. 298 and paragraph 1(9) of Schedule 1 to S.R. 2006 No. 261

(5) S.I. 1997/1183 (N.I. 12)

(6) Article 2(2) was amended by paragraph 119 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))

## **Amendment of the Social Security (Benefit) (Married Women and Widows Special Provisions) Regulations**

4.—(1) The Social Security (Benefit) (Married Women and Widows Special Provisions) (Northern Ireland) Regulations 1975(7) are amended in accordance with paragraphs (2) and (3).

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

(a) after the definition of “the Industrial Injuries Act” insert—

““the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007;”, and

(b) after the definition of “appropriate weekly rate” insert—

““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;”.

(3) In regulation 3(8) (modifications, in relation to widows, of provisions with respect to unemployment and short-term incapacity benefit, maternity allowance and Category A retirement pension)—

(a) in the heading after “short-term incapacity benefit” insert “, contributory employment and support allowance”;

(b) in paragraph (1)—

(i) in sub-paragraph (a) after “Schedule 3 to the Act” add “or, in relation to contributory employment and support allowance, she shall be deemed to have satisfied the first condition referred to in paragraph 1(1) of Schedule 1 to the Welfare Reform Act”, and

(ii) in sub-paragraph (b) after “Schedule 3 to the Act” insert “or, in relation to contributory employment and support allowance, she shall be deemed to have satisfied the second condition referred to in paragraph 2(1) of Schedule 1 to the Welfare Reform Act”; and

(c) in paragraph (5) after “short-term incapacity benefit”, in each place where it occurs, insert “, contributory employment and support allowance”.

### **Commencement Information**

**I4** Reg. 4 in operation at 27.10.2008, see **reg. 1(b)**

## **Amendment of the Social Security (Airmen’s Benefits) Regulations**

5.—(1) The Social Security (Airmen’s Benefits) Regulations (Northern Ireland) 1975(9) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 1(2) (interpretation) after the definition of “the Act” insert—

““the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007;”.

(3) In regulation 2(10) (removal of disqualification in the case of airmen for receiving benefit while absent from Northern Ireland)—

(a) in paragraph (1)—

(7) S.R. 1975 No. 19; relevant amending Regulations are S.R. 1978 No. 102, S.R. 1989 No. 193, S.R. 1995 No. 150, S.R. 1996 No. 289 and S.R. 2005 No. 536

(8) Regulation 3 was amended by regulation 3 of S.R. 1978 No. 102, regulation 2(3) of S.R. 1989 No. 193, regulation 2 of S.R. 1995 No. 150, regulation 2 of S.R. 1996 No. 289 and paragraph 1 of Schedule 3 to S.R. 2005 No. 536

(9) S.R. 1975 No. 101; relevant amending Regulations are S.R. 1984 No. 317, S.R. 1995 No. 150 and S.R. 1996 No. 289

(10) Regulation 2 was amended by regulation 13 of S.R. 1984 No. 317 and regulation 3 of S.R. 1995 No. 150

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- (i) after “of the Act” insert “or section 18(1) of the Welfare Reform Act”, and
  - (ii) after “incapacity benefit” insert “, employment and support allowance”; and
- (b) in paragraph (2)—
- (i) after “incapacity benefit” insert “, employment and support allowance”, and
  - (ii) after “incapable of work” insert “or to have limited capability for work as defined in section 1(4) of the Welfare Reform Act”.

(4) In regulation 3(11) (application of the Act and regulations) for “, and the Jobseekers (Northern Ireland) Order 1995 and regulations made thereunder” substitute “, the Jobseekers (Northern Ireland) Order 1995 and regulations made thereunder and Part 1 of the Welfare Reform Act and regulations made under it”.

#### Commencement Information

**I5** Reg. 5 in operation at 27.10.2008, see [reg. 1\(b\)](#)

### Amendment of the Social Security (Mariners’ Benefits) Regulations

6.—(1) The Social Security (Mariners’ Benefits) Regulations (Northern Ireland) 1975(12) are amended in accordance with paragraphs (2) to (5).

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

(i) after the definition of “the Act” insert—

““the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007;”,  
and

(ii) after the definition of “British ship” insert—

““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;”.

(3) In regulation 4(13) (removal of disqualification for receiving benefit by reason of absence from Northern Ireland)—

(a) after “of the Act” insert “or section 18(1) of the Welfare Reform Act”; and

(b) after “incapacity benefit”, in both places where it occurs, insert “, contributory employment and support allowance”.

(4) In regulation 5(14) (evidence of unemployment or incapacity)—

(a) in the heading for “or incapacity” substitute “, incapacity for work or limited capability for work”; and

(b) after “incapacity benefit” insert “, contributory employment and support allowance”.

(5) In regulation 6(15) (special provisions relating to days of unemployment or incapacity for work in the case of mariners and share fishermen employed on board any ships or vessels)—

(a) in the heading for “or incapacity for work” substitute “, incapacity for work or limited capability for work”; and

(11) Regulation 3 was amended by regulation 3 of S.R. 1996 No. 289

(12) S.R. 1975 No. 108; relevant amending Regulations are S.R. 1984 No. 317, S.R. 1995 No. 150 and S.R. 1996 Nos. 198 and 289

(13) Regulation 4 was amended by regulation 14(2) of S.R. 1984 No. 317, regulation 4(2) of S.R. 1995 No. 150 and regulation 4(2) of S.R. 1996 No. 289

(14) Regulation 5 was amended by regulation 14(3) of S.R. 1984 No. 317, regulation 4(3) of S.R. 1995 No. 150 and regulation 4(3) of S.R. 1996 No. 289

(15) Regulation 6 was amended by regulation 14(4) of S.R. 1984 No. 317, regulation 4(4) of S.R. 1995 No. 150 and regulation 165(4) of S.R. 1996 No. 198

- (b) in paragraph (2)—
- (i) after “incapacity benefit” insert “, contributory employment and support allowance”, and
  - (ii) after “incapable of work” insert “or to have limited capability for work as defined in section 1(4) of the Welfare Reform Act”.

#### Commencement Information

**I6** [Reg. 6](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

### Amendment of the Social Security (Credits) Regulations

7.—(1) The Social Security (Credits) Regulations (Northern Ireland) 1975<sup>(16)</sup> are amended in accordance with paragraphs (2) to (7).

- (2) In regulation 2(1) (interpretation)—
- (a) after the definition of “the Jobseekers Order”<sup>(17)</sup> insert—  
““the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007;”;
  - (b) in the definition of “benefit”<sup>(18)</sup> after “an income-based jobseeker’s allowance” add “and includes a contributory employment and support allowance but not an income-related employment and support allowance”;
  - (c) after the definition of “contribution-based jobseeker’s allowance”<sup>(19)</sup> insert—  
““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;”;
  - (d) after the definition of “income-based jobseeker’s allowance”<sup>(20)</sup> insert—  
““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act;”;
  - (e) in the definition of “reckonable year”<sup>(21)</sup>—
    - (i) omit “or” after paragraph (a),
    - (ii) after paragraph (b) add—  
“or
    - (c) in relation to a contributory employment and support allowance, the condition specified in paragraph 2(1) of Schedule 1 to the Welfare Reform Act (conditions relating to national insurance).”;
  - (f) in the definition of “relevant benefit year”<sup>(22)</sup>—
    - (i) omit “or” after paragraph (a), and
    - (ii) after paragraph (b) add—  
“or

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<sup>(16)</sup> [S.R. 1975 No. 113](#); relevant amending Regulations are [S.R. 1989 No. 368](#), [S.R. 1995 No. 150](#), [S.R. 1996 No. 430](#), [S.R. 2001 No. 108](#), [S.R. 2002 No. 80](#), [S.R. 2005 No. 536](#) and [S.R. 2007 No. 306](#)

<sup>(17)</sup> The definition of “the Jobseekers Order” was inserted by regulation 2(2)(b) of [S.R. 1996 No. 430](#)

<sup>(18)</sup> The definition of “benefit” was inserted by regulation 2(2)(b) of [S.R. 1996 No. 430](#)

<sup>(19)</sup> The definition of “contribution-based jobseeker’s allowance” was inserted by regulation 2(2)(b) of [S.R. 1996 No. 430](#)

<sup>(20)</sup> The definition of “income-based jobseeker’s allowance” was inserted by regulation 2(2)(c) of [S.R. 1996 No. 430](#)

<sup>(21)</sup> The definition of “reckonable year” was substituted by regulation 2(2)(d) of [S.R. 1996 No. 430](#) and amended by regulation 2(2) of [S.R. 2007 No. 306](#)

<sup>(22)</sup> The definition of “relevant benefit year” was substituted by regulation 2(2)(e) of [S.R. 1996 No. 430](#)

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- (c) in relation to a contributory employment and support allowance, in paragraph 3(1)(f) of Schedule 1 to the Welfare Reform Act (conditions relating to national insurance);”.
- (3) In regulation 3(1)(**23**) (general provisions relating to the crediting of contributions and earnings)—
- (a) omit “or” after sub-paragraph (a); and
  - (b) after sub-paragraph (b) add—
    - “or
    - (c) in relation to a contributory employment and support allowance, the condition specified in paragraph 2(1) of Schedule 1 to the Welfare Reform Act.”.
- (4) In regulation 8(1)(**24**) (credits on termination of full-time education, training or apprenticeship) for “or short-term incapacity benefit” substitute “, short-term incapacity benefit or a contributory employment and support allowance”.
- (5) In regulation 8A(2)(c)(**25**) (credits for unemployment) after “incapable of work” insert “or had limited capability for work”.
- (6) In regulation 8B(**26**) (credits for incapacity for work)—
- (a) in the heading after “incapacity for work” add “or limited capability for work”; and
  - (b) in paragraph (2)—
    - (i) omit “or” after sub-paragraph (a), and
    - (ii) after sub-paragraph (a) insert—
      - “(aa) a week in which, in relation to the person concerned, each of the days—
        - (i) was a day of limited capability for work for the purposes of Part 1 of the Welfare Reform Act (limited capability for work) or would have been such a day had that person been entitled to an employment and support allowance by virtue of section 1 of that Act, or
        - (ii) would have been such a day had the person concerned claimed an employment and support allowance or maternity allowance within the prescribed time; or”.
- (7) In regulation 8C(1)(**27**) (credits on termination of bereavement benefits)—
- (a) omit “or” after sub-paragraph (a); and
  - (b) after sub-paragraph (b) add—
    - “or
    - (c) paragraph 2(1) of Schedule 1 to the Welfare Reform Act in relation to a contributory employment and support allowance.”.

#### Commencement Information

**I7** [Reg. 7](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

- (23) Regulation 3(1) was substituted by regulation 2(3) of [S.R. 1996 No. 430](#) and amended by regulation 3(3) of [S.R. 2001 No. 108](#)
- (24) Regulation 8(1) was substituted by regulation 3 of [S.R. 1989 No. 368](#) and amended by regulation 6(3) of [S.R. 1995 No. 150](#) and regulation 2(5) of [S.R. 1996 No. 430](#)
- (25) Regulation 8A was inserted by regulation 2(6) of [S.R. 1996 No. 430](#) and paragraph (2) was amended by regulation 2(4) of [S.R. 2002 No. 80](#)
- (26) Regulation 8B was inserted by regulation 2(6) of [S.R. 1996 No. 430](#)
- (27) Regulation 8C was inserted by regulation 3(7) of [S.R. 2001 No. 108](#) and amended by paragraph 4(4) of Schedule 3 to [S.R. 2005 No. 536](#)

## Amendment of the Social Security (Medical Evidence) Regulations

**8.—(1)** The Social Security (Medical Evidence) Regulations (Northern Ireland) 1976(**28**) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 1(2) (interpretation) after the definition of “the Contributions and Benefits Act”(**29**) insert—

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

“limited capability for work” has the meaning given in section 1(4) of the Welfare Reform Act (Northern Ireland) 2007;

“limited capability for work assessment” means the assessment of whether a person has limited capability for work as set out in regulation 19(2) of, and Schedule 2 to, the Employment and Support Allowance Regulations;”.

(3) In regulation 2(**30**) (evidence of incapacity for work and confinement)—

(a) in the heading after “incapacity for work” insert “, limited capability for work”;

(b) in paragraph (1)—

(i) after “incapable of work” insert “or having limited capability for work”,

(ii) after “personal capability assessment”, in both places where it occurs, insert “or the limited capability for work assessment”,

(iii) after “evidence of such incapacity” insert “or limited capability for work”, and

(iv) in sub-paragraph (c) after “incapable of work” insert “or whether a person has or does not have limited capability for work”; and

(c) in paragraph (2) after “personal capability assessment” insert “or the limited capability for work assessment”.

(4) In regulation 5(**31**) (self-certificate for first 7 days of a spell of incapacity for work)—

(a) in the heading after “incapacity for work” add “or limited capability for work”;

(b) in paragraph (1)—

(i) after “evidence of incapacity” insert “or limited capability for work”,

(ii) omit “or” after sub-paragraph (a), and

(iii) after sub-paragraph (b) insert—

“(c) for a period of limited capability for work which lasts less than 8 days; or

(d) in respect of any of the first 7 days of a longer period of limited capability for work.”; and

(c) in for paragraph (2) for the definition of “self-certificate” substitute—

“a “self-certificate” means either—

(i) a declaration made by the claimant in writing, on a form approved for the purpose by the Department, or

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(28) S.R. 1976 No. 175; relevant amending Regulations are S.R. 1982 No. 153, S.R. 1987 No. 117, S.R. 1992 No. 83, S.R. 1994 No. 468, S.R. 1995 No. 149, S.R. 2000 No. 4 and S.R. 2001 No. 308

(29) The definition of “the Contributions and Benefits Act” was inserted by regulation 2(2) of S.R. 1994 No. 468

(30) Regulation 2 was amended by regulation 2(1) of S.R. 1982 No. 153, regulation 2(3) of S.R. 1987 No. 117, regulation 2(2) of S.R. 1992 No. 83, regulation 2(3) of S.R. 1994 No. 468, regulation 2(2) of S.R. 1995 No. 149, regulation 3(3) of S.R. 2000 No. 4 and regulation 2(2) of S.R. 2001 No. 308

(31) Regulation 5 was inserted by regulation 2(2) of S.R. 1982 No. 153 and amended by regulation 2(4) of S.R. 1994 No. 468

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- (ii) where the claimant has made a claim for employment and support allowance in accordance with regulation 4F of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987, an oral declaration by the claimant, that he has been unfit for work from a date or for a period specified in the declaration and may include a statement that the claimant expects to continue to be unfit for work on days subsequent to the date on which it is made;”.

#### Commencement Information

**18** Reg. 8 in operation at 27.10.2008, see [reg. 1\(b\)](#)

### Amendment of the Social Security (Overlapping Benefits) Regulations

**9.**—(1) The Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979(**32**) are amended in accordance with paragraphs (2) to (7).

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

(a) after the definition of “the Pensions Order” insert—

““the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007;”;

(b) in the definition of “contributory benefit”(**33**) for “ and a contribution-based jobseeker’s allowance” substitute “a contribution-based jobseeker’s allowance and a contributory employment and support allowance”; and

(c) in the definition of “personal benefit”(**34**) after “includes” insert “a contributory employment and support allowance but not an income-related employment and support allowance and includes”.

(3) In regulation 4(1)(a)(**35**) (adjustment of personal benefit) after “industrial injuries benefits)” insert “, Part 1 of the Welfare Reform Act”.

(4) In regulation 10(1) (adjustment of dependency benefit where certain personal benefit is payable) after sub-paragraph (j)(**36**) insert—

“(k) a contributory employment and support allowance,”.

(5) In regulation 16(**37**) (persons to be treated as entitled to benefit for certain purposes)—

(a) after “the Act”, in the first place where it occurs, insert “, Part 1 of the Welfare Reform Act”; and

(b) after “under it,”, in the first place where it occurs, insert “under Part 1 of the Welfare Reform Act and regulations made under it”.

(6) In regulation 17(**38**) (prevention of double adjustments) for “or under the Jobseekers Order”, in both places where it occurs, substitute “, the Jobseekers Order or Part 1 of the Welfare Reform Act”.

**(32)** S.R. 1979 No. 242; relevant amending Regulations are S.R. 1980 No. 451, S.R. 1983 No. 36, S.R. 1984 No. 317, S.R. 1992 No. 557, S.R. 1995 No. 150, S.R. 1996 No. 289, S.R. 2002 No. 323 and S.R. 2005 No. 536

**(33)** The definition of “contributory benefit” was inserted by regulation 11(2)(b) of S.R. 1996 No. 289

**(34)** The definition of “personal benefit” was amended by regulation 2(a) of S.R. 1980 No. 451 and regulation 11(2)(c) of S.R. 1996 No. 289

**(35)** Regulation 4(1) was substituted by regulation 3 of S.R. 1992 No. 557 and amended by regulation 11(3) of S.R. 1996 No. 289

**(36)** Sub-paragraph (j) was added by regulation 11(4) of S.R. 1996 No. 289

**(37)** Regulation 16 was amended by regulation 11(6) of S.R. 1996 No. 289

**(38)** Regulation 17 was amended by regulation 11(7) of S.R. 1996 No. 289



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(7) In Schedule 1 (personal benefits which are required to be adjusted) in column (1) of paragraph 4(39) after “severe disablement allowance” insert “, contributory employment and support allowance”.

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**Commencement Information**

**I9** [Reg. 9](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

### **Amendment of the Statutory Sick Pay (General) Regulations**

**10.** In regulation 3 of the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982(40) (period of entitlement ending or not arising) after paragraph (2B) insert—

“(2C) A period of entitlement in respect of an employee who was entitled to employment and support allowance shall not arise in relation to any day within a period of limited capability for work beginning with the first day on which paragraph 2(dd) of Schedule 11 to the Contributions and Benefits Act ceases to have effect where the employee in question is a person to whom regulation 148 of the Employment and Support Allowance Regulations (Northern Ireland) 2008 (work or training beneficiaries) applies.”.

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**Commencement Information**

**I10** [Reg. 10](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

### **Amendment of the Statutory Maternity Pay (General) Regulations**

**11.** In regulation 25A(1) of the Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987(41) (provision of information relating to claims for certain other benefits) for “or incapacity benefit” substitute “, incapacity benefit or an employment and support allowance”.

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**Commencement Information**

**I11** [Reg. 11](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

### **Amendment of the Income Support (General) Regulations**

**12.—(1)** The Income Support (General) Regulations (Northern Ireland) 1987(42) are amended in accordance with paragraphs (2) to (15).

