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STATUTORY INSTRUMENTS

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**2008 No. 2428**

**SOCIAL SECURITY**

**The Employment and Support Allowance  
(Miscellaneous Amendments) Regulations 2008**

<i>Made</i>	- - - -	<i>8th September 2008</i>
<i>Laid before Parliament</i>		<i>17th September 2008</i>
<i>Coming into force</i>	- -	<i>27th October 2008</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 135(1), 136(3), 137(2)(h) and 175(1) and (4) of the Social Security Contributions and Benefits Act 1992<sup>(1)</sup>, paragraphs 4(6), 20(1)(b) and (3) and 23(1) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000<sup>(2)</sup>, sections 2(1), 3(2) and (3), 4(2), 5(3), 8(1), (2)(a) and (b), 9 (1), (2)(a) and (b), 17(1), (2) and (3)(b), 18(4), 24(1), 25(1), (2), (3) and (5)(a) and 28(2) of, and paragraphs 1(4) and 6 of Schedule 1 and paragraphs 1(a), 2 and 10 of Schedule 2 to, the Welfare Reform Act 2007<sup>(3)</sup>.

These Regulations are made by virtue of, or consequential on, the provisions of the Welfare Reform Act 2007 and are made before the end of a period of 6 months beginning with the coming into force of those provisions<sup>(4)</sup>.

In accordance with section 176(1) of the Social Security Administration Act 1992<sup>(5)</sup> the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008.

(2) These Regulations shall come into force on 27th October 2008.

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(1) 1992 c. 4. Section 137(1) is cited for the meaning given to “prescribed”.

(2) 2000 c. 19. Paragraph 23(1) of Schedule 7 is cited for the meaning given to “prescribed”.

(3) 2007 c. 5.

(4) See section 173(5) of the Social Security Administration Act 1992. The requirement to refer Regulations to the Social Security Advisory Committee does not apply where regulations are contained in a statutory instrument made before the end of the period of six months beginning with the coming into force of the enactment under which the Regulations were made.

(5) 1992 c. 5. Section 176(1) was amended by paragraph 23 of Schedule 9 to the Local Government Finance Act 1992 (c. 14), paragraph 3(4) of Schedule 13 to the Housing Act 1996 (c. 52) and section 69(6) of the Child Support, Pensions and Social Security Act 2000.

(3) In these Regulations “the principal Regulations” means the Employment and Support Allowance Regulations 2008<sup>(6)</sup>.

## PART 1

### General amendments of the principal Regulations

#### Amendment of the principal Regulations

2. The principal Regulations are amended as provided in this Part and in Part 2 and references in this Part and in Part 2 to a numbered regulation, paragraph or Schedule is a reference to the regulation, paragraph or Schedule of that number in the principal Regulations.

#### Amendment of Part 1 of the principal Regulations

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

(a) after the definition of “attendance allowance” insert—

““basic rate” has the same meaning as in the Income Tax Act 2007<sup>(7)</sup> (see section 989 of that Act);”;

(b) omit the definitions of “Independent Living (Extension) Fund”, “Independent Living Fund”, “Independent Living (1993) Fund”, “Independent Living Funds” and “starting rate”; and

(c) after the definition of “sports award” insert—

““state pension credit” means a state pension credit under the State Pension Credit Act 2002<sup>(8)</sup>;”.

#### Amendment of Part 3 of the principal Regulations

4. In regulation 9 (condition relating to youth – claimants aged 20 or over but under 25) after paragraph (5) add—

“(6) A claimant is to be treated as not having limited capability for work on a day which is not, for the purposes of paragraph 4(1)(d)(ii) of Schedule 1 to the Act (period of 196 consecutive days preceding the relevant period of limited capability for work), part of any consecutive days of limited capability for work.”.