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

(a) after the definition of “the 1998 Order”(43) insert the following definition—

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(39) Paragraph 4 was amended by regulation 12(3)(a) of S.R. 1983 No. 36, regulation 11 of S.R. 1984 No. 317, regulation 14(8)(b) of S.R. 1995 No. 150, paragraph 1(e) of the Schedule to S.R. 2002 No. 323 and paragraph 9(4) of Schedule 3 to S.R. 2005 No. 536

(40) S.R. 1982 No. 263; regulation 3(2B) was inserted by regulation 4(2) of S.R. 2007 No. 225

(41) S.R. 1987 No. 30; regulation 25A was inserted by regulation 6 of S.R. 1990 No. 112 and amended by regulation 18(3) of S.R. 1995 No. 150 and regulation 2(5) of S.R. 2002 No. 354

(42) S.R. 1987 No. 459; relevant amending Rules are 1988 Nos. 146, 318 and 431, S.R. 1989 Nos. 139 and 395, S.R. 1992 No. 6, S.R. 1993 No. 149, S.R. 1995 Nos. 67, 301 and 434, S.R. 1996 Nos. 199 and 449, S.R. 1997 Nos. 165 and 435, S.R. 1998 No. 81, S.R. 1999 Nos. 107 and 472 (C. 36), S.R. 2000 Nos. 71, 74 and 366, S.R. 2001 Nos. 78 and 261, S.R. 2002 Nos. 132 and 295, S.R. 2003 Nos. 191, 195, 261 and 338, S.R. 2004 Nos. 143, 394 and 461, S.R. 2005 Nos. 319 (C. 23), 458 and 580, S.R. 2006 Nos. 128, 359 and 407, S.R. 2007 Nos. 196 and 475 and S.R. 2008 No. 112

(43) The definition of “the 1998 Order” was inserted by Article 7(3) of S.R. 1999 No. 472 (C. 36)

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- “the benefit Acts” means the Contributions and Benefits Act, the Jobseekers Order and Part 1 of the Welfare Reform Act”;
- (b) after the definition of “the Registered Homes Order”(44) insert—
- “the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007;”;
- (c) after the definition of “concessionary payment” insert—
- “contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;”;
- (d) after the definition of “employment”(45) insert—
- “the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations (Northern Ireland) 2008;”;
- (e) after the definition of “the Housing Benefit (State Pension Credit) Regulations”(46) insert—
- “income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act;”.
- (3) In regulation 6(5)(47) (persons not treated as engaged in remunerative work)—
- (a) in sub-paragraph (b) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”; and
- (b) in sub-paragraph (c)—
- (i) omit “or” after head (i), and
- (ii) after head (ii) for “and” substitute—
- “or
- (iii) an amount determined in accordance with Schedule 6 to the Employment and Support Allowance Regulations (housing costs) as applicable to him in respect of housing costs which qualify under paragraphs 16 to 18 of that Schedule, and”.
- (4) In regulation 14(2)(48) (persons of a prescribed description)—
- (a) omit “or” after sub-paragraph (b); and
- (b) after sub-paragraph (c) add—
- “or
- (d) entitled to an employment and support allowance or would, but for paragraph 6(1) (d) of Schedule 1 to the Welfare Reform Act (conditions of entitlement to income-related employment and support allowance), be so entitled.”.
- (5) In regulation 31(2)(49) (date on which income is treated as paid) for “or severe disablement allowance” substitute “severe disablement allowance or employment and support allowance”.

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(44) The definition of “the Registered Homes Order” was inserted by regulation 2(2)(a) of [S.R. 1993 No. 149](#)

(45) The definition of “employment” was inserted by regulation 2(b) of [S.R. 1988 No. 318](#)

(46) The definition of “the Housing Benefit (State Pension Credit) Regulations” was inserted by paragraph 12(2)(a) of Schedule 2 to [S.R. 2006 No. 407](#)

(47) Regulation 6(5) was added by regulation 4 of [S.R. 2001 No. 78](#) and amended by regulation 2(2) of [S.R. 2007 No. 475](#)

(48) Regulation 14(2) was substituted by paragraph 2 of Schedule 1 to [S.R. 2005 No. 319 \(C. 23\)](#) and amended by regulation 2(4) (b) of [S.R. 2006 No. 128](#)

(49) Regulation 31(2) was amended by regulation 14 of [S.R. 1988 No. 146](#), regulation 7 of [S.R. 1988 No. 318](#), regulation 2(7) of [S.R. 1995 No. 67](#) and regulation 15 of [S.R. 1996 No. 199](#)

(6) In regulation 32(4)(b)(50) (calculation of weekly amount of income) for “or jobseeker’s allowance” substitute “, jobseeker’s allowance or employment and support allowance”.

(7) In regulation 40 (calculation of income other than earnings) after paragraph (5)(51) add—

“(6) Where the claimant—

- (a) is a member of a couple;
- (b) his partner is receiving a contributory employment and support allowance, and
- (c) that benefit has been reduced under regulation 63 of the Employment and Support Allowance Regulations,

the amount of that benefit to be taken into account is the amount as if it had not been so reduced.”.

(8) In regulation 72 (assessment of income and capital in urgent cases)—

- (a) in paragraph (1)(a)(ii)(52) after “(urgent cases)” insert “or of employment and support allowance under regulation 162 of the Employment and Support Allowance Regulations”, and
- (b) in paragraph (2)(53) after “regulation 70” insert “, regulation 162 of the Employment and Support Allowance Regulations”.

(9) In regulation 73(3)(54) (amount of income support payable) in the definition of “B” for “or severe disablement allowance” substitute “, severe disablement allowance or employment and support allowance”.

(10) In regulation 75(55) (modifications in the calculation of income)—

- (a) in paragraph (b) for “or severe disablement allowance” substitute “severe disablement allowance or employment and support allowance”;
- (b) in paragraph (e) for “or severe disablement allowance” substitute “, severe disablement allowance or employment and support allowance”; and
- (c) in paragraph (f) for “or severe disablement allowance” substitute “severe disablement allowance or employment and support allowance”.

(11) In Schedule 3(56) (housing costs)—

(a) in paragraph 1(57) (housing costs)—

(i) in sub-paragraph (3) after head (c) add—

“or

(d) who is in receipt of an employment and support allowance which includes an amount under section 2(2) or (3) or 4(4) or (5) of the Welfare Reform Act (components).”, and

(ii) in sub-paragraph (4) after “disqualification etc.)” add “or disqualified for receiving employment and support allowance or treated as not having limited capability for

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(50) Regulation 32(4)(b) was amended by regulation 16(b) of S.R. 1996 No. 199

(51) Paragraph (5) was added by regulation 5(6)(b) of S.R. 2000 No. 71

(52) Paragraph (1)(a) was substituted by regulation 12(1)(a) of S.R. 1998 No. 81

(53) Paragraph (2) was amended by regulation 13(c) of S.R. 1988 No. 431, regulation 2(4)(b) of S.R. 1996 No. 449, regulation 12(1)(b) of S.R. 1998 No. 81 and regulation 2(12) of S.R. 2008 No. 112

(54) Regulation 73 was inserted by regulation 28 of S.R. 1988 No. 146 and amended by regulation 16 of S.R. 1988 No. 318, regulation 2(9) of S.R. 1995 No. 67, regulation 19 of S.R. 1996 No. 199 and paragraph 12 of the Schedule to S.R. 2002 No. 132

(55) Regulation 75 was inserted by regulation 28 of S.R. 1988 No. 146 and amended by regulation 16 of S.R. 1988 No. 318, regulation 2(10) of S.R. 1995 No. 67 and regulation 20 of S.R. 1996 No. 199

(56) Schedule 3 was inserted by regulation 2 of S.R. 1995 No. 301

(57) Paragraph 1 was amended by regulation 2(3)(a) of S.R. 1995 No. 434, regulation 2(a) of S.R. 2004 No. 461 and regulation 5(7)(a) of S.R. 2006 No. 359

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- work in accordance with regulations made under section 18 of the Welfare Reform Act (disqualification)”;
- (b) in paragraph 1A**(58)** (previous entitlement to income-based jobseeker’s allowance or state pension credit)—
- (i) in the heading after “allowance” insert “or income-related employment and support allowance”;
  - (ii) after “income-based jobseeker’s allowance”, in each place where it occurs, insert “or income-related employment and support allowance”, and
  - (iii) in sub-paragraph (1)(a) after “1996” add “or paragraphs 16 to 18 of Schedule 6 to the Employment and Support Allowance Regulations”;
- (c) in paragraph 4(4) (housing costs not met) after “income support”, in each place where it occurs, insert “or income-related employment and support allowance”;
- (d) in paragraph 6(1B)**(59)** (existing housing costs) for “or state pension credit” substitute “, state pension credit or income-related employment and support allowance”;
- (e) in paragraph 8(1B)**(60)** (new housing costs) for “or state pension credit” substitute “, state pension credit or income-related employment and support allowance”;
- (f) in paragraph 14 (linking rule)—
- (i) in sub-paragraph (5)(a)**(61)** for “or incapacity benefit” substitute “, incapacity benefit or contributory employment and support allowance”, and
  - (ii) after sub-paragraph (14)**(62)** add—
 

“(15) For the purposes of determining whether the linking rules set out in this paragraph apply in a case where [<sup>F1</sup>a claimant, a claimant’s partner or] a claimant’s former partner was entitled to income-related employment and support allowance, any reference to income support in this Schedule shall be taken to include also a reference to income-related employment and support allowance.”; and
- (g) in paragraph 18(7)**(63)** (non-dependant deductions) after head (h) add—
- “(i) he is aged less than 25 and is in receipt of employment and support allowance which does not include an amount under section <sup>F2</sup>...(5) of the Welfare Reform Act (components).”.
- (12) In Schedule 7 (applicable amounts in special cases) in paragraph 17A**(64)** (persons who have commenced remunerative work) in column 2—
- (a) in sub-paragraph (1)—
    - (i) in head (a)—
      - (aa) omit “or” after sub-head (i), and
      - (bb) after sub-head (ii) add—

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**(58)** Paragraph 1A was inserted by regulation 2(2) of S.R. 1997 No. 435 and amended by regulation 2(3)(a) of S.R. 2007 No. 475

**(59)** Paragraph 6(1B) was inserted by regulation 2(4) of S.R. 1997 No. 435 and amended by regulation 24(6)(a) of S.R. 2003 No. 191

**(60)** Paragraph 8(1B) was inserted by regulation 2(6) of S.R. 1997 No. 435 and amended by regulation 24(6)(b) of S.R. 2003 No. 191

**(61)** Sub-paragraph (5) was amended by regulation 2(3)(i)(ii) of S.R. 1995 No. 434, regulation 24(b)(i) of S.R. 1996 No. 199 and regulation 3 of S.R. 1999 No. 107

**(62)** Sub-paragraph (14) was added by regulation 24(6)(d) of S.R. 2003 No. 191

**(63)** Paragraph 18(7) was amended by regulation 3 of S.R. 1997 No. 165, Article 7(2) of S.R. 1999 No. 472 (C. 36), regulation 3(4) of S.R. 2003 No. 261, regulation 4(b)(ii) of S.R. 2004 No. 394, regulation 3(4) of S.R. 2005 No. 580 and regulation 5 of, and paragraph 1(4)(b) of Schedule 2 to, S.R. 2006 No. 407

**(64)** Paragraph 17A was inserted by regulation 7 of S.R. 2001 No. 78 and amended by paragraph 15(l) of the Schedule to S.R. 2002 No. 132

“or

(iii) as the case may be, Schedule 6 to the Employment and Support Allowance Regulations (housing costs),”

(ii) in head (b) after “income support” in the first place where it occurs, insert “, income-related employment and support allowance”.

(13) In paragraph 4(7)(**65**) of Schedule 8 (sums to be disregarded in the calculation of earnings) after “income support” in each place where it occurs insert “or employment and support allowance”.

(14) In Schedule 9 (sums to be disregarded in the calculation of income other than earnings)—

(a) in paragraph 7(b)(**66**) for “or jobseeker’s allowance” substitute “, jobseeker’s allowance or employment and support allowance.”; and

(b) in paragraph 13(1)(a)(**67**) for “or severe disablement allowance” substitute “, severe disablement allowance or an employment and support allowance”.

(15) In paragraph 7(**68**) of Schedule 10 (capital to be disregarded)—

(a) in sub-paragraph (1)(b) after “income-related benefit” insert “, an income-related employment and support allowance”; and

(b) in sub-paragraph (3)—

(i) in head (a) after “income support” insert “, an income-related employment and support allowance”, and

(ii) in head (b) after “income support” insert “, an income-related employment and support allowance”.

- F1** Words in [reg. 12\(11\)\(f\)\(ii\)](#) inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/413\)](#), [regs. 1\(2\)](#), [5\(2\)\(a\)](#)
- F2** Words in [reg. 12\(11\)\(g\)\(i\)](#) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/413\)](#), [regs. 1\(2\)](#), [5\(2\)\(b\)](#)

#### Commencement Information

**I12** [Reg. 12](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

### Amendment of the Social Security (Claims and Payments) Regulations

**13.**—(1) The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**69**) are amended in accordance with paragraphs (2) to (20).

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

(a) after the definition of “the 2002 Act”(**70**) insert—

- (**65**) Paragraph 4 was substituted by regulation 9 of [S.R. 1989 No. 139](#) and amended by regulation 12(a) of [S.R. 1989 No. 395](#), regulation 9(a) of [S.R. 2000 No. 74](#), regulation 3 of [S.R. 2000 No. 366](#), paragraph 16(a) of the Schedule to [S.R. 2002 No. 132](#), regulation 24(7)(c) of [S.R. 2003 No. 191](#) and regulation 3 of, and paragraph 11 of Schedule 1 to, [S.R. 2005 No. 458](#)
- (**66**) Paragraph 7(b) was amended by regulation 9(1)(c)(i)(b) of [S.R. 1998 No. 81](#)
- (**67**) Paragraph 13 was substituted by regulation 2(3) of [S.R. 2004 No. 143](#) and amended by regulation 2(7)(a) of [S.R. 2007 No. 196](#)
- (**68**) Paragraph 7 was amended by regulation 10(7) of [S.R. 1992 No. 6](#), regulation 26 of [S.R. 1996 No. 199](#), regulation 2(2)(b) of [S.R. 2001 No. 261](#), regulation 2 of [S.R. 2002 No. 295](#), paragraph 24(a) of Schedule 1 to [S.R. 2003 No. 195](#) and regulation 2(4) of [S.R. 2003 No. 338](#)
- (**69**) [S.R. 1987 No. 465](#); relevant amending Rules are [S.R. 1988 Nos. 67, 141 and 369](#), [S.R. 1989 No. 398](#), [S.R. 1991 No. 488](#), [S.R. 1992 Nos. 83 and 271](#), [S.R. 1993 No. 149](#), [S.R. 1994 No. 456](#), [S.R. 1995 Nos. 301 and 367](#), [S.R. 1996 Nos. 354, 432 and 622](#), [S.R. 1997 Nos. 156, 165 and 435](#), [S.R. 1999 Nos. 381 and 472 \(C. 36\)](#), [S.R. 2000 No. 365](#), [S.R. 2001 Nos. 22 and 78](#), [S.R. 2002 Nos. 132, 254, 327 and 412](#), [S.R. 2003 Nos. 191, 367 and 412](#), [S.R. 2004 No. 461](#), [S.I. 2005/1551](#), [S.R. 2005 Nos. 299, 458 and 536](#), [S.R. 2006 Nos. 168 and 203](#), [S.R. 2007 Nos. 206, 263 and 330](#) and [S.R. 2008 No. 105](#)
- (**70**) The definition of “the 2002 Act” was inserted by regulation 3(a)(i) of [S.R. 2003 No. 191](#)

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- “the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007;”;
- (b) in the definition of “benefit”(71) for “and a shared additional pension” substitute “, a shared additional pension or an employment and support allowance under Part 1 of the Welfare Reform Act”;
- (c) after the definition of “electronic communication”(72) insert—
- “the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations (Northern Ireland) 2008;”;
- (d) after the definition of “joint-claim couple”(73) insert—
- “limited capability for work” has the same meaning as in section 1(4) of the Welfare Reform Act;”.
- (3) In regulation 3 (claims not required for entitlement to benefit in certain cases)—
- (a) in paragraph (h)(ii)(74) after “allowance” insert “or an income-related employment and support allowance”; and
- (b) after paragraph (i)(75) add—
- “(j) in the case of an employment and support allowance where the beneficiary has made and is pursuing an appeal against the decision of the Department that he does not have limited capability for work.”.
- (4) In regulation 4(10)(76) (making a claim for benefit) after “state pension credit” add “or an employment and support allowance”.
- (5) After regulation 4E(77) (making a claim after attaining the qualifying age: date of claim) insert—

#### **“Making a claim for employment and support allowance by telephone**

**4F.—**(1) A claim (“a telephone claim”) for an employment and support allowance may be made by telephone call to the telephone number specified by the Department.

(2) Where the Department, in any particular case, directs that the person making the claim approves a written statement of his circumstances, provided for the purpose by the Department, a telephone claim is not a valid claim unless the person complies with the direction.

(3) A telephone claim is defective unless the Department is provided, during that telephone call, with all the information it requires to determine the claim.

(4) Where a telephone claim is defective, the Department shall advise the person making it of the defect and of the relevant provisions of regulation 6(1D) relating to the date of claim.

(5) If the person corrects the defect within one month, or such longer period as the Department considers reasonable, of the date it last drew attention to the defect, the Department shall treat the claim as if it had been properly made in the first instance.

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(71) The definition of “benefit” was amended by regulation 3(2)(a) of S.R. 1988 No. 369, regulation 7(2)(a)(i) of S.R. 1992 No. 83, regulation 2(2)(b) of S.R. 1996 No. 354, regulation 3(a)(ii) of S.R. 2003 No. 191 and regulation 2(2)(a) of S.R. 2005 No. 299

(72) The definition of “electronic communication” was inserted by Article 2(2) of S.R. 2006 No. 203

(73) The definition of “joint-claim couple” was inserted by regulation 2(1)(b) of S.R. 2000 No. 365

(74) Paragraph (h) was added by regulation 5 of S.R. 1999 No. 381 and amended by regulation 11(2) of S.R. 2001 No. 78 and regulation 4 of S.R. 2003 No. 367

(75) Paragraph (i) was added by regulation 2(3) of S.R. 2005 No. 299

(76) Paragraph (10) was added by regulation 4(1) of S.R. 2003 No. 191

(77) Regulation 4E was inserted by regulation 4(3) of S.R. 2003 No. 191

### **Making a claim for employment and support allowance in writing**

**4G.**—(1) A claim (“a written claim”) for employment and support allowance need only be made in writing if the Department so directs in any particular case but a written claim may be made whether or not a direction is issued.