#### Amendment of Part 5 of the principal Regulations

5.—(1) In regulation 26 (claimants receiving certain regular treatment) for paragraph (2) substitute—

“(2) A claimant who receives the treatment referred to in paragraph (1) is only to be treated as having limited capability for work from the first week of treatment in which the claimant undergoes no fewer than—

(a) two days of treatment;

(b) two days of recovery from any of the forms of treatment listed in paragraph 1(a) to (c); or

(c) one day of treatment and one day of recovery from that treatment,

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<sup>(6)</sup> S.I. 2008/794.

<sup>(7)</sup> 2007 c. 3.

<sup>(8)</sup> 2006 c. 16.

- but the days of treatment or recovery from that treatment or both need not be consecutive.”.
- (2) In regulation 32 (certain claimants to be treated as not having limited capability for work)—
- (a) renumber regulation 32 as 32(1);
  - (b) in paragraph (1), after “claimant” insert “who is or has been a member of Her Majesty’s forces”; and
  - (c) after paragraph (1) add—
    - “(2) A claimant is to be treated as not having limited capability for work on any day on which the claimant attends a training course in respect of which the claimant is paid a training allowance or premium pursuant to arrangements made under section 2 of the Employment and Training Act 1973(9) or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990(10).
  - (3) Paragraph (2) is not to apply—
    - (a) for the purposes of any claim to employment and support allowance for a period commencing after the claimant ceased attending the training course in question; or
    - (b) where any training allowance or premium paid to the claimant is paid for the sole purpose of travelling or meal expenses incurred or to be incurred under the arrangement made under section 2 of the Employment and Training Act 1973 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990.”.

#### **Amendment of Part 7 of the principal Regulations**

- 6.—(1) In regulation 40(6) (a claimant who works to be treated as not entitled to an employment and support allowance) for “paragraph (5) above” substitute “paragraph (4)”.
- (2) In regulation 45(3) and (4) (exempt work) for “£88.50” substitute “£92.00”.

#### **Amendment of Part 9 of the principal Regulations**

- 7.—(1) After regulation 72 (permanent health insurance) insert—

##### **“Financial Assistance Scheme**

- 72A.**—(1) For the purposes of sections 2(1)(c) and 3 of the Act (deductions from contributory allowance) pension payment is to include a Financial Assistance Scheme payment.
- (2) In this regulation “Financial Assistance Scheme payment” means a payment made under the Financial Assistance Scheme Regulations 2005(11).”.
- (2) In regulation 74(1)(a) (deductions for pension payment and PPF payment) for “claimant” substitute “a claimant”.
- (3) In regulation 76(1) (deductions for councillor’s allowance) for “£88.50” substitute “£92.00”.

#### **Amendment of Part 10 of the principal Regulations**

- 8.—(1) In regulation 94(8) (calculation of weekly amount of income) for “paragraph (9)” substitute “paragraph (8)”.

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(9) 1973 c. 50. Section 2(1) was substituted by section 25(1) of the Employment Act 1988 (c.19).

(10) 1990 c. 35. Section 2(3) was amended by section 47(2), (4)(a), section 51 of and Schedule 10 to the Trade Union Reform and Employment Act 1993 (c.19).

(11) S.I. 2005/1986.

(2) In regulation 95(1) (earnings of employed earners) for “paragraphs (3) and (4)” substitute “paragraphs (2) and (3)”.

(3) In regulation 99 (deduction of tax and contributions for self-employed earners)—

(a) in paragraph (1) omit “starting rate or, as the case may be, the starting rate and the”; and

(b) in paragraph (2) for “starting rate” substitute “basic rate”.

(4) In regulation 103 (deduction in respect of tax for participants in the self-employment route)—

(a) in paragraph (1)(c) omit “starting rate of tax or, as the case may be, the starting rate and the”; and

(b) in paragraph (2) for “starting rate” substitute “basic rate”.

(5) At the end of regulation 107(5)(a) (notional income - income due to be paid or income paid to or in respect of a third party) and 112(8) (income treated as capital) for “the Independent Living Funds” substitute “the Independent Living Fund (2006)”.