(2) A written claim must be made on a form approved for the purpose by the Department and be made in accordance with the instructions on the form.

(3) A claim in writing may also be made at an office of—

- (a) an authority administering housing benefit;
- (b) a person providing to such an authority services relating to housing benefit; or
- (c) a person authorised to exercise any function of such an authority relating to housing benefit,

if the Department has arranged with the authority or person specified in sub-paragraph (b) or (c) for them to receive claims in accordance with this paragraph.

(4) Where a written claim is made in accordance with paragraph (3), on receipt of that claim the authority or other person specified in that paragraph—

- (a) shall forward the claim to the Department as soon as reasonably practicable;
- (b) may receive information or evidence relating to the claim supplied by—
  - (i) the person making, or who has made, the claim, or
  - (ii) other persons in connection with the claim,

and shall forward it to the Department as soon as reasonably practicable;

- (c) may obtain information or evidence relating to the claim from the person who has made the claim, but not any medical information or evidence except for that which the claimant must provide in accordance with instructions on the form, and shall forward the information or evidence to the Department as soon as reasonably practicable;
- (d) may record information or evidence relating to the claim supplied or obtained in accordance with sub-paragraph (b) or (c) and may hold the information or evidence (whether as supplied or obtained or as recorded) for the purpose of forwarding it to the Department; and
- (e) may give information and advice with respect to the claim to the person who makes, or who has made, the claim.

(5) Paragraph (4)(b) to (e) applies in respect of information, evidence and advice relating to any claim whether the claim is made in accordance with paragraph (3) or otherwise.

(6) Where a written claim is defective when first received, the Department is to advise the person making it of the defect and of the provisions of regulation 6(1D) relating to the date of claim.

(7) If that person corrects the defect so that the claim then satisfies the requirements of paragraph (2) and does so within one month, or such longer period as the Department considers reasonable, of the date it last drew attention to the defect, the claim shall be treated as having been properly made in the first instance.

### **Claims for employment and support allowance: supplemental**

**4H.**—(1) Where a person who is a member of a couple may be entitled to an income-related employment and support allowance the claim for an employment and support allowance

shall be made by whichever member of the couple they agree should claim or, in default of agreement, by such one of them as the Department may choose.

(2) Where one member of a couple (“the former claimant”) is entitled to an income-related employment and support allowance under an award but a claim for an employment and support allowance is made by the other member of the couple and the Department considers that the other member is entitled to an income-related employment and support allowance, then, if both members of the couple confirm in writing that they wish the claimant to be the other member, the former claimant’s entitlement shall terminate on the day the partner’s claim is actually made or, if earlier, is treated as made.

(3) In calculating any period of one month for the purposes of regulations 4F and 4G, any period commencing on a day on which a person is first notified of a decision in connection with his failure to take part in a work-focused interview and ending on a day on which he was notified that that decision has been revised so that the decision as revised is that he did take part is to be disregarded.

(4) Employment and support allowance is a relevant benefit for the purposes of section 5A of the Administration Act.”.

(6) In regulation 6 (date of claim) after paragraph (1C)(78) insert—

“(1D) For employment and support allowance—

- (a) in the case of a telephone claim made in accordance with regulation 4F(1) the date of claim is the date of the telephone call or the first day in respect of which the claim is made, if later;
- (b) subject to sub-paragraph (c), in the case of a written claim which meets the requirements of regulation 4G(2) the date of claim is the date the claim form was received in an appropriate office or office mentioned in regulation 4G(3) or the first day in respect of which the claim is made, if later;
- (c) where the claimant notifies the Department (by whatever means) of his intention of making a claim and, within one month of first notification or such longer period as the Department considers reasonable, a claim mentioned in sub-paragraph (b) is received, in an office mentioned in that sub-paragraph, the date of claim is the date notification was made or the first day in respect of which the claim is made, if later.”.

(7) In regulation 7(4)(79) (evidence and information) for “or state pension credit” substitute “, state pension credit or employment and support allowance”.

(8) In regulation 10(80) (claim for incapacity benefit or severe disablement allowance where no entitlement to statutory sick pay or statutory maternity pay)—

- (a) in the heading for “or severe disablement allowance” substitute “, severe disablement allowance or employment and support allowance”; and
- (b) after paragraph (1) insert—

“(1A) Paragraph (2) also applies to a claim for an employment and support allowance for a period of limited capability for work of which the claimant gave his employer a notice of incapacity under regulation 7 of the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982, and for which he has been informed in writing by his employer that there is no entitlement to statutory sick pay.”.

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(78) Paragraph (1C) was inserted by regulation 2(7)(a) of S.R. 2006 No. 168

(79) Paragraph (4) was added by regulation 5(3) of S.R. 1995 No. 367 and amended by regulation 2(6)(b) of S.R. 1996 No. 354 and regulation 5(b) of S.R. 2003 No. 191

(80) Regulation 10 was amended by regulation 2(3) of S.R. 1994 No. 456 and regulation 3(5) of S.R. 1997 No. 156



(9) In regulation 11(**81**) (special provisions where it is certified that a woman is expected to be confined or where she has been confined) for “or severe disablement allowance”, in both places where it occurs, substitute “, severe disablement allowance or an employment and support allowance”.

(10) In regulation 13(7)(**82**) (advance claims and awards)—

(a) omit “or” after sub-paragraph (a); and

(b) after sub-paragraph (b) add—

“and

(c) a claim for an employment and support allowance made by a person from abroad as defined in regulation 70 of the Employment and Support Allowance Regulations.”.

(11) In regulation 16(4)(**83**) (date of entitlement under an award for the purpose of determining the day from which benefit is to be payable and effective date of change of rate) after “incapacity benefit” insert “, employment and support allowance”.

(12) In regulation 16A(2)(a)(**84**) (date of entitlement under an award of state pension credit for the purpose of payability and effective date of change of rate) for “or income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance or income-related employment and support allowance”.

(13) After regulation 26B(**85**) (state pension credit) insert—

#### “Employment and support allowance

**26C.**—(1) Subject to paragraphs (3) to (7), employment and support allowance shall be paid fortnightly in arrears on the day of the week determined in accordance with paragraph (2).

(2) The day specified for the purposes of paragraph (1) is the day in column (2) which corresponds to the series of numbers in column (1) which includes the last 2 digits of the claimant’s national insurance number—

<i>Column (1)</i>	<i>Column (2)</i>
00 to 19	Monday
20 to 39	Tuesday
40 to 59	Wednesday
60 to 79	Thursday
80 to 99	Friday

(3) The Department may, in any particular case or class of case, arrange that the claimant be paid otherwise than fortnightly.

(4) The Department may, in any particular case arrange that employment and support allowance be paid on any day of the week and where it is in payment to any person and the day on which it is payable is changed, it shall be paid at a daily rate of one seventh of the weekly rate in respect of any of the days for which payment would have been made but for that change.

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(81) Regulation 11 was amended by regulation 2(4) of S.R. 1994 No. 456 and regulation 3(6) of S.R. 1997 No. 156

(82) Paragraph (7) was added by regulation 2(2) of S.R. 2007 No. 263

(83) Paragraph (4) was amended by regulation 3(c) of S.R. 1988 No. 141, regulation 2(7) of S.R. 1994 No. 456, regulation 2(9) of S.R. 1996 No. 354 and regulation 7(1) of S.R. 2003 No. 191

(84) Regulation 16A was inserted by regulation 7(2) of S.R. 2003 No. 191

(85) Regulation 26B was inserted by regulation 9 of S.R. 2003 No. 191

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(5) Where the weekly amount of employment and support allowance is less than £1.00 it may be paid in arrears at intervals of not more than 13 weeks.

(6) Where the weekly amount of employment and support allowance is less than 10 pence that allowance is not payable.

(7) The provisions of paragraph 2A of Schedule 7 (payment of income support at time of office closure) apply for the purposes of payment of employment and support allowance as they apply for the purposes of payment of income support.”.

(14) In regulation 32(3)(**86**) (information to be given and changes to be notified) for “or a jobseeker’s allowance” substitute “, a jobseeker’s allowance or an employment and support allowance”.

(15) In regulation 35(2)(b)(**87**) (payment to a partner as alternative payee) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”.

(16) In Schedule 1(**88**) (benefit claimed and other benefit which may be treated as if claimed in addition or in the alternative)—

(a) after the entry relating to “Severe disablement allowance for a woman” insert—

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“Employment and support allowance for a woman	Maternity allowance”;
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(b) in column (2) of the entry relating to “Maternity allowance” for “or severe disablement allowance” substitute “, severe disablement allowance or employment and support allowance”.

(17) In Schedule 4 (prescribed times for claiming benefit) after paragraph 15(**89**) add—

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“ <b>16.</b> Employment and support allowance.	The day in respect of which the claim is made and the period of 3 months immediately following it.”.
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(18) In Schedule 8A(**90**) (deductions from benefits and direct payment to third parties)—

(a) in paragraph 1 (interpretation)—

(i) in the definition of “applicable amount”(**91**)—

(aa) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”, and

(bb) after “Jobseeker’s Allowance Regulations” insert “or regulation 67(1)(a) and (b) or 68(1)(a) to (c) of the Employment and Support Allowance Regulations”,

(ii) in the definition of “housing costs”(**92**) after paragraph (c) add—

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(**86**) Paragraph (3) was added by regulation 5(4) of S.R. 1995 No. 367 and amended by regulation 2(16)(b) of S.R. 1996 No. 354 and regulation 11(a) of S.R. 2003 No. 191

(**87**) Paragraph (2) was added by regulation 2(3) of S.R. 2002 No. 327 and amended by paragraph 15(8) of Schedule 3 to S.R. 2005 No. 536

(**88**) The table in Part 1 was substituted by regulation 2(11) of S.R. 1994 No. 456

(**89**) Paragraph 15 was added by S.I. 2005/1551

(**90**) Schedule 8A was inserted by regulation 2(3) of S.R. 1988 No. 67; relevant amending Rules are S.R. 1989 No. 398, S.R. 1991 No. 488, S.R. 1992 No. 271, S.R. 1993 No. 149, S.R. 1995 No. 301, S.R. 1996 Nos. 354 and 432, S.R. 1999 No. 472 (C. 36), S.R. 2002 Nos. 132 and 412, S.R. 2003 No. 191, S.R. 2005 No. 458, S.R. 2007 Nos. 206 and 330 and S.R. 2008 No. 105

(**91**) The definition of “applicable amount” was amended by regulation 2(26)(a)(i) of S.R. 1996 No. 354

(**92**) The definition of “housing costs” was substituted by regulation 2(26)(a)(ii) of S.R. 1996 No. 354 and amended by regulation 14(1)(a)(iii) of S.R. 2003 No. 191

- “(d) Schedule 6 to the Employment and Support Allowance Regulations but—
- (i) excludes costs under paragraph 18(1)(d) of that Schedule (tents and tent sites), and
  - (ii) includes costs under paragraph 18(1)(a) and (c) (ground rent and rentcharges) of that Schedule but only where they are paid with costs under paragraph 18(1)(b) of that Schedule (service charges);”
- (iii) in the definition of “mortgage payment”<sup>(93)</sup>—
- (aa) omit “or” after paragraphs (a) and (b), and
  - (bb) after paragraph (c) insert—  
“or  
(d) Schedule 6 to the Employment and Support Allowance Regulations in accordance with paragraphs 8 to 11 of that Schedule on a loan which qualifies under paragraph 16 or 17 of that Schedule, but less any amount deducted under paragraph 19 of that Schedule (non- dependant deductions);”, and
- <sup>F3</sup>(iv) .....
- (b) in paragraph 3 (housing costs)—
- (i) in sub-paragraph (1)<sup>(94)</sup>—
    - (aa) for “or state pension credit” substitute “, state pension credit or employment and support allowance”,
    - (bb) omit “or” after head (b), and
    - (cc) after head (c) insert—  
“or  
(d) regulation 67(1)(c) or 68(1)(d) of the Employment and Support Allowance Regulations;”, and
  - (ii) in sub-paragraph (2A)<sup>(95)</sup> for “or paragraph 5(9) or (12) or paragraph 14 of Schedule 2 to the State Pension Credit Regulations”, in both places where it occurs, substitute “, paragraph 5(9) or (12) or 14 of Schedule 2 to the State Pension Credit Regulations or paragraph 6(10) or (13) or 19 of Schedule 6 to the Employment and Support Allowance Regulations”;
- (c) in paragraph 4<sup>(96)</sup> (miscellaneous accommodation costs)—
- (i) in sub-paragraph (1)—
    - (aa) for “or state pension credit” substitute “, state pension credit or employment and support allowance”, and

<sup>(93)</sup> The definition of “mortgage payment” was substituted by regulation 2(26)(a)(iii) of [S.R. 1996 No. 354](#) and amended by regulation 14(1)(a)(iv) of [S.R. 2003 No. 191](#)

<sup>(94)</sup> Sub-paragraph (1) was amended by regulation 2(26)(b) of [S.R. 1996 No. 354](#), Article 9(2) of [S.R. 1999 No. 472 \(C. 36\)](#) and regulation 14(1)(b)(i) of [S.R. 2003 No. 191](#)

<sup>(95)</sup> Sub-paragraph (2A) was inserted by regulation 4(2) of [S.R. 1992 No. 271](#) and amended by paragraph 1(3) of Schedule 3 to [S.R. 1995 No. 301](#), regulation 2(26)(c) of [S.R. 1996 No. 354](#) and regulation 14(1)(b)(ii) of [S.R. 2003 No. 191](#)

<sup>(96)</sup> Paragraph 4 was amended by regulation 8 of [S.R. 1989 No. 398](#), paragraph 2(2) of Schedule 1 to [S.R. 1993 No. 149](#), regulation 2(26)(d) of [S.R. 1996 No. 354](#), Article 9(2) of [S.R. 1999 No. 472 \(C. 36\)](#), regulation 3(3) of [S.R. 2002 No. 132](#), regulation 2 of [S.R. 2003 No. 412](#), regulation 5(3)(b) of [S.R. 2005 No. 458](#) and regulation 5 of [S.R. 2008 No. 105](#)

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(bb) for head (a) substitute—

“(a) is made to a person residing in a residential care home, a nursing home, an Abbeyfield Home or an independent hospital as defined in—

- 
- (i) in the case of income support, regulation 2(1) of the Income Support Regulations,
  - (ii) in the case of jobseeker’s allowance, regulation 1(2) of the Jobseeker’s Allowance Regulations, or
  - (iii) in the case of employment and support allowance, regulation 2(1) of the Employment and Support Allowance Regulations;”
- 

(ii) in sub-paragraph (2)(a)—

(aa) for “or guarantee credit” substitute “guarantee credit or employment and support allowance”, and

(bb) for “or regulation 17 of the State Pension Credit Regulations” substitute “, regulation 17 of the State Pension Credit Regulations or regulation 90 of the Employment and Support Allowance Regulations”,

(iii) in sub-paragraph (2)(b) for “or guarantee credit” substitute “, guarantee credit or employment and support allowance”, and

(iv) in sub-paragraph (3)—

(aa) omit “or” after heads (a) and (b), and

(bb) after head (c) add—

“or

(d) employment and support allowance for a period of less than a week calculated in accordance with Part 14 of the Employment and Support Allowance Regulations (periods of less than a week).”;

(d) in paragraph 4A<sup>(97)</sup> (hostel payments)—

(i) in sub-paragraph (1)<sup>(98)</sup> for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or income-related employment and support allowance”, and

(ii) in sub-paragraph (5)<sup>(99)</sup>—

(aa) omit “or” after head (a), and

(bb) after head (b) insert—

“or

(c) an award of employment and support allowance is calculated in accordance with regulation 165 of the Employment and Support Allowance Regulations (entitlement for less than a week -

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<sup>(97)</sup> Paragraph 4A was inserted by regulation 6(7)(d) of [S.R. 1991 No. 488](#)

<sup>(98)</sup> Sub-paragraph (1) was amended by regulation 2(26)(g) of [S.R. 1996 No. 354](#)

<sup>(99)</sup> Sub-paragraph (5) was substituted by regulation 2(26)(h) of [S.R. 1996 No. 354](#)

- amount of an employment and support allowance payable);” and
- (iii) after “as the case may be, jobseeker’s allowance” insert “or employment and support allowance”;
- (e) in paragraph 6A**(100)** (water charges)—
- (i) in sub-paragraph (9)(a)—
- (aa) omit “or” after sub-head (ii), and
- (bb) after sub-head (iii) add—
- “(iv) in the case of employment and support allowance the applicable amount for the family as determined under regulation 67(1)(a) and (b) or 68(1)(a) to (c) of the Employment and Support Allowance Regulations; or”;
- (ii) in sub-paragraph (9)(b)(i) for “to (iii)” substitute “to (iv)”;
- (iii) in sub-paragraph (11) in paragraph (b) of the definition of “specified benefit” after “jobseeker’s allowance” add “or employment and support allowance”, and
- (iv) for sub-paragraph (12) substitute—
- “(12) For the purposes of paragraph (b) of the definition of “specified benefit” in sub-paragraph (11)—
- (a) “jobseeker’s allowance” means—
- (i) income-based jobseeker’s allowance, and
- (ii) in a case where, if there was no entitlement to contribution-based jobseeker’s allowance, there would be entitlement to income-based jobseeker’s allowance at the same rate, contribution-based jobseeker’s allowance;
- (b) “employment and support allowance” means—
- (i) income-related employment and support allowance, and
- (ii) in a case where, if there was no entitlement to contributory employment and support allowance, there would be entitlement to income-related employment and support allowance at the same rate, contributory employment and support allowance.”; and
- (f) in paragraph 7B**(101)** (arrears of child support maintenance)—
- (i) after “jobseeker’s allowance”, in each place where it occurs, insert “or contributory employment and support allowance”, and
- (ii) in sub-paragraph (3) after “Jobseekers Order” insert “or, as the case may be, the amount applicable to the beneficiary under regulation 67(2) of the Employment and Support Allowance Regulations”.
- (19) In Schedule 8B**(102)** (deductions of mortgage interest from benefit and payment to qualifying lenders)—

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**(100)** Paragraph 6A was inserted by regulation 2(e) of [S.R. 2007 No. 206](#)

**(101)** Paragraph 7B was inserted by regulation 2(8)(b) of [S.R. 1996 No. 432](#) and amended by Article 9(2) of [S.R. 1999 No. 472 \(C.36\)](#)

**(102)** Schedule 8B was inserted by regulation 5 of [S.R. 1992 No. 271](#); relevant amending Rules are [S.R. 1995 No. 301](#), [S.R. 1996 Nos. 354 and 622](#), [S.R. 1997 Nos. 165 and 435](#), [S.R. 2001 No. 78](#), [S.R. 2003 No. 191](#) and [S.R. 2004 No. 461](#)

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- (a) in paragraph 1 (interpretation) in the definition of “relevant benefits”**(103)**—
  - (i) omit “and” after paragraph (b), and
  - (ii) after paragraph (c) add—
    - “and
    - (d) income-related employment and support allowance,”;
- (b) in paragraph 2(a)**(104)** (specified circumstances for the purposes of regulation 34ZA)—
  - (i) omit “or” after heads (i) and (ii), and
  - (ii) after head (iii) add—
    - “or
    - (iv) Schedule 6 to the Employment and Support Allowance Regulations,”;
- (c) in paragraph 3**(105)** (specified part of relevant benefit)—
  - (i) in sub-paragraph (1) for “or, in the case of jobseeker’s allowance,” to the end substitute “, in the case of jobseeker’s allowance, a sum equal to the amount of mortgage interest to be met in accordance with paragraphs 6 to 9 of Schedule 2 to the Jobseeker’s Allowance Regulations or, in the case of employment and support allowance, a sum equal to the amount of mortgage interest to be met in accordance with paragraphs 8 to 11 of Schedule 6 to the Employment and Support Allowance Regulations.”, and
  - (ii) in sub-paragraph (3)—
    - (aa) for “of jobseeker’s allowance” substitute “jobseeker’s allowance, employment and support allowance”,
    - (bb) in head (b) for “or paragraph 4(8) or (11) or 17 of Schedule 2 to the Jobseeker’s Allowance Regulations” substitute “, paragraph 4(8) or (11) or 17 of Schedule 2 to the Jobseeker’s Allowance Regulations or paragraph 6(10) or (13) or 19 of Schedule 6 to the Employment and Support Allowance Regulations”,
    - (cc) in the definition of “A” for “or paragraph 1 of Schedule 2 to the Jobseeker’s Allowance Regulations” substitute “, paragraph 1 of Schedule 2 to the Jobseeker’s Allowance Regulations or paragraph 1 of Schedule 6 to the Employment and Support Allowance Regulations”,
    - (dd) in the definition of “B” for “ or paragraphs 6 to 9 of Schedule 2 to the Jobseeker’s Allowance Regulations” substitute “, paragraphs 6 to 9 of Schedule 2 to the Jobseeker’s Allowance Regulations or paragraphs 8 to 11 of Schedule 6 to the Employment and Support Allowance Regulations”, and
    - (ee) in the definition of “C” for “or paragraph 4(8) or (11) or 17 of Schedule 2 to the Jobseeker’s Allowance Regulations” substitute “, paragraph 4(8) or (11) or 17 of Schedule 2 to the Jobseeker’s Allowance Regulations or paragraph 19 of Schedule 6 to the Employment and Support Allowance Regulations”;

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**(103)** The definition of “relevant benefits” was substituted by regulation 2(27)(a)(ii) of [S.R. 1996 No. 354](#) and amended by regulation 16(2)(b) of [S.R. 1996 No. 622](#) and regulation 14(2)(b) of [S.R. 2003 No. 191](#)

**(104)** Paragraph 2 was substituted by paragraph 3(2) of Schedule 2 to [S.R. 1995 No. 301](#) and amended by regulation 2(27)(b) of [S.R. 1996 No. 354](#), regulation 14(2)(c) and (d) of [S.R. 2003 No. 191](#) and regulation 5(a) of [S.R. 2004 No. 461](#)

**(105)** Paragraph 3(1) was amended by paragraph 3(3) of Schedule 2 to [S.R. 1995 No. 301](#), regulation 2(27) of [S.R. 1996 No. 354](#), regulation 4(3)(b) of [S.R. 1997 No. 165](#), Article 9(14) of [S.R. 1999 No. 472 \(C. 36\)](#), regulation 11(3) of [S.R. 2001 No. 78](#) and regulation 14(2)(f) of [S.R. 2003 No. 191](#)

- (d) in paragraph 4(1)(a)(**106**) (more than one loan) for “or paragraph 11 of Schedule 2 to the Jobseeker’s Allowance Regulations” substitute “, paragraph 11 of Schedule 2 to the Jobseeker’s Allowance Regulations or paragraph 13 of Schedule 6 to the Employment and Support Allowance Regulations”;
  - (e) in paragraph 9(**107**) (provision of information)—
    - (i) in sub-paragraphs (2)(a) and (3)(a) for “or income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance or employment and support allowance”, and
    - (ii) in sub-paragraph (4) for “or paragraph 1A of Schedule 2 to the Jobseeker’s Allowance Regulations” substitute “, paragraph 1A of Schedule 2 to the Jobseeker’s Allowance Regulations or paragraph 3 of Schedule 6 to the Employment and Support Allowance Regulations”; and
  - (f) in paragraph 10(2)(a)(**108**) (recovery of sums wrongly paid) for “or paragraph 9 of Schedule 2 to the State Pension Credit Regulations” substitute “, paragraph 9 of Schedule 2 to the State Pension Credit Regulations or paragraph 13 of Schedule 6 to the Employment and Support Allowance Regulations”.
- (20) In Schedule 8C(**109**) (deductions from benefit in respect of child support maintenance and payment to persons with care)—
- (a) in paragraph 2(1) (deductions) for “or income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance or income-related employment and support allowance”;
  - (b) in paragraph 3(1) (arrears) for “or income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance or income-related employment and support allowance”;
  - (c) in paragraph 5(1) (flat rate maintenance) for “or income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance or income-related employment and support allowance”;
  - (d) in paragraph 6(1) (flat rate maintenance (polygamous marriage)) for “or income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance or income-related employment and support allowance”; and
  - (e) in paragraph 8 (general) for “and regulation 15(3) of the State Pension Credit Regulations” insert “, regulation 15(3) of the State Pension Credit Regulations and regulation 104(3) of the Employment and Support Allowance Regulations”.

**F3** [Reg. 13\(18\)\(a\)\(iv\)](#) revoked (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/413\)](#), regs. 1(1), **8**

#### Commencement Information

- I13** [Reg. 13\(1\)-\(12\)\(14\)-\(20\)](#) in operation at 27.7.2008, see [reg. 1\(a\)](#)
- I14** [Reg. 13\(13\)](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

(**106**) Paragraph 4 was amended by paragraph 3(4) of Schedule 2 to [S.R. 1995 No. 301](#), regulation 2(27)(e) of [S.R. 1996 No. 354](#), regulation 4(3)(c) of [S.R. 1997 No. 165](#) and regulation 14(2)(g) of [S.R. 2003 No. 191](#)

(**107**) Paragraph 9 was amended by regulation 2(27)(f) of [S.R. 1996 No. 354](#), regulation 3 of [S.R. 1997 No. 435](#) and regulation 14(2) of [S.R. 2003 No. 191](#)

(**108**) Paragraph 10 was amended by paragraph 3(5) of Schedule 2 to [S.R. 1995 No. 301](#), regulation 2(27)(g) of [S.R. 1996 No. 354](#), regulation 14(2)(k) of [S.R. 2003 No. 191](#) and regulation 5(b) of [S.R. 2004 No. 461](#)

(**109**) Schedule 8C was inserted by regulation 2(3) of [S.R. 2001 No. 22](#) and amended by regulation 2(3) of [S.R. 2002 No. 254](#) and regulation 14(3) of [S.R. 2003 No. 191](#)

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## Amendment of the Social Fund (Recovery by Deductions from Benefits) Regulations

14. In regulation 2 of the Social Fund (Recovery by Deductions from Benefits) Regulations (Northern Ireland) 1988(110) (benefits from which an award may be recovered) after paragraph (d) insert—

“(da) an employment and support allowance under section 1 of the Welfare Reform Act (Northern Ireland) 2007;”.

### Commencement Information

**I15** [Reg. 14](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

## Amendment of the Social Security (Payments on account, Overpayments and Recovery) Regulations

15.—(1) The Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988(111) are amended in accordance with paragraphs (2) to (12).

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

(a) in the definition of “benefit”(112) after “state pension credit” insert “, an employment and support allowance”;

(b) after the definition of “disability working allowance”(113) insert—

““the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;” and

(c) after the definition of “the State Pension Credit Regulations”(114) add—

““the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007.”.

(3) In regulation 2(4)(115) (making of interim payments) after “income support” insert “or income-related employment and support allowance”.

(4) In regulation 4(3)(c)(116) (recovery of overpaid interim payments) after “income support” insert “or income-related employment and support allowance”.

(5) In regulation 5(3)(117) (offsetting prior payment against subsequent award) for “or income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance or an income-related employment and support allowance”.

(6) In regulation 7(1)(118) (duplication and prescribed income)—

(a) in sub-paragraph (a) for “or Part III of the State Pension Credit Regulations” substitute “, Part III of the State Pension Credit Regulations or Part 10 of the Employment and Support Allowance Regulations”; and

(110) S.R. 1988 No. 21; regulation 2 was amended by regulation 20 of S.R. 1995 No. 150, regulation 6 of S.R. 1996 No. 405, regulation 5 of S.R. 1999 No. 385, regulation 2 of S.R. 2001 No. 52, paragraph 1(j) of the Schedule to S.R. 2002 No. 323, regulation 25(7) of S.R. 2003 No. 191, regulation 2(6) of S.R. 2003 No. 213 and regulation 5 of S.R. 2003 No. 367

(111) S.R. 1988 No. 142; relevant amending Rules are S.R. 1988 No. 369, S.R. 1992 No. 6, S.R. 1993 No. 175, S.R. 1995 No. 150, S.R. 1996 Nos. 289, 464 and 622, S.R. 1999 No. 472 (C. 36), S.R. 2003 No. 191 and S.R. 2005 Nos. 536 and 582

(112) The definition of “benefit” was amended by regulation 4(2) of S.R. 1988 No. 369, regulation 21(2)(b) of S.R. 1995 No. 150, regulation 15(2)(a) of S.R. 1996 No. 289 and regulation 26(2)(a) of S.R. 2003 No. 191

(113) The definition of “disability working allowance” was inserted by regulation 14(2)(b) of S.R. 1992 No. 6

(114) The definition of “the State Pension Credit Regulations” was inserted by regulation 26(2)(b) of S.R. 2003 No. 191

(115) Paragraph (4) was added by regulation 2(3) of S.R. 1993 No. 175

(116) Sub-paragraph (c) was added by regulation 2(4)(b)(ii) of S.R. 1993 No. 175

(117) Paragraph (3) was amended by regulation 15(3) of S.R. 1996 No. 289 and regulation 26(5) of S.R. 2003 No. 191

(118) Paragraph (1) was substituted by regulation 2(5)(a) of S.R. 1993 No. 175 and amended by regulation 15(4) of S.R. 1996 No. 289 and regulation 26(3) of S.R. 2003 No. 191



- (b) in sub-paragraph (b) after “Jobseeker’s Allowance Regulations” insert “or Chapter 9 of Part 10 to the Employment and Support Allowance Regulations”.
- (7) In regulation 8 (duplication and prescribed payments)—
- (a) in paragraph (1) after sub-paragraph (j)(**119**) add—
- “(k) a contributory employment and support allowance.”; and
- (b) in paragraph (2)(**120**) for “or income-based jobseekers allowance” substitute “, income-based jobseekers allowance or income-related employment and support allowance”.
- (8) In regulation 13(b)(**121**) (sums to be deducted in calculating recoverable amounts) for “or income-based jobseeker’s allowance” insert “, income-based jobseeker’s allowance or income related employment and support allowance”.
- (9) In regulation 14(**122**) (quarterly diminution of capital)—
- (a) in paragraph (1) after “income-based jobseeker’s allowance”, in both places where it occurs, insert “, income-related employment and support allowance”; and
- (b) in paragraph (3) in the definition of “overpayment period” for “or an income-based jobseeker’s allowance” substitute “, income based jobseeker’s allowance or income-related employment and support allowance”.
- (10) In regulation 15(2)(d)(**123**) (recovery by deduction from prescribed benefits) for “or a jobseeker’s allowance” substitute “, a jobseeker’s allowance or an employment and support allowance”.
- (11) In regulation 16 (limitations on deductions from prescribed benefits)—
- (a) in paragraph (4A)(**124**) after sub-paragraph (d) add—
- “(e) an income-related employment and support allowance;
- (f) where, if there was no entitlement to a contributory employment and support allowance, there would be entitlement to an income-related employment and support allowance at the same rate, a contributory employment and support allowance.”;
- (b) in paragraph (6)(**125**) after sub-paragraph (c) add—
- “or
- (d) in the calculation of the income of a person to whom income-related employment and support allowance is payable, the amount of earnings or other income falling to be taken into account is reduced by paragraph 7 of Schedule 7 to the Employment and Support Allowance Regulations (sums to be disregarded in the calculation of earnings) or paragraphs 15 and 16 of Schedule 8 to those Regulations (sums to be disregarded in the calculation of income other than earnings),”; and
- (c) in paragraph (8)—

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(119) Sub-paragraph (j) was added by regulation 2 of [S.R. 2005 No. 582](#)

(120) Paragraph (2) was amended by regulation 15(3) of [S.R. 1996 No. 289](#), Article 11(5) of [S.R. 1999 No. 472 \(C. 36\)](#) and regulation 26(5) of [S.R. 2003 No. 191](#)

(121) Regulation 13 was amended by regulation 15(3) of [S.R. 1996 No. 289](#) and regulation 26(6) of [S.R. 2003 No. 191](#)

(122) Regulation 14 was amended by regulation 14(5) of [S.R. 1992 No. 6](#), regulation 15(5) of [S.R. 1996 No. 289](#), regulation 3(2) of [S.R. 1996 No. 464](#) and regulation 26(5) of [S.R. 2003 No. 191](#)

(123) Paragraph (2)(d) was amended by regulation 3(3) of [S.R. 1996 No. 464](#) and regulation 26(5) of [S.R. 2003 No. 191](#)

(124) Paragraph (4A) was inserted by regulation 3(4)(b) of [S.R. 1996 No. 464](#) and amended by regulation 26(4)(a) of [S.R. 2003 No. 191](#)

(125) Paragraph (6) was amended by regulation 15(6)(b) of [S.R. 1996 No. 289](#) and regulation 26(4)(b) of [S.R. 2003 No. 191](#)

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- (i) in paragraph (a) of the definition of “personal allowance for a single claimant aged not less than 25”(126) after “entitled to” insert “employment and support allowance,”, and
  - (ii) in the definition of “specified benefit”(127) after “income support” insert “an employment and support allowance,”.
- (12) In regulation 17(128) (recovery from couples) after “income-based jobseeker’s allowance”, in both places where it occurs, insert “, income-related employment and support allowance”.

#### Commencement Information

**I16** Reg. 15 in operation at 27.10.2008, see [reg. 1\(b\)](#)

### Amendment of the Social Fund Cold Weather Payments (General) Regulations

**16.**—(1) The Social Fund Cold Weather Payments (General) Regulations (Northern Ireland) 1988(129) are amended in accordance with paragraphs (2) and (3).

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

(a) after the definition of “the Order” insert—

““the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007;”;

(b) in the definition of “claimant”(130) for “or income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance or income-related employment and support allowance”; and

(c) after the definition of “an income-based jobseeker’s allowance”(131) insert—

““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act;”.

(3) In regulation 1A(1)(132) (prescribed description of persons)—

(a) for “or an income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance or income-related employment and support allowance”; and

(b) after sub-paragraph (ac) insert—

“(ad) whose applicable amount includes one or more of the premiums specified in [F<sup>4</sup>paragraphs 5 to 7] of Schedule 4 to the Employment and Support Allowance Regulations (Northern Ireland) 2008; or

(ae) whose applicable amount includes an amount under section 4(2)(b) of the Welfare Reform Act; or”.

(126) The definition of “personal allowance for a single claimant aged not less than 25” was substituted by regulation 26(4)(c)(i) of S.R. 2003 No. 191

(127) The definition of “specified benefit” was amended by regulation 21(4) of S.R. 1995 No. 150, regulation 15(6)(c)(ii) of S.R. 1996 No. 289, regulation 16(3) of S.R. 1996 No. 622 and regulation 26(4)(c)(ii) of S.R. 2003 No. 191

(128) Regulation 17 was amended by regulation 14(8) of S.R. 1992 No. 6, regulation 15(5) of S.R. 1996 No. 289, regulation 26(5) of S.R. 2003 No. 191 and paragraph 17 of Schedule 3 to S.R. 2005 No. 536

(129) S.R. 1988 No. 368; relevant amending Regulations are S.R. 1991 Nos. 464 and 487, S.R. 1996 No. 488, S.R. 2003 Nos. 191 and 267, S.R. 2004 No. 429 and S.R. 2005 No. 447

(130) The definition of “claimant” was substituted by regulation 2(a) of S.R. 1991 No. 464 and amended by regulation 2(a)(i) of S.R. 2005 No. 447

(131) The definition of “income-based jobseeker’s allowance” was inserted by regulation 2(b) of S.R. 1996 No. 488

(132) Regulation 1A was inserted by regulation 2 of S.R. 1991 No. 487 and paragraph (1) was amended by regulation 3 of S.R. 1996 No. 488, regulation 25(4) and (5) of S.R. 2003 No. 191, regulation 3(2)(a) to (d) of S.R. 2003 No. 267 and regulation 2 of S.R. 2004 No. 429

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**F4** Words in [reg. 16\(3\)\(b\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/413\)](#), [regs. 1\(2\)](#), [5\(3\)](#)

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**Commencement Information**

**I17** [Reg. 16](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

### **Amendment of the Child Support (Maintenance Assessment Procedure) Regulations**

**17.—(1)** The Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992(**133**) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 1 (interpretation)—

(a) in paragraph (2)—

(i) in the definition of “benefit week”(**134**) after “Jobseeker’s Allowance Regulations,” insert “in relation to employment and support allowance has the same meaning as in the Employment and Support Allowance Regulations (Northern Ireland) 2008,”,

(ii) after the definition of “family credit”(**135**) insert—

““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act (Northern Ireland) 2007;”, and

(iii) in the definition of “relevant benefit”(**136**) after “income-based jobseeker’s allowance,” insert “income-related employment and support allowance;”;

(b) in paragraph (3)(c)(**137**) for “or income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance or income-related employment and support allowance”.