(6) In regulation 109(2) (notional income - calculation and interpretation)—

(a) in sub-paragraph (a) omit “starting rate or, as the case may be, the starting rate and the”; and

(b) in sub-paragraph (b) for “starting rate” substitute “basic rate”.

(7) In regulation 111(1) (calculation of capital) for “sections 1(3)” substitute “sections 1(2)”.

(8) In regulation 115(5)(a) (notional capital) and paragraph 27(1) of Schedule 9 (capital to be disregarded) for “, the Independent Living Funds” substitute “, the Independent Living Fund (2006)”.

(9) In regulation 131(1) (interpretation) in the definition of “student loan” for “73(3)” substitute “73(f)”.

### **Amendment of Part 11 of the principal Regulations**

9.—(1) In regulation 144 (waiting days)—

(a) in paragraph (2)(a) for “or statutory sick pay” substitute “, statutory sick pay or a maternity allowance”; and

(b) at the end of paragraph (2)(c) add—

“, or

(d) the claimant is the other member of a couple to whom regulation 4I(2) of the Social Security (Claims and Payments) Regulations 1987(12) applies and the former claimant was not entitled to an employment and support allowance in respect of 3 days at the beginning of the period of limited capability for work which relates to the former claimant’s entitlement.”.

(2) In regulation 146 (advance awards), in paragraph (3)(b) for “29”, substitute “30”.

(3) In regulation 156(5)(d) and (6)(g) (circumstances in which a person is to be treated as being or not being a member of the household) for “Adoption Agencies Regulations 1983” substitute “Adoption and Children Act 2002(13)”.

### **Amendment of Part 12 of the principal Regulations**

10. In regulation 160(3)(b) (exceptions from disqualification for imprisonment) omit “or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment for mental disorder)”.

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(12) S.I.1987/1968. Regulation 4I(2) was inserted by S.I. 2008/1554.

(13) 2002 c. 38.

### **Amendment of Part 13 of the principal Regulations**

11. In regulation 164 (assessment of income and capital in urgent cases)—
- (a) in paragraph (1)(a)(i) for “the Independent Living Funds” substitute “the Independent Living Fund (2006)”; and
  - (b) in paragraph (2)(c) omit “Part 2 or”.

### **Amendment of Schedule 2 to the principal Regulations**

12. In Schedule 2 (assessment of whether a claimant has limited capability for work)—
- (a) in paragraphs 3(b) and (c) (bending or kneeling) for “pick a light object” substitute “pick up a light object”;
  - (b) in paragraph 10(c) (continence other than enuresis (bed wetting) where the claimant has an artificial stoma), re-number—
    - (i) paragraph (iii) as (iv);
    - (ii) paragraph (iv) as (v);
    - (iii) paragraph (v) as (vi); and
    - (iv) paragraph (vi) as (vii);
  - (c) in paragraph 10(c) (continence other than enuresis (bed wetting) where the claimant has an artificial stoma), after paragraph (ii), insert—
    - “(iii) Where the claimant’s artificial stoma relates solely to the evacuation of the bowel, has no voluntary control over voiding of the bladder.”;
  - (d) in paragraph 10(c)(iii) as re-numbered, in column (3) add “15”;
  - (e) in paragraph 10(c)(v) as re-numbered, for “at last once a month” substitute “at least once a month”;
  - (f) in paragraph 12(e) (learning or comprehension in the completion of tasks) omit “the following day”;
  - (g) in paragraph 16(b) (initiating and sustaining personal action)—
    - (i) before “verbal prompting” insert “daily”; and
    - (ii) omit “for the majority of the time”;
  - (h) in paragraph 19(b) (coping with social situations) in column (3) add “9”; and
  - (i) in paragraph 21(d) (dealing with other people) after “significant distress”, omit “to himself”.