(3) In regulation 8D(8)(**138**) (miscellaneous provisions in relation to interim maintenance assessments) after “income support” in each place where it occurs insert “, an income-related employment and support allowance”.

(4) In regulation 29A(5)(**139**) (effective dates of new maintenance assessments in particular cases) for “or an income-based jobseeker’s allowance” in each place where it occurs substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”.

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**Commencement Information**

**I18** [Reg. 17](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

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(**133**) S.R. 1992 No. 340; relevant amending Regulations are S.R. 1995 No. 475, S.R. 1996 Nos. 289 and 590, S.R. 1999 Nos. 167 and 385 and S.R. 2003 No. 469. See also regulation 29 of S.R. 2001 No. 17

(**134**) The definition of “benefit week” was amended by regulation 20(2)(a)(ii) of S.R. 1996 No. 289

(**135**) The definition of “family credit” was inserted by regulation 6(3) of S.R. 1999 No. 385

(**136**) The definition of “relevant benefit” was amended by regulation 20(2)(a)(iv) of S.R. 1996 No. 289 and regulation 6(4) of S.R. 1999 No. 385

(**137**) Sub-paragraph (c) was inserted by regulation 3(2)(c) of S.R. 1995 No. 475 and amended by regulation 20(2)(b)(ii) of S.R. 1996 No. 289

(**138**) Regulation 8D was inserted by regulation 3(3) of S.R. 1995 No. 475 and paragraph (8) was substituted by regulation 2(3) of S.R. 1996 No. 590 and amended by regulation 2(3) of S.R. 2003 No. 469

(**139**) Regulation 29A was inserted by regulation 3(19) of S.R. 1995 No. 475 and paragraph (5) was inserted by regulation 2(5)(b) of S.R. 1996 No. 590 and amended by regulation 2(14)(b) of S.R. 1999 No. 167 and regulation 2(3) of S.R. 2003 No. 469

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Employment and Support Allowance (Consequential Provisions) Regulations (Northern Ireland) 2008*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

## Amendment of the Child Support (Maintenance Assessments and Special Cases) Regulations

**18.**—(1) The Child Support (Maintenance Assessments and Special Cases) Regulations (Northern Ireland) 1992(**140**) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 1(2) (interpretation) after the definition of “the Jobseekers Order”(**141**) insert—  
““the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007;”.

(3) In regulation 7(1)(b)(**142**) (net income: calculation or estimation of N) for “or the Jobseekers Order” substitute “, the Jobseekers Order or the Welfare Reform Act”.

(4) In regulation 28(1)(**143**) (amount payable where absent parent is in receipt of income support or other prescribed benefit) after “income-based jobseeker’s allowance” insert “, income-related employment and support allowance under Part 1 of the Welfare Reform Act,”.

(5) In Schedule 1 (calculation of N and M) in paragraph 6(2)(**144**) of Part II (benefit payments) for “or the Jobseekers Order” substitute “, the Jobseekers Order or the Welfare Reform Act”.

### Commencement Information

**I19** Reg. 18 in operation at 27.10.2008, see [reg. 1\(b\)](#)

## Amendment of the Jobseeker’s Allowance Regulations

**19.**—(1) The Jobseeker’s Allowance Regulations (Northern Ireland) 1996(**145**) are amended in accordance with paragraphs (2) to (29).

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

(a) after the definition of “the Eileen Trust” insert—

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

(b) after the definition of “week” insert—

““the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007;”.

(3) In regulation 11(2) (part-time students) for “or incapacity benefit” in each place where it occurs substitute “, incapacity benefit or employment and support allowance”.

(4) In regulation 14(1) (circumstances in which a person is to be treated as available)—

(a) in sub-paragraphs (k) and (kk)(**146**) (circumstances in which a person is to be treated as available) after “capable of work” insert “or as not having limited capability for work”; and

(b) in sub-paragraph (n)(ii)(**147**) after “incapacity benefit” insert “, employment and support allowance”.

**(140)** S.R. 1992 No. 341; relevant amending Regulations are S.R. 1993 No. 164, S.R. 1998 No. 8 and S.R. 1996 No. 289. See also regulation 15 of S.R. 2001 No. 18

**(141)** The definition of “the Jobseekers Order” was inserted by regulation 21(2) of S.R. 1996 No. 289

**(142)** Regulation 7(1)(b) was amended by regulation 21(7)(a) of S.R. 1996 No. 289

**(143)** Regulation 28(1) was amended by regulation 5(10)(a) and (b) of S.R. 1993 No. 164, regulation 4(13) of S.R. 1998 No. 8 and regulation 21(3) of S.R. 1996 No. 289

**(144)** Paragraph 6(2) was amended by regulation 21(7)(b) of S.R. 1996 No. 289

**(145)** S.R. 1996 No. 198; relevant amending Rules are S.R. 1996 Nos. 202, 356, 358 and 503, S.R. 1997 Nos. 22, 435 and 541, S.R. 1998 No. 81, S.R. 1999 Nos. 428 (C. 32) and 468, S.R. 2000 No. 350, S.R. 2001 Nos. 120, 151 and 261, S.R. 2002 Nos. 275, 295 and 323, S.R. 2003 Nos. 191, 195 and 338, S.R. 2004 Nos. 143, 308 and 394, S.R. 2005 Nos. 98, 319 (C. 23) and 536, S.R. 2006 Nos. 128 and 359, S.R. 2007 Nos. 154, 196 and 475 and S.R. 2008 No. 112

**(146)** Sub-paragraph (kk) was inserted by regulation 3(2)(a) of S.R. 2004 No. 308

**(147)** Sub-paragraph (n) was inserted by regulation 2 of S.R. 1999 No. 468

(5) In regulation 19(1) (circumstances in which a person is to be treated as actively seeking employment) in sub-paragraphs (k) and (kk) after “capable of work” insert “or as not having limited capability for work”.

(6) In regulation 46(1)(**148**) (waiting days)—

(a) in sub-paragraph (a) after “incapacity benefit” insert “, employment and support allowance”; and

(b) in sub-paragraph (d) after “incapacity benefit” insert “, employment and support allowance”.

(7) In regulation 48(2)(**149**) (linking periods) after sub-paragraph (b) insert—

“(bb) any period throughout which the claimant has, or is treated as having, limited capability for work for the purposes of Part 1 of the Welfare Reform Act.”.

(8) In regulation 49 (persons approaching retirement and the jobseeking period)—

(a) in paragraph (2)(**150**) for “(3) and (4)” substitute “(3), (4) and (4A)”; and

(b) after paragraph (4) insert—

“(4A) Any day which, for the purposes of Part 1 of the Welfare Reform Act, is a day where the person has limited capability for work falling within a period of limited capability for work shall not be a day on which the person is treated as satisfying the conditions referred to in paragraph (2).”.

(9) In regulation 55 (short periods of sickness)—

(a) in paragraph (1)(**151**)—

(i) in sub-paragraph (c) after “capable of work” insert “or not having limited capability for work”,

(ii) after “capable of work”, in the second place where it occurs, insert “or as not having limited capability for work”, and

(iii) after “incapacity benefit” insert “, employment and support allowance,”; and

(b) in paragraph (4) after “within” insert “ 12 weeks of an entitlement of his to employment and support allowance or”.

(10) In regulation 55A(1)(**152**) (periods of sickness and persons receiving treatment outside Northern Ireland)—

(a) in sub-paragraph (d) after “capable of work” insert “or not having limited capability for work”;

(b) after “capable of work”, in the second place where it occurs, insert “or as not having limited capability for work”; and

(c) after “incapacity benefit” insert “, employment and support allowance”.

(11) In regulation 61(**153**) (other young persons in prescribed circumstances)—

(a) in paragraph (1) after sub-paragraph (f) add—

“(g) who has limited capability for work for the purpose of Part 1 of the Welfare Reform Act.”; and

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(148) Regulation 46(1) was amended by paragraph 10 of Schedule 2 to S.R. 2000 No. 350 and regulation 3 of S.R. 2002 No. 323

(149) Regulation 48(2) was amended by regulation 2(8)(a) of S.R. 1996 No. 503, regulation 4 of S.R. 1997 No. 541, regulation 3 of S.R. 2001 No. 151, regulation 2(3) of S.R. 2002 No. 275 and regulation 3 of S.R. 2002 No. 323

(150) Paragraph (2) was substituted by regulation 16(2) of S.R. 1996 No. 358

(151) Paragraph (1) was amended by regulation 17 of S.R. 1996 No. 358, Article 9(5)(d) of S.R. 1999 No. 428 (C. 32) and paragraph 17 of Schedule 2 to S.R. 2000 No. 350

(152) Regulation 55A was inserted by regulation 3(6) of S.R. 2004 No. 308

(153) Regulation 61 was amended by paragraph 19 of Schedule 2 to S.R. 2000 No. 350

- (b) in paragraph (2)(b) for “1(b) or (c)” in each place where it occurs substitute “1(b), (c) or (g)”.
- (12) In regulation 76(2)(**154**) (persons of a prescribed description) after sub-paragraph (d) add—  
“or
- (e) entitled to an income-related employment and support allowance or would, but for paragraph 6(1)(d) of Schedule 1 to the Welfare Reform Act (conditions of entitlement to income-related employment and support allowance), be so entitled.”.
- (13) In regulation 78(6) (circumstances in which a person is to be treated as being or not being a member of the household) after “income support” insert “or an income-related employment and support allowance”.
- (14) In regulation 96(2) (date on which income is treated as paid) for “or jobseeker’s allowance” substitute “, jobseeker’s allowance or employment and support allowance”.
- (15) In regulation 97(4)(b) (calculation of weekly amount of income) for “or income support” substitute “, income support or employment and support allowance”.
- (16) In regulation 103 (calculation of income other than earnings) after paragraph (5A)(**155**) insert—  
“(5B) Where the claimant—  
(a) is a member of a couple;  
(b) his partner is receiving a contributory employment and support allowance, and  
(c) that benefit has been reduced under regulation 63 of the Employment and Support Allowance Regulations,  
the amount of that benefit to be taken into account is the amount as if it had not been reduced.”.
- (17) In regulation 140(3)(**156**) (meaning of “person in hardship”) after “income support” insert “or an income-related employment and support allowance”.
- (18) In regulation 146A(3)(**157**) (meaning of “couple in hardship”) after “(income support)” add “or an employment and support allowance”.
- (19) In regulation 149(1)(a)(ii)(**158**) (assessment of income and capital in urgent cases) after “Income Support Regulations” insert “or of employment and support allowance under regulation 164 of the Employment and Support Allowance Regulations”.
- (20) In regulation 150(1)(b) (amount of a jobseeker’s allowance payable) in the definition of “B” for “or severe disablement allowance” substitute “, severe disablement allowance or employment and support allowance”.
- (21) In regulation 153(b) (modification in the calculation of income) after “Benefits Act” insert “or employment and support allowance”.
- (22) In regulation 169(b) (trade disputes: exemptions from Article 17 of the Order)—  
(a) omit “or” after sub-paragraph (i); and  
(b) after sub-paragraph (ii) add—  
“or  
(iii) has limited capability for work.”.

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(154) Regulation 76(2) was amended by paragraph 2 of Schedule 3 to S.R. 2005 No. 319 (C. 23) and regulation 4(6)(b) of S.R. 2006 No. 128

(155) Paragraph 5A was inserted by regulation 7(2) of S.R. 1997 No. 22

(156) Regulation 140(3) was amended by regulation 25 of S.R. 1996 No. 358

(157) Regulation 146A was inserted by regulation 2(3) of S.R. 2000 No. 350

(158) Sub-paragraph (1)(a) was substituted by regulation 12(2)(a) of S.R. 1998 No. 81

(23) In Schedule A1(**159**) (categories of members of a joint-claim couple etc.)—

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

**“Member has limited capability for work**

**6A.** A person who—

- (a) has limited capability for work under section 8 of the Welfare Reform Act;
- (b) is treated as having limited capability for work under regulations made under paragraph 1 of Schedule 2 to that Act, or
- (c) is treated as not having limited capability for work under regulations made under section 18(1) of that Act (disqualification).”;

(b) in paragraph 12 (pregnancy) after “incapable of work” insert “or who has limited capability for work”.

(24) In Schedule 1 (applicable amounts) in paragraph 1(3)(**160**)—

(a) in head (a)—

- (i) in sub-head (iii) after “income support” insert “or an income-related employment and support allowance”, and
- (ii) in sub-head (vii) after “income support” insert “or an income-related employment and support allowance”;

(b) in head (f)(iii) after “income support” insert “or an income-related employment and support allowance”;

(c) in head (g)(iii) after “income support” insert “or an income-related employment and support allowance”;

(d) in head (h)(iii) after “income support” insert “or an income-related employment and support allowance”; and

(e) in paragraph 20H(1)(**161**) (additional conditions for higher pensioner and disability premium) after sub-paragraph (e) insert—

“(ee) has had limited capability for work or has been treated as having limited capability for work for a continuous period of not less than—

- (i) 196 days in the case of a member of a joint-claim couple who is terminally ill within the meaning of regulation 2(1) of the Employment and Support Allowance Regulations, or
- (ii) 364 days in any other case,

and for these purposes any two or more periods of limited capability for work separated by a break of not more than 12 weeks is to be treated as one continuous period.”.

(25) In Schedule 2 (housing costs)—

(a) in paragraph 1 (housing costs)—

(i) in sub-paragraph (3)(**162**)—

(aa) omit “or” after head (c), and

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(159) Schedule A1 was inserted by regulation 2(4) of S.R. 2000 No. 350 and amended by regulation 2(6) of S.R. 2001 No. 120, regulation 3 of S.R. 2002 No. 323, regulation 4(9) of S.R. 2006 No. 128 and regulation 13(11) of S.R. 2006 No. 359

(160) Paragraph 1(3) was amended by regulation 16 of S.R. 1996 No. 356, paragraph 23(11)(a) of Schedule 3 to S.R. 2005 No. 536, regulation 3(8)(a) of S.R. 2007 No. 154 and regulation 4(13)(a) and (b) of S.R. 2008 No. 112

(161) Paragraph 20H was inserted by paragraph 53(4) of Schedule 2 to S.R. 2000 No. 350 and amended by paragraph 20(e) of Schedule 2 to S.R. 2003 No. 195 and regulation 13(12)(a) of S.R. 2006 No. 359

(162) Sub-paragraph (3) was amended by regulation 13(13)(a) of S.R. 2006 No. 359

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(bb) after head (d) add—

“or

(e) who is in receipt of an employment and support allowance which includes an amount under section 2(2) or (3) or 4(4) or (5) of the Welfare Reform Act (components).”, and

(ii) in sub-paragraph (4) after “disqualification etc.)” add “or disqualified for receiving employment and support allowance or treated as not having limited capability for work in accordance with regulations made under section 18 of the Welfare Reform Act (disqualification)”;

(b) in paragraph 1A**(163)** (previous entitlement to income support or state pension credit)—

(i) in the heading after “income support” insert “, income-related employment and support allowance”,

(ii) after “income support” in each place where it occurs insert “or income-related employment and support allowance”,

(iii) in sub-paragraph (1)(a) after “Income Support Regulations” insert “or paragraphs 16 to 18 of Schedule 6 to the Employment and Support Allowance Regulations”, and

(iv) in sub-paragraph (1A)(a)**(164)** after “Income Support Regulations” insert “or paragraph 16 or 17 of Schedule 6 to the Employment and Support Allowance Regulations”;

(c) in paragraph 6 (existing housing costs)—

(i) in sub-paragraph (3)**(165)** for “or state pension credit” substitute “, state pension credit or income-related employment and support allowance”, and

(ii) in sub-paragraph (4)**(166)** after “income support” insert “or income-related employment and support allowance”;

(d) in paragraph 7 (new housing costs)—

(i) in sub-paragraph (2A)**(167)** after “income support” insert “or income-related employment and support allowance”, and

(ii) in sub-paragraph (2B)**(168)** after “income support” insert “or income-related employment and support allowance”;

(e) in paragraph 13(6)(a) (linking rule) for “or incapacity benefit” substitute “, incapacity benefit or contributory employment and support allowance”;

(f) in paragraph 17(7) (non-dependant deductions)—

(i) omit “or” after head (g), and

(ii) after head (h)**(169)** add—

“or

(i) he is aged less than 25 and is in receipt of employment and support allowance which does not include an amount under section <sup>F5</sup>... 4(4) or (5) of the Welfare Reform Act (components).”; and

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**(163)** Paragraph 1A was inserted by regulation 5(2) of S.R. 1997 No. 435 and amended by paragraph 54(2) of Schedule 2 to S.R. 2000 No. 350 and regulation 4(a) of S.R. 2007 No. 475

**(164)** Sub-paragraph (1A) was inserted by paragraph 54(2) of Schedule 2 to S.R. 2000 No. 350

**(165)** Sub-paragraph (3) was inserted by regulation 5(4) of S.R. 1997 No. 435 and amended by regulation 32(a) of S.R. 2003 No. 191

**(166)** Sub-paragraph (4) was inserted by paragraph 54(5) of Schedule 2 to S.R. 2000 No. 350

**(167)** Sub-paragraph (2A) was inserted by regulation 5(6) of S.R. 1997 No. 435

**(168)** Sub-paragraph (2B) was inserted by paragraph 54(6) of Schedule 2 to S.R. 2000 No. 350

**(169)** Head (h) was added by regulation 5(b) of S.R. 2004 No. 394



- (g) in paragraph 18 (continuity with income support)—
  - (i) in the heading after “income support” add “or income-related employment and support allowance”, and
  - (ii) in sub-paragraph (1)—
    - (aa) after “income support” in the first place where it occurs, insert “or income-related employment and support allowance”, and
    - (bb) in head (c) after “income support” insert “or income-related employment and support allowance”.

(26) In paragraph 5(7) of Schedule 5 (sums to be disregarded in the calculation of earnings) for “or income support” in each place where it occurs substitute “, income support or an employment and support allowance”.

(27) In paragraph 1(5) of Schedule 5A(170) (sums to be disregarded in the calculation of earnings of members of joint-claim couples) for “income support” in each place where it occurs substitute “, income support or an employment and support allowance”.

(28) In Schedule 6 (sums to be disregarded in the calculation of income other than earnings)—

- (a) in paragraph 8(b) for “or income support” substitute “, income support or employment and support allowance”; and
- (b) in paragraph 14(1)(a)(171) for “or severe disablement allowance” substitute “, severe disablement allowance or employment and support allowance”.

(29) In paragraph 12(172) of Schedule 7 (capital to be disregarded)—

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

**F5** Words in [reg. 19\(25\)\(f\)\(ii\)](#) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/413\)](#), [regs. 1\(2\)](#), [5\(4\)](#)

#### Commencement Information

**I20** [Reg. 19](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

### Amendment of the Social Security Benefits (Maintenance Payments and Consequential Amendments) Regulations

**20.**—(1) The Social Security Benefits (Maintenance Payments and Consequential Amendments) Regulations (Northern Ireland) 1996(173) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 1(2) (interpretation) after the definition of “the Act” insert—

““the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations (Northern Ireland) 2008;”.

(3) In regulation 2(c) (interpretation for the purposes of section 72A of the Act)—

- (a) omit “or” after sub-paragraph (i); and

(170) Schedule 5A was inserted by regulation 2(5) of, and paragraph 58 of Schedule 2 to, [S.R. 2000 No. 350](#)

(171) Paragraph 14 was substituted by regulation 4(3)(a) of [S.R. 2004 No. 143](#) and amended by regulation 4(7)(a) of [S.R. 2007 No. 196](#)

(172) Paragraph 12 was amended by regulation 2(2)(c) of [S.R. 2001 No. 261](#), regulation 4 of [S.R. 2002 No. 295](#), paragraph 24(a) of Schedule 2 to [S.R. 2003 No. 195](#), regulation 4(3) of [S.R. 2003 No. 338](#) and regulation 5(6) of [S.R. 2005 No. 98](#)

(173) [S.R. 1996 No. 202](#)

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- (b) after sub-paragraph (ii) add—
  - “or
  - (iii) any income which is taken into account under Part 10 of the Employment and Support Allowance Regulations for the purposes of calculating the amount of employment and support allowance to which the claimant is entitled.”.
- (4) In regulation 3 (persons of a prescribed description)—
  - (a) omit “or” after paragraph (a); and
  - (b) after paragraph (b) add—
    - “or
    - (c) is referred to as a “young person” in the Employment and Support Allowance Regulations by virtue of regulation 2(1) of those Regulations.”.
- (5) In regulation 5 (circumstances in which persons are to be treated as being members of the same household)—
  - (a) omit “either”; and
  - (b) for “or regulation 78 of the Jobseeker’s Allowance Regulations” substitute “, regulation 78 of the Jobseeker’s Allowance Regulations or regulation 156 of the Employment and Support Allowance Regulations”.

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#### Commencement Information

**I21** [Reg. 20](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

### Amendment of the Child Support Departure Direction and Consequential Amendments Regulations

- 21.**—(1) The Child Support Departure Direction and Consequential Amendments Regulations (Northern Ireland) 1996(**174**) are amended in accordance with paragraphs (2) to (4).
- (2) In regulation 1(2) (interpretation) after the definition of “effective date” insert—
    - ““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act (Northern Ireland) 2007 (employment and support allowance);”.
  - (3) In regulation 9(**175**) (departure directions and persons in receipt of income support, state pension credit, income-based jobseeker’s allowance, or working tax credit)—
    - (a) in the heading after “state pension credit” insert “, income-related employment and support allowance,”; and
    - (b) after “state pension credit” in each place where it occurs insert “, income-related employment and support allowance”.
  - (4) In regulation 12(**176**) (meaning of “benefit” for the purposes of Article 28E of the Order) after “income-based jobseeker’s allowance” insert “, income-related employment and support allowance”.

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(**174**) S.R. 1996 No. 541; relevant amending Regulations are S.R. 1998 No. 8 and S.R. 2003 Nos. 84 and 469

(**175**) Regulation 9 was substituted by regulation 9(3) of S.R. 1998 No. 8 and amended by regulation 6(2) of S.R. 2003 No. 84 and regulation 4(2) of S.R. 2003 No. 469

(**176**) Regulation 12 was amended by regulation 6(3) of S.R. 2003 No. 84 and regulation 4(3) of S.R. 2003 No. 469

### Commencement Information

**I22** Reg. 21 in operation at 27.10.2008, see [reg. 1\(b\)](#)

## Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations

**22.**—(1) The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(**177**) are amended in accordance with paragraphs (2) to (14).

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

(a) after the definition of “the Pension Schemes Act” insert—

““the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007;”;

(b) in paragraph (a) of the definition of “claimant”(**178**) for “or section 17(1) of the State Pension Credit Act” substitute “, section 17(1) of the State Pension Credit Act or section 24(1) of the Welfare Reform Act”;

(c) after the definition of “clerk to the appeal tribunal” insert—

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

(d) after the definition of “disability determination”(**179**) insert—

““employment and support allowance decision” means a decision to award a relevant benefit or relevant credit embodied in or necessary to which is a determination that a person has or is to be treated as having limited capability for work under Part 1 of the Welfare Reform Act;

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

“failure determination” means a determination by the Department under regulation 63(1) of the Employment and Support Allowance Regulations that a claimant has failed to satisfy the requirement of regulation 47 or 54 of those Regulations;”;

(e) after the definition of “the Incapacity for Work Regulations”(**180**) insert—

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

(f) after the definition of “legally qualified panel member” insert—

““limited capability for work determination” means a determination whether a person has limited capability for work by applying the test of limited capability for work or whether a person is to be treated as having limited capability for work in accordance with regulation 20 of the Employment and Support Allowance Regulations;

“limited capability for work” has the same meaning as in section 1(4) of the Welfare Reform Act;” and

(**177**) S.R. 1999 No. 162; relevant amending Rules are S.R. 1999 Nos. 267, 271 (C. 22), 408 and 472 (C. 36), S.R. 2000 No. 215, S.R. 2001 No. 23, S.R. 2002 No. 189, S.R. 2003 Nos. 191, 224 and 312, S.R. 2004 Nos. 110 and 516, S.R. 2005 No. 46, S.R. 2006 Nos. 104, 168 and 365, S.R. 2007 Nos. 332, 392 and 395 and S.R. 2008 No. 179

(**178**) The definition of “claimant” was amended by Article 3(2)(a)(ii) of S.R. 1999 No. 271 (C. 22) and regulation 16(b) of S.R. 2003 No. 191

(**179**) The definition of “disability determination” was inserted by regulation 2(2)(a) of S.R. 1999 No. 267

(**180**) The definition of “the Incapacity for Work Regulations” was inserted by regulation 2(2)(b) of S.R. 1999 No. 267

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- (g) in the definition of “payee”(181) for “or “incapacity benefit decision”” substitute “, “incapacity benefit decision” or “employment and support allowance decision””.
- (3) In regulation 3 (revision of decisions)—
- (a) in paragraph (5)(182)—
- (i) in sub-paragraph (c)—
- (aa) after “an incapacity determination” insert “or is an employment and support allowance decision where there has been a limited capability for work determination”, and
- (bb) for “or the incapacity determination” substitute “the incapacity determination or the limited capability for work determination”, and
- (ii) in sub-paragraph (d)—
- (aa) after “where the decision” insert “is an employment and support allowance decision,”,
- (bb) after “in relation to the” insert “limited capability for work determination,”, and
- (cc) after “necessary to” insert “the employment and support allowance decision,”;
- (b) in paragraph (5ZB)(183) after sub-paragraph (b) insert—
- “(bb) contributory employment and support allowance;”;
- (c) after paragraph (5B)(184) insert—
- “(5C) A decision of the Department under Article 11 made in consequence of a failure determination may be revised at any time if it contained an error to which the claimant did not materially contribute.
- (5D) A decision by the Department under Article 9 or 11 awarding employment and support allowance may be revised at any time if—
- (a) it incorporates a determination that the condition in regulation 30 of the Employment and Support Allowance Regulations is satisfied;
- (b) the condition referred to in sub-paragraph (a) was not satisfied at the time when the claim was first determined; and
- (c) there is a period before the award which falls to be decided.”;
- (d) in paragraph (7ZA)(185)—
- (i) in sub-paragraph (a) for “or state pension credit” substitute “, state pension credit or an income-related employment and support allowance”,
- (ii) in sub-paragraph (b) after “Income Support Regulations” insert “or regulation 71 of the Employment and Support Allowance Regulations”,
- (iii) in sub-paragraph (c)(i) after “Income Support Regulations” add “or regulation 67 of the Employment and Support Allowance Regulations”, and
- (iv) in sub-paragraph (d)(ii) after “Income Support Regulations” insert “, paragraph 6(4) of Schedule 4 to the Employment and Support Allowance Regulations”; and

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(181) The definition of “payee” was inserted by regulation 2(2)(c) of S.R. 1999 No. 267

(182) Paragraph (5) was amended by regulation 2(3) of S.R. 1999 No. 267, regulation 3(3)(a) of S.R. 2007 No. 392 and regulation 3(a) of S.R. 2007 No. 395

(183) Paragraph (5ZB) was inserted by regulation 3(b) of S.R. 2007 No. 395

(184) Paragraph (5B) was inserted by regulation 3(3)(b) of S.R. 2007 No. 392

(185) Paragraph (7ZA) was inserted by regulation 7(2)(a) of S.R. 2005 No. 46

- (e) in paragraph (9)(**186**)—
  - (i) omit “or” after sub-paragraph (a), and
  - (ii) after sub-paragraph (b) add—
    - “or
    - (c) a decision which relates to an employment and support allowance where the claimant is terminally ill, within the meaning of regulation 2(1) of the Employment and Support Allowance Regulations, unless the claimant makes an application which contains an express statement that he is terminally ill and where such an application is made, the decision may be revised.”.
- (4) In regulation 6 (supersession of decisions)—
  - (a) in paragraph (2)—
    - (i) in sub-paragraph (a)(i)(**187**) after “Regulations” insert “or regulation 146 of the Employment and Support Allowance Regulations”, and
    - (ii) after sub-paragraph (n)(**188**) add—
      - “(o) is a decision awarding employment and support allowance where there has been a failure determination;
      - (p) is a decision made in consequence of a failure determination where the reduction ceases to have effect under regulation 64 of the Employment and Support Allowance Regulations;
      - (q) is an employment and support allowance decision where, since the decision was made, the Department has received medical evidence from a health care professional approved by the Department for the purposes of regulation 23 or 38 of the Employment and Support Allowance Regulations.”; and
  - (b) in paragraph (6)(a)(**189**) after “Income Support Regulations” insert “, regulation 137 of the Employment and Support Allowance Regulations”.
- (5) In regulation 7 (date from which a decision superseded under Article 11 takes effect)—
  - (a) in paragraph (1)(a)(**190**)—
    - (i) after “(2)(b)” insert “or (be)”, and
    - (ii) for “and 2B” substitute “, 2B and 2C”;
  - (b) in paragraph (2)(**191**)—
    - (i) in sub-paragraph (b)(i) for “or state pension credit” substitute “, state pension credit or an employment and support allowance”, and
    - (ii) before sub-paragraph (c) insert—
      - “or

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**(186)** Paragraph 9 was substituted by regulation 3(2)(b) of S.R. 1999 No. 408 and amended by regulation 3(3) of S.R. 2003 No. 224 and regulation 7(2)(c) of S.R. 2005 No. 46

**(187)** Sub-paragraph (a) was amended by regulation 3(4)(a) of S.R. 2003 No. 224 and regulation 7(4)(a)(i) of S.R. 2005 No. 46

**(188)** Sub-paragraph (n) was added by regulation 9(4) of S.R. 2006 No. 104

**(189)** Paragraph (6) was amended by regulation 3(3)(b) of S.R. 1999 No. 408 and regulation 7(4)(b) of S.R. 2005 No. 46

**(190)** Paragraph (1) was substituted by Article 17(a) of S.R. 1999 No. 472 (C. 36) and amended by regulation 18(a) of S.R. 2003 No. 191 and regulation 3(6)(a) of S.R. 2003 No. 224

**(191)** Paragraph (2) was amended by regulation 2(5) of S.R. 1999 No. 267, Article 17(b) of S.R. 1999 No. 472 (C. 36), regulation 6(5)(b) of S.R. 2000 No. 215, regulation 18(b) of S.R. 2003 No. 191, regulation 3(6)(b) of S.R. 2003 No. 224, regulation 7(5)(a) of S.R. 2005 No. 46, regulation 4(4)(a) of S.R. 2006 No. 168, regulation 3(2) of S.R. 2006 No. 365 and regulation 2(a) of S.R. 2008 No. 179

- (be) in the case of a claimant who is in receipt of an employment and support allowance and the claimant makes an application which contains an express statement that he is terminally ill within the meaning of regulation 2(1) of the Employment and Support Allowance Regulations, from the date the claimant became terminally ill;”;
- (c) for paragraph (3)(**192**) substitute—
- “(3) For the purposes of paragraphs (2) and (8) “benefit week” has the same meaning, as the case may be, as in—
- (a) regulation 2(1) of the Income Support Regulations;
  - (b) regulation 1(2) of the Jobseeker’s Allowance Regulations;
  - (c) regulation 1(2) of the State Pension Credit Regulations; or
  - (d) regulation 2(1) of the Employment and Support Allowance Regulations.”;
- (d) in paragraph (7)(b)(**193**)—
- (i) for “or section 2(7) of the State Pension Credit Act” substitute “, section 2(7) of the State Pension Credit Act or paragraph 6 of Schedule 4 to the Employment and Support Allowance Regulations”, and
  - (ii) in head (i) after “Income Support Regulations” add “or regulation 71 of the Employment and Support Allowance Regulations”;
- (e) in paragraph (13)(a)(**194**) for “and” after head (iii) substitute—
- “or
- (iv) paragraph 16 or 17 of Schedule 6 to the Employment and Support Allowance Regulations; and”;
- (f) after paragraph (17C)(**195**) insert—
- “(17D) Except in a case where paragraph (23) applies, where a claimant is in receipt of an employment and support allowance and his applicable amount includes an amount determined in accordance with Schedule 6 to the Employment and Support Allowance Regulations, and there is a reduction in the amount of eligible capital owing in connection with a loan which qualifies under paragraph 16 or 17 of that Schedule, a decision made under Article 11 shall take effect—
- (a) on the first anniversary of the date on which the claimant’s housing costs were first met under that Schedule; or
  - (b) where the reduction in eligible capital occurred after the first anniversary of the date referred to in sub-paragraph (a), on the next anniversary of that date following the date of the reduction.
- (17E) Where a claimant is in receipt of an employment and support allowance and payments made to that claimant which fall within paragraph 30 or 31(1)(a) to (c) of Schedule 8 to the Employment and Support Allowance Regulations have been disregarded in relation to any decision under Article 9 or 11 and there is a change in the amount of interest payable—
- (a) on a loan qualifying under paragraph 16 or 17 of Schedule 6 to those Regulations to which those payments relate; or

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(192) Paragraph (3) was amended by regulation 18(c) of [S.R. 2003 No. 191](#)

(193) Paragraph (7) was substituted by regulation 4(4)(b) of [S.R. 2006 No. 168](#)

(194) Paragraph (13) was amended by regulation 18(d) of [S.R. 2003 No. 191](#)

(195) Paragraph (17C) was inserted by regulation 18(e) of [S.R. 2003 No. 191](#) and substituted by regulation 2(a) of [S.R. 2004 No. 110](#)

(b) on a loan not so qualifying which is secured on the dwelling occupied as the home to which those payments relate,

a decision under Article 11 which is made as a result of that change in the amount of interest payable shall take effect on whichever of the dates referred to in paragraph (17F) is appropriate in the claimant's case.

(17F) The date on which a decision under Article 11 takes effect for the purposes of paragraph (17E) is—

- (a) the date on which the claimant's housing costs are first met under paragraph 8(1)(a), 9(1)(a) or 10(2)(a) of Schedule 6 to the Employment and Support Allowance Regulations; or
- (b) where the change in the amount of interest payable occurred after the date referred to in sub-paragraph (a), on the date of the next alteration in the standard rate following the date of that change.

(17G) In paragraph (17F) "standard rate" has the same meaning as in paragraph 13(2) of Schedule 6 to the Employment and Support Allowance Regulations.

(17H) Where the decision is superseded in accordance with regulation 6(2)(a)(i) and the relevant circumstances are that the claimant has a non-dependant who has become entitled to main phase employment and support allowance, the superseding decision shall take effect from the date the main phase employment and support allowance is first paid to the non-dependant.”;

(g) in paragraph (23)(**196**)—

- (i) after "(17A)" insert ", (17D)",
- (ii) after "a jobseeker's allowance" insert ", an employment and support allowance", and
- (iii) in sub-paragraph (a) for "or jobseeker's allowance" substitute ", jobseeker's allowance or employment and support allowance"; and

(h) after paragraph (33)(**197**) add—

“(34) A decision made in accordance with regulation 6(2)(o), where the failure determination was made before the 13th week of entitlement, shall take effect from the first day of the benefit week following that week.

(35) A decision made in accordance with regulation 6(2)(o) where paragraph (34) does not apply shall take effect from the first day of the benefit week in which the failure determination was made.

(36) A decision made in accordance with regulation 6(2)(p) shall take effect from the first day of the benefit week in which the reduction mentioned in that sub-paragraph ceased to have effect.

(37) A decision made in accordance with regulation 6(2)(q) that embodies a determination that the claimant has limited capability for work which is the first such determination shall take effect from the beginning of the 14th week of entitlement.

(38) A decision made in accordance with regulation 6(2)(q), following an application by the claimant, that embodies a determination that the claimant has limited capability for work-related activity shall take effect from the date of the application.”.

(6) In regulation 7B(22)(**198**) (date from which a decision superseded under Article 19 of the Child Support Order takes effect)—

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**(196)** Paragraph (23) was substituted by regulation 18(f) of [S.R. 2003 No. 191](#) and amended by regulation 2(b) of [S.R. 2004 No. 110](#)

**(197)** Paragraph (33) was added by regulation 7(5)(d) of [S.R. 2005 No. 46](#)

**(198)** Regulation 7B was inserted by regulation 2(8) of [S.R. 2001 No. 23](#)

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- (a) in the definition of “benefit week” after “Income Support Regulations” insert “, in relation to employment and support allowance has the same meaning as in regulation 2(1) of the Employment and Support Allowance Regulations”; and
  - (b) in the definition of “partner” after “Jobseeker’s Allowance Regulations” add “or regulation 2(1) of the Employment and Support Allowance Regulations.
- (7) For regulation 10 (effect of a determination as to capacity for work) substitute—

**“Effect of determination as to capacity or capability for work**

**10.**—(1) This regulation applies to a determination whether a person—

- (a) is capable or incapable of work;
- (b) is to be treated as capable or incapable of work;
- (c) has or does not have limited capability for work; or
- (d) is to be treated as having or not having limited capability for work.