### **Amendment of Schedule 3 to the principal Regulations**

13. In paragraph 7 (maintaining personal hygiene) of Schedule 3 (assessment of whether a claimant has limited capability for work-related activity) in sub-paragraphs (b) and (c) for “(excluding back)” substitute “(excluding own back)”.

### **Amendment of Schedule 4 to the principal Regulations**

- 14.—(1) In Schedule 4 (amounts)—
- (a) in paragraph 1(3) in column (1)—
    - (i) in paragraph (f)(ii) for “was” substitute “were”; and
    - (ii) for paragraph (h) substitute—

- “(h) where the claimant is aged not less than 18 but less than 25 and the claimant’s partner is a person under 18 who—
  - (i) would not qualify for an income-related allowance if the person were not a member of a couple;
  - (ii) would not qualify for income support if the person were not a member of a couple;
  - (iii) does not satisfy the requirements of section 3(1)(f)(iii) of the Jobseekers Act (prescribed circumstances for persons aged 16 but less than 18); and
  - (iv) is not the subject of a direction under section 16 of that Act (persons under 18: severe hardship);”;
- (b) in paragraph 11—
  - (i) in sub-paragraph (3) (carer premium) for “paragraph 9(1)” substitute “paragraph 8(1)”; and
  - (ii) in sub-paragraph (4)(b) (enhanced disability premium) for “paragraph 89” substitute “paragraph 7”.

#### **Amendment of Schedule 5 to the principal Regulations**

**15.** In Schedule 5 (special cases) in paragraph 9(2)(b) (polygamous marriage) for “parents” substitute “partners”.

#### **Amendment of Schedule 6 to the principal Regulations**

- 16.** In Schedule 6 (housing costs)—
- (a) in the heading for “68(2)(d)” substitute “68(1)(d)”;
  - (b) in paragraph 2 (remunerative work)—
    - (i) in sub-paragraph (1)—
      - (aa) for “the following provisions of this paragraph” substitute “sub-paragraphs (2) to (8)”;
      - (bb) for “person” the first time it occurs substitute “non-dependant (referred to in this paragraph as “person”)”; and
    - (ii) for sub-paragraph (8) substitute—
      - “(8) A person is to be treated as not being engaged in remunerative work on any day in which that person falls within the circumstances prescribed in regulation 43(2) (circumstances in which partners of claimants entitled to an income-related allowance are not to be treated as engaged in remunerative work).
      - (9) Whether a claimant or the claimant’s partner is engaged in, or to be treated as being engaged in, remunerative work is to be determined in accordance with regulations 41 or 42 (meaning of “remunerative work” for the purposes of paragraph 6(1)(e) and (f) of Schedule 1 to the Act) as the case may be.”;
  - (c) in paragraph 3(2) (previous entitlement to other income-related benefits) for “income support” substitute “an income-related allowance”;
  - (d) in paragraph 6 (housing costs not met)—
    - (i) for sub-paragraph (2)(b) substitute—