(2) A determination (including a determination made following a change of circumstances) as set out in paragraph (1) which is embodied in or necessary to a decision under Chapter II of Part II of the Order or on which such a decision is based shall be conclusive for the purposes of any further decision.”.

- (8) In regulation 11 (Department to determine certain matters)—
- (a) after “Act” insert “or Part 1 of the Welfare Reform Act”; and
  - (b) for “or” after sub-paragraph (a) substitute—
    - “(aa) whether a person is, or is to be treated as, having or not having limited capability for work; or”.
- (9) In regulation 13 (income support and social fund determinations on incomplete evidence)—
- (a) in paragraph (1)(a)(**199**)—
    - (i) omit “or” after head (i), and
    - (ii) for “and” after head (ii) substitute—
      - “or
      - (iii) a claimant’s applicable amount under regulation 67(1)(c) or 68(1)(d) of the Employment and Support Allowance Regulations; and”; and
  - (b) in paragraph (2)(a)—
    - (i) omit “or” after head (ii), and
    - (ii) for “and” after head (iii) substitute—
      - “or
      - (iv) in relation to any claimant, the applicable amount includes the severe disability premium by virtue of regulation 67(1) or 68(1) of, and paragraph 6 of Schedule 4 to, the Employment and Support Allowance Regulations; and”.
- (10) In regulation 14A(**200**) (termination of award of income support or jobseeker’s allowance)—
- (a) in the heading for “or jobseeker’s allowance” substitute “, jobseeker’s allowance or employment and support allowance”;
  - (b) in paragraph (1)—

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(199) Paragraph (1) was amended by regulation 19(a) of S.R. 2003 No. 191

(200) Regulation 14A was inserted by regulation 2(6) of S.R. 2002 No. 189



- (i) for “or a jobseeker’s allowance” substitute “, a jobseeker’s allowance or an employment and support allowance”, and
- (ii) after “a jobseeker’s allowance” insert “, an employment and support allowance,”; and
- (c) after paragraph (4) add—
  - “(5) Where an award of an employment and support allowance is made in accordance with the provisions of this regulation, paragraph 2 of Schedule 2 to the Welfare Reform Act shall not apply.”.
- (11) In regulation 17(2) (provision of information or evidence) after sub-paragraph (e) add—
  - “(f) a person whose entitlement to an employment and support allowance is conditional on his having, or being treated as having, limited capability for work.”.
- (12) In regulation 19(1)(**201**) (suspension and termination for failure to submit to medical examination) after “1995” insert “or regulation 23 of the Employment and Support Allowance Regulations”.
- (13) In paragraph 5 of Schedule 1(**202**) (decisions against which no appeal lies)—
  - (a) after sub-paragraph (a) insert—
    - “(aa) regulation 4H (as to which partner should make a claim for an employment and support allowance);”;
  - (b) in sub-paragraph (f) after “benefit” insert “or employment and support allowance”; and
  - (c) after sub-paragraph (kk) insert—
    - “(kl) regulation 26C (as to the time and manner of payment of employment and support allowance);”.
- (14) After Schedule 2B(**203**) (date on which change of circumstances takes effect where claimant is entitled to state pension credit) insert as Schedule 2C the Schedule set out in Schedule 1 to these Regulations.

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**Commencement Information**

**I23** Reg. 22 in operation at 27.7.2008, see [reg. 1\(a\)](#)

**Amendment of the Social Security (Immigration and Asylum) Consequential Amendments Regulations**

**23.**—(1) The Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000(**204**) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 1(3) (interpretation) after the definition of “the Jobseeker’s Allowance Regulations” add—

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

“income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act (Northern Ireland) 2007.”.

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(**201**) Regulation 19(1) was amended by regulation 4(3) of [S.R. 2007 No. 332](#)

(**202**) Paragraph 5 was substituted by regulation 2(20) of [S.R. 2002 No. 189](#) and amended by regulation 2(b) of [S.R. 2003 No. 312](#) and regulation 3(9) of [S.R. 2004 No. 516](#)

(**203**) Schedule 2B was inserted by regulation 22 of [S.R. 2003 No. 191](#)

(**204**) [S.R. 2000 No. 71](#); relevant amending Regulations are [S.R. 2002 No. 323](#) and [S.R. 2003 No. 421](#)

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(3) In regulation 2(**205**) (persons not excluded from specified benefits under section 115 of the Act)—

- (a) in paragraph (1) after “Contributions and Benefits Act,” insert “income-related employment and support allowance,”;
- (b) in paragraph (4)(a) after “Contributions and Benefits Act,” insert “or income-related employment and support allowance,”; and
- (c) in paragraph (5) after “Jobseeker’s Allowance Regulations (urgent cases)” insert “, to employment and support allowance by virtue of regulation 162 of the Employment and Support Allowance Regulations (urgent cases)”.

(4) In regulation 11(3)(**206**) (transitional arrangements and savings) after “Income Support Regulations” insert “, regulation 162 of the Employment and Support Allowance Regulations”.

(5) In the heading to Part 1 of the Schedule (persons not excluded from certain benefits) after “income support,” insert “income-related employment and support allowance,”.

#### Commencement Information

**I24** Reg. 23 in operation at 27.10.2008, see [reg. 1\(b\)](#)

### Amendment of the Social Fund Winter Fuel Payment Regulations

**24.**—(1) The Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000(**207**) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 1(2) (interpretation) after the definition of “free in-patient treatment”(**208**) insert—

““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act (Northern Ireland) 2007;”.

(3) In regulation 2(1)(b)(ii)(**209**) (social fund winter fuel payments) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”.

(4) In regulation 3(1)(a)(i)(**210**) (persons not entitled to a social fund winter fuel payment) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”.

(5) In regulation 4(2)(**211**) (making a winter fuel payment without a claim) for “or state pension credit” substitute “, state pension credit or an income-related employment and support allowance”.

#### Commencement Information

**I25** Reg. 24 in operation at 27.10.2008, see [reg. 1\(b\)](#)

(**205**) Regulation 2 was amended by paragraph 1(s) of the Schedule to [S.R. 2002 No. 323](#) and regulation 6 of [S.R. 2003 No. 421](#)

(**206**) Regulation 11 was amended by paragraph 1(s) of the Schedule to [S.R. 2002 No. 323](#)

(**207**) [S.R. 2000 No. 91](#); relevant amending Regulations are [S.R. 2000 No. 321](#), [S.R. 2003 Nos. 349 and 389](#), [S.R. 2004 No. 354](#) and [S.R. 2005 No. 580](#)

(**208**) The definition of “free in-patient treatment” was amended by regulation 6 of [S.R. 2005 No. 580](#)

(**209**) Regulation 2 was substituted by regulation 2 of [S.R. 2003 No. 349](#) and amended by regulation 2 of [S.R. 2003 No. 389](#) and regulation 2(3) of [S.R. 2004 No. 354](#)

(**210**) Regulation 3 was amended by regulation 2(3) of [S.R. 2000 No. 321](#) and regulation 2(4) of [S.R. 2004 No. 354](#)

(**211**) Regulation 4 was amended by regulation 2(5) of [S.R. 2004 No. 354](#)

## Amendment of the Child Support (Maintenance Calculation Procedure) Regulations

**25.** In paragraph 1(3)(b) of Schedule 1 to the Child Support (Maintenance Calculation Procedure) Regulations (Northern Ireland) 2001(**212**) (persons of 16 or 17 years of age who are not in full-time non-advanced education) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or income-related employment and support allowance”.

### Commencement Information

**I26** [Reg. 25](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

## Amendment of the Child Support (Maintenance Calculations and Special Cases) Regulations

**26.**—(1) The Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001(**213**) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 1 (interpretation) after the definition of “the Act” insert—

““the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007;”.

(3) In regulation 4 (flat rate)—

(a) in paragraph (1)(**214**)—

(i) omit “and” after sub-paragraph (f), and

(ii) after sub-paragraph (g) add—

“and

(h) contributory employment and support allowance under section 2 of the Welfare Reform Act.”;

(b) in paragraph (2)(**215**)—

(i) omit “and” after sub-paragraph (b), and

(ii) after sub-paragraph (c) add—

“and

(d) income-related employment and support allowance under section 4 of the Welfare Reform Act.”.

(4) In regulation 5(1)(d)(**216**) (nil rate) for “or an income-based jobseeker’s allowance” in each place where it occurs substitute “, income-based jobseeker’s allowance or income-related employment and support allowance”.

### Commencement Information

**I27** [Reg. 26](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

(212) S.R. 2001 No. 17

(213) S.R. 2001 No. 18; relevant amending Regulations are S.R. 2002 No. 323, S.R. 2003 Nos. 191, 261 and 469, S.R. 2004 No. 428 and S.R. 2005 Nos. 125 and 536

(214) Paragraph (1) was amended by paragraph 1(t) of the Schedule to S.R. 2002 No. 323, regulation 6(3) of S.R. 2003 No. 469, regulation 6(2) of S.R. 2005 No. 125 and paragraph 7(3) of Schedule 4 to S.R. 2005 No. 536

(215) Paragraph (2) was amended by regulation 33(3) of S.R. 2003 No. 191

(216) Regulation 5(1) was amended by regulation 33(4) of S.R. 2003 No. 191, regulation 6 of S.R. 2003 No. 261, regulation 6(4) of S.R. 2003 No. 469, regulation 7(2) of S.R. 2004 No. 428 and regulation 6(3) of S.R. 2005 No. 125

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## Amendment of the Child Support (Variations) Regulations

**27.** In regulation 32 of the Child Support (Variations) Regulations (Northern Ireland) 2001(**217**) (meaning of “benefit” for the purposes of Article 28E of the Order) after “income-based jobseeker’s allowance” insert “, income-related employment and support allowance under Part 1 of the Welfare Reform Act (Northern Ireland) 2007”.

### Commencement Information

**I28** [Reg. 27](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

## Amendment of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations

**28.**—(1) The Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations (Northern Ireland) 2001(**218**) are amended in accordance with paragraphs (2) to (5).

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

(a) after the definition of “the Order” insert—

““the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007;”;

(b) in the definition of “contributory benefit” after “income-based jobseeker’s allowance” insert “and includes a contributory employment and support allowance but not an income-related employment and support allowance”;

(c) after the definition of “contributory benefit” insert—

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

(d) after the definition of “earnings factor” insert—

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

(e) in the definition of “relevant benefit year” after paragraph (b) add—

“(c) paragraph 3(1)(f) of Schedule 1 to the Welfare Reform Act (conditions relating to national insurance), in relation to a contributory employment and support allowance;”.

(3) In regulation 4 (treatment for the purpose of any contributory benefit of late paid contributions)—

(a) in paragraph (8) for “or short-term incapacity benefit” substitute “, short-term incapacity benefit or a contributory employment and support allowance”; and

(b) after paragraph (9)(b) insert—

“(c) a contributory employment and support allowance is a reference to the condition specified in paragraph 2(1) of Schedule 1 to the Welfare Reform Act.”.

(4) In regulation 5 (treatment for the purpose of any contributory benefit of late paid primary Class 1 contributions)—

(a) in paragraph (1)(b)—

- (i) omit “or” after head (i), and
- (ii) after head (ii) add—
  - “or
  - (iii) a contributory employment and support allowance, is not paid before the beginning of the relevant benefit year;”;
- (b) in paragraph (2)(a) for “or short-term incapacity benefit” substitute “, short-term incapacity benefit or a contributory employment and support allowance”; and
- (c) in paragraph (3)(a) after head (ii) add—
  - “(iii) a contributory employment and support allowance is a reference to the condition specified in paragraph 1(1) of Schedule 1 to the Welfare Reform Act;”.

(5) In regulation 5A(a)(**219**) (treatment for the purpose of any contributory benefit of duly paid primary Class 1 contributions in respect of retrospective earnings) for “or short-term incapacity benefit” substitute “, short-term incapacity benefit or a contributory employment and support allowance”.

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**Commencement Information**

**I29** [Reg. 28](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

**Amendment of the Social Security (Loss of Benefit) Regulations**

**29.**—(1) The Social Security (Loss of Benefit) Regulations (Northern Ireland) 2002(**220**) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 2(**221**) (disqualification period)—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (a)(iii) after “state pension credit” insert “, employment and support allowance”, and
  - (ii) in sub-paragraph (b)(iii) for “or state pension credit” substitute “, state pension credit or employment and support allowance”; and
- (b) in paragraph (3)(c) after “state pension credit” insert “, employment and support allowance”.

(3) In regulation 3 (reduction of income support)—

- (a) in the heading after “income support” add “and income-related employment and support allowance”;
- (b) in paragraph (1) after “income support”, in the first place where it occurs, insert “or income-related employment and support allowance”;
- (c) in paragraph (4) after “income support”, in both places where it occurs, insert “or income-related employment and support allowance”;
- (d) in paragraph (5) after “income support” insert “or income-related employment and support allowance”; and

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(**219**) Regulation 5A was inserted by regulation 9(4) of [S.I. 2007/1154](#)

(**220**) [S.R. 2002 No. 79](#); relevant amending Rules are [S.R. 2003 No. 28](#) and [S.R. 2008 No. 147 \(C. 7\)](#)

(**221**) Regulation 2 was amended by regulation 25(2) of [S.R. 2003 No. 28](#) and Article 3(2) of [S.R. 2008 No. 147 \(C. 7\)](#)

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- (e) in paragraph (6) after “Income Support Regulations” add “or, as the case may be, regulation 2(1) of the Employment and Support Allowance Regulations (Northern Ireland) 2008”.

#### Commencement Information

**I30** Reg. 29 in operation at 27.10.2008, see **reg. 1(b)**

### Amendment of the State Pension Credit Regulations

**30.**—(1) The State Pension Credit Regulations (Northern Ireland) 2003(**222**) are amended in accordance with paragraphs (2) to (10).

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

(a) after the definition of “the 1972 Order” insert—

““the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007;”;

(b) after the definition of “the Computation of Earnings Regulations”(**223**) insert—

““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act (employment and support allowance);”;

(c) after the definition of “the Eileen Trust” insert—

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

(d) after the definition of “the Housing Benefit (State Pension Credit) Regulations”(**224**) insert—

““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act (employment and support allowance);”.

(3) In regulation 9 (qualifying income for the purposes of savings credit) after paragraph (f) add—

“(g) contributory employment and support allowance.”.

(4) In regulation 13A(1)(a)(**225**) (part-weeks) after “income support” insert “, an income-related employment and support allowance”.

(5) In regulation 13B(1) (date on which benefits are treated as paid) after sub-paragraph (d) add—

“(e) contributory employment and support allowance.”.

(6) In regulation 15(4)(**226**) (income for the purposes of the Act) after sub-paragraph (c) add—

“(d) section 3 of the Welfare Reform Act (deductions from contributory allowance).”.

(7) In paragraph 6(**227**) of Schedule 1 (amount applicable for former claimants of income support or income-based jobseeker’s allowance)—

(a) in the heading for “or income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance or income-related employment and support allowance”;

(**222**) S.R. 2003 No. 28; relevant amending Regulations are S.R. 2003 Nos. 191 and 421, S.I. 2003/2175, S.R. 2004 No. 394, S.R. 2005 No. 580, S.R. 2006 Nos. 97, 128 and 407, S.R. 2007 No. 196 and S.R. 2008 No. 112

(**223**) The definition was inserted by regulation 4 of S.I. 2003/2175

(**224**) The definition was inserted by regulation 5 of, and paragraph 11(2) of Schedule 2 to S.R. 2006 No. 407

(**225**) Regulations 13A and 13B were inserted by regulation 23(3) of S.R. 2003 No. 191

(**226**) Regulation 15(4) was amended by regulation 7(3) of S.R. 2005 No. 580

(**227**) Paragraph 6 was amended by regulation 23(6) of S.R. 2003 No. 191 and regulation 5(3) of S.R. 2006 No. 97

- (b) in sub-paragraph (2) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”;
  - (c) in sub-paragraph (5)—
    - (i) omit “or” after head (a),
    - (ii) after head (b) insert—
      - “or
      - (c) for the purposes of determining his entitlement to income-related employment and support allowance,”, and
      - (iii) in head (v) after “Income Support Regulations” insert “, paragraph 7 of Schedule 4 to the Employment and Support Allowance Regulations”;
  - (d) in sub-paragraph (10)(a)(**228**) after “Jobseeker’s Allowance Regulations” insert “or paragraph 20(2) of Schedule 6 to the Employment and Support Allowance Regulations”.
- (8) In Schedule 2 (housing costs)—
- (a) in paragraph 1 (housing costs)—
    - (i) in sub-paragraph (2) in paragraph (b) of the definition of “disabled person”(229) after head (iii) add—
      - “or
      - (iv) who is in receipt of an employment and support allowance which includes an amount under section 2(2) or (3) or 4(4) or (5) of the Welfare Reform Act (components);”, and
    - (ii) in sub-paragraph (3)(230) after “disqualification etc.)” add “or disqualified for receiving employment and support allowance or treated as not having limited capability for work in accordance with regulations made under section 18 of the Welfare Reform Act (disqualification)”;
  - (b) in paragraph 5 (housing costs not met)—
    - (i) in sub-paragraph (4) after “income-based jobseeker’s allowance” in each place where it occurs insert “, income-related employment and support allowance”, and
    - (ii) in sub-paragraph (5)(231) for “or state pension credit” substitute “, state pension credit or income-related employment and support allowance”;
  - (c) in paragraph 7 (the calculation for loans)—
    - (i) in sub-paragraph (4A)(a)(232) for “or income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance or income-related employment and support allowance”,
    - (ii) in sub-paragraph (4B)—
      - (aa) omit “or” after head (a), and
      - (bb) after head (b) for “and” substitute—
        - “or

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(228) Sub-paragraph (10) was added by regulation 23(6) of S.R. 2003 No. 191

(229) The definition of “disabled person” was amended by regulation 7(4)(a) of S.R. 2005 No. 580, regulation 5(4)(a) of S.R. 2006 No. 97 and regulation 5(4)(a) of S.R. 2006 No. 128

(230) Sub-paragraph (3) was amended by regulation 5(4)(b) of S.R. 2006 No. 97

(231) Sub-paragraph (5) was amended by regulation 5 of S.R. 2008 No. 112

(232) Sub-paragraphs (4A) and (4B) were inserted by regulation 23(7)(b)(iii) of S.R. 2003 No. 191

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- (c) where the earlier entitlement was to an income-related employment and support allowance, if their applicable amount included an amount determined in accordance with Schedule 6 to the Employment and Support Allowance Regulations as applicable to them in respect of a loan which qualifies under paragraph 16 to 18 of that Schedule, and”;
- (d) in paragraph 10(10) (excessive housing costs) for “and income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance and income-related employment and support allowance”;
- (e) in paragraph 14(7) (persons residing with the claimant) after head (f)(233) add—
  - “(g) if he is aged less than 25 and is in receipt of employment and support allowance which does not include an amount under section <sup>F6</sup>... 4(4) or (5) of the Welfare Reform Act (components).”.
- (9) In Schedule 5 (income from capital)—
  - (a) in paragraph 20(2)(234) after head (n) add—
    - “(o) income-related employment and support allowance.”;
  - (b) in paragraph 20A(2)(235)—
    - (i) omit “or” after head (b), and
    - (ii) after head (c) add—
      - “or
      - (d) paragraph 11(2) of Schedule 9 to the Employment and Support Allowance Regulations,”.
- (10) In paragraph 4 of Schedule 6 (sums disregarded from claimant’s earnings)—
  - (a) in sub-paragraph (1)(a)—
    - (i) omit “or” after sub-head (vi), and
    - (ii) after sub-head (vi) add—
      - “(vii) employment and support allowance, or”;
  - (b) in sub-paragraph (2) for “or income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance or income-related employment and support allowance”.

**F6** Words in reg. 30(8)(e) omitted (27.10.2008) by virtue of The Employment and Support Allowance (Miscellaneous Amendments) Regulations (Northern Ireland) 2008 (S.R. 2008/413), regs. 1(2), 5(5)

#### Commencement Information

**I31** Reg. 30 in operation at 27.10.2008, see reg. 1(b)

### Amendment of the Social Security (Work-focused Interviews for Partners) Regulations

**31.** In regulation 10(4) of the Social Security (Work-focused Interviews for Partners) Regulations (Northern Ireland) 2003(236) (failure to take part in an interview) after sub-paragraph (a) insert—

(233) Head (f) was added by regulation 6(5)(b)(ii)(bb) of S.R. 2004 No. 394

(234) Paragraph 20(2) was amended by regulation 2(11)(e) of S.R. 2003 No. 421

(235) Paragraph 20A was inserted by regulation 23(9)(b) of S.R. 2003 No. 191, substituted by regulation 2(11) of S.R. 2003 No. 421 and amended by paragraph 11(6) of Schedule 2 to S.R. 2006 No. 407

(236) S.R. 2003 No. 405



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“(aa) an income-related employment and support allowance under Part 1 of the Welfare Reform Act (Northern Ireland) 2007 (employment and support allowance);”.

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**Commencement Information**

**I32** [Reg. 31](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

### **Amendment of the Children (Leaving Care) Social Security Benefits Regulations**

**32.** In regulation 2(1) of the Children (Leaving Care) Social Security Benefits Regulations (Northern Ireland) 2005(**237**) (entitlement to benefits) for “or income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance or income-related employment and support allowance”.

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**Commencement Information**

**I33** [Reg. 32](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

### **Amendment of the Age-Related Payments Regulations**

**33.** In regulation 2(3)(a) of the Age-Related Payments Regulations (Northern Ireland) 2005(**238**) (entitlement: basic cases) for “or income support” substitute “, income support or income-related employment and support allowance under Part 1 of the Welfare Reform Act (Northern Ireland) 2007”.

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**Commencement Information**

**I34** [Reg. 33](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

### **Amendment of the Social Fund Maternity and Funeral Expenses (General) Regulations**

**34.**—(1) The Social Fund Maternity and Funeral Expenses (General) Regulations (Northern Ireland) 2005(**239**) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of “the Act” insert—

““the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations (Northern Ireland) 2008;”,  
and

(ii) after the definition of “income-based jobseeker’s allowance” insert—

““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act (Northern Ireland) 2007;”;

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(237) S.R. 2005 No. 324

(238) S.R. 2005 No. 383

(239) S.R. 2005 No. 506, to which there are amendments not relevant to these Regulations

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- (b) in paragraph (3) after “Income Support Regulations” add “or regulation 2(1) of the Employment and Support Allowance Regulations”; and
  - (c) in paragraph (4)(a) after “Income Support Regulations” insert “, in regulation 156 of the Employment and Support Allowance Regulations”.
- (3) In regulation 5(1)(a) (entitlement)—
- (a) omit “or” after head (iv); and
  - (b) after head (v) insert—
    - “or
    - (vi) income-related employment and support allowance;”.
- (4) In regulation 7(4)(a) (funeral payments: entitlement)—
- (a) omit “or” after head (v); and
  - (b) after head (vi) insert—
    - “or
    - (vii) income-related employment and support allowance.”.

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**Commencement Information**

**I35** [Reg. 34](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

**Revocations**

**35.** The Regulations specified in column (1) of Schedule 2 are revoked to the extent mentioned in column (3).

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**Commencement Information**

**I36** [Reg. 35](#) in operation at 27.10.2008, see [reg. 1\(b\)](#)

Sealed with the Official Seal of the Department for Social Development on 4th July 2008

(L.S.)

*John O'Neill*  
A senior officer of the Department for Social  
Development

## SCHEDULE 1

Regulation 22(14)

### Commencement Information

**I37** Sch. 1 in operation at 27.10.2008, see [reg. 1\(b\)](#)

## “SCHEDULE 2C

Regulation 7(1)(a)

Date from which change of circumstances takes effect where  
a claimant is entitled to employment and support allowance

1. Subject to paragraphs 2 to 7, where the amount of an employment and support allowance payable under an award is changed by a superseding decision made on the ground of a change of circumstances, that superseding decision shall take effect from the first day of the benefit week in which the relevant change of circumstances occurs or is expected to occur.

2. In the cases set out in paragraph 3, the superseding decision shall take effect from the day on which the relevant change of circumstances occurs or is expected to occur.

3. The cases referred to in paragraph 2 are where—

- (a) entitlement ends, or is expected to end, for a reason other than that the claimant no longer satisfies the provisions of paragraph 6(1)(a) of Schedule 1 to the Welfare Reform Act;
- (b) a child or young person referred to in regulation 156(6)(d) or (g) of the Employment and Support Allowance Regulations lives, or is expected to live, with the claimant for part only of the benefit week;
- (c) a person referred to in paragraph 12 of Schedule 5 to the Employment and Support Allowance Regulations—
  - (i) ceases, or is expected to cease, to be a patient, or
  - (ii) a member of the person’s family ceases, or is expected to cease, to be a patient, in either case for a period of less than a week;
- (d) a person referred to in paragraph 3 of Schedule 5 to the Employment and Support Allowance Regulations—
  - (i) becomes a prisoner, or
  - (ii) ceases to be a prisoner;
- (e) during the currency of the claim a claimant makes a claim for a relevant social security benefit—
  - (i) the result of which is that his benefit week changes, or
  - (ii) in accordance with regulation 13 of the Claims and Payments Regulations and an award of that benefit on the relevant day for the purposes of that regulation means that his benefit week is expected to change.

4. A superseding decision made in consequence of a payment of income being treated as paid on a particular day under regulation 93 of the Employment and Support Allowance Regulations shall take effect from the day on which that payment is treated as paid.

5. Where—

- (a) it is decided upon supersession on the ground of a relevant change of circumstances or change specified in paragraphs 9 and 10 that the amount of an employment and support allowance is, or is to be, reduced; and

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- (b) the Department certifies that it is impracticable for a superseding decision to take effect from the day prescribed in paragraph 9 or the preceding paragraphs (other than where paragraph 3(e) or 4 applies),

that superseding decision shall take effect—

- (i) where the relevant change has occurred, from the first day of the benefit week following that in which that superseding decision is made, or
- (ii) where the relevant change is expected to occur, from the first day of the benefit week following that in which that change of circumstances is expected to occur.

6. Where—

- (a) a superseding decision (“the former supersession”) was made on the ground of a relevant change of circumstances in the cases set out in paragraph 3(b) to (e); and
- (b) that superseding decision is itself superseded by a subsequent decision because the circumstances which gave rise to the former supersession cease to apply (“the second change”),

that subsequent decision shall take effect from the date of the second change.

7. In the case of an employment and support allowance decision where there has been a limited capability for work determination, where—

- (a) the Department is satisfied that, in relation to a limited capability for work determination, the claimant or payee failed to notify an appropriate office of a change of circumstances which regulations under the Administration Act required him to notify; and
- (b) the claimant or payee, as the case may be, could reasonably have been expected to know that the change of circumstances should have been notified,  
the superseding decision shall take effect—
  - (i) from the date on which the claimant or payee, as the case may be, ought to have notified the change of circumstances, or
  - (ii) if more than one change has taken place between the date from which the decision to be superseded took effect and the date of the superseding decision, from the date on which the first change ought to have been notified.

8. Where—

- (a) the Department supersedes a decision made by an appeal tribunal or a Commissioner on the grounds specified in regulation 6(2)(c)(i);
- (b) the decision to be superseded was more advantageous to the claimant because of the ignorance or mistake than it would otherwise have been; and
- (c) the material fact—
  - (i) does not relate to the limited capability for work determination embodied in or necessary to the decision, or
  - (ii) relates to a limited capability for work determination embodied in or necessary to the decision and the Department is satisfied that at the time the decision was made the claimant or payee, as the case may be, knew or could reasonably have been expected to know of it and that it was relevant,

the superseding decision shall take effect from the first day of the benefit week in which the decision of the appeal tribunal or the Commissioner took effect or was to take effect.

9. Where an amount of an employment and support allowance payable under an award is changed by a superseding decision specified in paragraph 10 the superseding decision shall take effect from the day specified in paragraph 1 for a change of circumstances.

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10. The following are superseding decisions for the purposes of paragraph 9—
- (a) a decision which supersedes a decision specified in regulation 6(2)(b) and (d) to (ee); and
  - (b) a superseding decision which would, but for paragraph 9, take effect from a date specified in regulation 7(6), (7), (12), (13), (17D) to (17F) and (32).”

SCHEDULE 2

Regulation 35

Revocations

**Commencement Information**

**I38** Sch. 2 in operation at 27.10.2008, see [reg. 1\(b\)](#)

<i>Column (1) Citation</i>	<i>Column (2) Reference</i>	<i>Column (3) Extent of revocation</i>
The Social Security (Incapacity Benefit) (Consequential and Transitional Amendments and Savings) Regulations (Northern Ireland) 1995	<a href="#">S.R. 1995 No. 150</a>	Regulation 6(3)
The Social Security and Child Support (Jobseeker’s Allowance) (Consequential Amendments) Regulations (Northern Ireland) 1996	<a href="#">S.R. 1996 No. 289</a>	Regulations 3, 11(7), 15(3), 20(2)(b)(ii), 21(7)(a) and (b)
The Social Security (Claims and Payments) (Jobseeker’s Allowance Consequential Amendments) Regulations (Northern Ireland) 1996	<a href="#">S.R. 1996 No. 354</a>	Regulation 2(16), (26)(d)(i) and (ii) and (g) and (27)(c)(ii) and (f)
The Social Security (Jobseeker’s Allowance and Payments on account) (Miscellaneous Amendments) Regulations (Northern Ireland) 1996	<a href="#">S.R. 1996 No. 464</a>	Regulation 3(2) and (3)
The Social Fund (Cold Weather Payments) (General) (Amendment) Regulations (Northern Ireland) 1996	<a href="#">S.R. 1996 No. 488</a>	Regulation 3(a)
The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 1998	<a href="#">S.R. 1998 No. 81</a>	Regulation 9(1)(c)(i)(b)
F7 ...	F7 ...	F7 ...
The Social Security (Amendment) (Residential Care and Nursing Homes) Regulations (Northern Ireland) 2002	<a href="#">S.R. 2002 No. 132</a>	Regulation 3(3)(a)
The State Pension Credit (Consequential, Transitional and Miscellaneous Provisions) Regulations (Northern Ireland) 2003	<a href="#">S.R. 2003 No. 191</a>	Regulations 14(1)(b)(ii)(bb) and (2)(k)(ii), 18(c),

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<i>Column (1) Citation</i>	<i>Column (2) Reference</i>	<i>Column (3) Extent of revocation</i>
The Social Security (Third Party Deductions and Miscellaneous Amendments) Regulations (Northern Ireland) 2003	<a href="#">S.R. 2003 No. 412</a>	24(6)(a) and (b), 26(3)(b) and 32(a) Regulation 2(b)
The Social Fund Winter Fuel Payment (Amendment) Regulations (Northern Ireland) 2004	<a href="#">S.R. 2004 No. 354</a>	Regulation 2(5)
The Social Security (Shared Additional Pension) (Miscellaneous Amendments) Regulations (Northern Ireland) 2005	<a href="#">S.R. 2005 No. 299</a>	Regulation 2(2)(a)
The Social Security (Residential Care Homes, Nursing Homes and Independent Hospitals) Regulations (Northern Ireland) 2005	<a href="#">S.R. 2005 No. 458</a>	Regulation 5(3)(b)(i)(aa)

**F7** Words in [Sch. 2](#) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2008](#) (S.R. 2008/413), regs. 1(2), **5(6)**

## EXPLANATORY NOTE

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

These Regulations make provisions consequential upon the introduction of employment and support allowance by inserting references to employment and support allowance where appropriate in—

the Social Security Contributions and Benefits (Northern Ireland) Act 1992;  
the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997;  
the Social Security (Benefit) (Married Women and Widows Special Provisions) (Northern Ireland) Regulations 1975  
the Social Security Airmen’s Benefits Regulations (Northern Ireland) 1975;  
the Social Security (Mariners’ Benefits) Regulations (Northern Ireland) 1975;  
the Social Security (Credits) Regulations (Northern Ireland) 1975;  
the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976;  
the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979;  
the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982;  
the Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987;  
the Income Support (General) Regulations (Northern Ireland) 1987;

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the Social Fund (Recovery by Deductions from Benefits) Regulations (Northern Ireland) 1988;  
the Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988;  
the Social Fund Cold Weather Payments (General) Regulations (Northern Ireland) 1988;  
the Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992;  
the Child Support (Maintenance Assessments and Special Cases) Regulations (Northern Ireland) 1992;  
the Jobseeker's Allowance Regulations (Northern Ireland) 1996;  
the Social Security Benefits (Maintenance Payments and Consequential Amendments) Regulations (Northern Ireland) 1996;  
the Child Support Departure Direction and Consequential Amendments Regulations (Northern Ireland) 1996;  
the Social Security and Child Support (Decision and Appeals) Regulations (Northern Ireland) 1999;  
the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000;  
the Social Fund Winter Fuel Payment Regulations (Northern Ireland) 2000;  
the Child Support (Maintenance Calculation Procedure) Regulations (Northern Ireland) 2001;  
the Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001;  
the Child Support (Variations) Regulations (Northern Ireland) 2001;  
the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations (Northern Ireland) 2001;  
the Social Security (Loss of Benefit) Regulations (Northern Ireland) 2002;  
the State Pension Credit Regulations (Northern Ireland) 2003;  
the Social Security (Work-focused Interviews for Partners) Regulations (Northern Ireland) 2003;  
the Children (Leaving Care) Social Security Benefits Regulations (Northern Ireland) 2005;  
the Age-Related Payments Regulations (Northern Ireland) 2005; and  
the Social Fund Maternity and Funeral Expenses (General) Regulations (Northern Ireland) 2005.

Regulation 13 amends the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 to make provision for—

claims for, and payment of, employment and support allowance;

the manner and time for making a claim for employment and support allowance, either by telephone or in writing;

the day on which employment and support allowance is to be paid; and

inserts other references to employment and support allowance where appropriate.

Regulation 35 makes consequential revocations.

Sections 25(2) and 28(2) of the Welfare Reform Act (Northern Ireland) 2007, the enabling provision under which these Regulations are made, were brought into operation for the purpose only of authorising the making of regulations on 1st July 2008, and for all other purposes on 27th July 2008, by virtue of the Welfare Reform (2007 Act) (Commencement No. 5) Order (Northern Ireland) 2008 (S.R. 2008 No. 276 (C. 14)).

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**Changes and effects yet to be applied to :**

- reg. 7(6)(b)(ii) revoked by [S.R. 2010/109 reg. 3\(b\)](#)
- reg. 8(3)(b) revoked by [S.R. 2010/55 Sch. 3](#)
- reg. 12(8) revoked by [S.R. 2010/6 Sch. Pt. 1](#)
- reg. 12(11)(d) revoked by [S.R. 2016/44 Sch.](#)
- reg. 12(14)(a) revoked by [S.R. 2008/498 Sch.](#)
- reg. 13(3)(b) revoked by [S.R. 2010/200 reg. 10](#)
- reg. 13(6) revoked by [S.R. 2009/240 Sch.](#)
- reg. 15(3) revoked by [S.R. 2016/223 Sch.](#)
- reg. 15(4) revoked by [S.R. 2016/223 Sch.](#)
- reg. 15(8) revoked by [S.R. 2016/224 reg. 34](#)
- reg. 16(3) revoked by [S.R. 2010/344 Sch. 2](#)
- reg. 1718 revoked by [S.R. 2012/438 reg. 9\(2\)Sch.](#)
- reg. 19(9)(b) revoked by [S.R. 2013/246 reg. 12Sch.](#)
- reg. 19(19) revoked by [S.R. 2010/6 Sch. Pt. 1](#)
- reg. 19(24)(b) revoked by [S.R. 2009/261 reg. 4\(b\)](#)
- reg. 19(25)(c) revoked by [S.R. 2016/44 Sch.](#)
- reg. 19(28)(a) revoked by [S.R. 2008/498 Sch.](#)
- reg. 21 revoked by [S.R. 2012/438 reg. 9\(2\)Sch.](#)
- reg. 22(6) revoked by [S.R. 2009/133 Sch. 2](#)
- reg. 23(4) revoked by [S.R. 2010/6 Sch. Pt. 1](#)
- reg. 25 revoked by [S.R. 2009/363 Sch.](#)
- reg. 2627 revoked by [S.R. 2012/438 reg. 9\(2\)Sch.](#)
- reg. 29(2)reg. 29(3)(c) revoked by [S.R. 2011/291 Sch.](#)
- reg. 34(3) revoked by [S.R. 2010/378 reg. 4\(b\)](#)