- “(b) after 2nd May 1994 and the housing costs applicable to that loan were not met by virtue of the former paragraph 5A of Schedule 3 to the Income Support Regulations, or paragraph 4(2)(a) of Schedule 3 to the Income Support Regulations, paragraph 4(2)(a) of Schedule 2 to the Jobseeker’s Allowance Regulations or paragraph 5(2)(a) of Schedule 2 to the State Pension Credit Regulations;”;
  - (ii) in sub-paragraph (12)(b) for “children of different sexes aged 10 or over” substitute “persons of different sexes aged 10 or over but aged under 20”;
- (e) in paragraph 9(3) (new housing costs) for “paragraph 2” substitute “paragraph 3”;
- (f) in paragraph 12 (general provisions applying to new and existing housing costs) after sub-paragraph (10) add—
  - “(11) Sub-paragraph (12) applies to a person who, had the person been entitled to income support and not an employment and support allowance, would have been a person to whom any of the following transitional or savings provisions would have applied—
    - (a) regulation 4 of the Income Support (General) Amendment No. 3 Regulations 1993(14) (“the 1993 Regulations”);
    - (b) regulation 28 of the Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1995(15) (“the 1995 Regulations”).
  - (12) Where this sub-paragraph applies, the amount of housing costs applicable in the particular case shall be determined as if—
    - (a) in a case to which regulation 4(1) of the 1993 Regulations would have applied, sub-paragraphs 12(4) to (9) do not apply;
    - (b) in a case to which regulation 4(4) of the 1993 Regulations would have applied, the appropriate amount is £150,000; and
    - (c) in a case to which the 1995 Regulations would have applied, the appropriate amount is £125,000.”;
- (g) for paragraph 15(11)(b) (linking rule) substitute—
  - “(b) is in full-time education and in receipt of disability living allowance;”;
- (h) in paragraph 19(7) (non-dependant deductions)—
  - (i) in sub-paragraph (a) for “non-dependent” substitute “non-dependant”; and
  - (ii) for sub-paragraph (f) substitute—
    - “(f) to whom, but for paragraph (5) of regulation 71 (definition of non-dependant) paragraph (4) of that regulation would apply;”;
- (i) in paragraph 19(8)(b) for “the Independent Living Funds” substitute “the Independent Living Fund (2006)”.

#### **Amendment of Schedule 7 to the principal Regulations**

17. In paragraphs 5 and 6, each time it occurs, and in paragraph 7(3)(b) of Schedule 7 (sums to be disregarded in the calculation of earnings) for “£88.50” substitute “£92.00”.

#### **Amendment of Schedule 8 to the principal Regulations**

18. In Schedule 8 (sums to be disregarded in the calculation of income other than earnings)—

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(14) S.I. 1993/1679.

(15) S.I. 1995/516.

- (a) in paragraph 9(b)—
  - (i) before “employment and support allowance” insert “income-related”; and
  - (ii) for “a jobseeker’s allowance” substitute “an income-based jobseeker’s allowance”;
- (b) at the end of paragraphs 22(2) and 41(1) for “the Independent Living Funds” substitute “the Independent Living Fund (2006)”; and
- (c) in paragraph 52(1)(a) for “widowers or surviving civil partners” substitute “widower or surviving civil partner”.

### **Amendment of Schedule 9 to the principal Regulations**

- 19.** In Schedule 9 (capital to be disregarded)—
- (a) in paragraph 17(2)(a) for “in consequences of that personal injury” substitute “in consequence of that personal injury”;
  - (b) in paragraph 27(1) for “the Independent Living Funds” substitute “the Independent Living Fund (2006)”; and
  - (c) at the end of paragraph 31 for “the Independent Living Funds” substitute “the Independent Living Fund (2006)”; and
  - (d) in paragraph 35 for “in consequence of reduction” substitute “in consequence of a reduction”; and
  - (e) in paragraph 47(1) for “Any payment for a sports award” substitute “Any payment of a sports award”.

## **PART 2**

### **Child Maintenance Amendments of the principal Regulations**

- 20.—**(1) In regulation 2(2) (interpretation) omit “Chapter 9 of Part 10 (income and capital – child support) and”.
- (2) In the heading to each of the following regulations, before “liable relative” insert “child maintenance or”—
- (a) 85 (liable relative payments);
  - (b) 120 (treatment of liable relative payments);
  - (c) 124 (calculation of the weekly amount of a liable relative payment); and
  - (d) 125 (date on which a liable relative payment is to be treated as paid).
- (3) In regulation 85 for “liable relatives” substitute “child maintenance and liable relative payments”.
- (4) Omit—
- (a) regulation 86 (child support);
  - (b) regulation 126 (liable relative payments to be treated as capital);
  - (c) in Part 10, the whole of Chapter 9.
- (5) In Part 10 for the heading to Chapter 8 (liable relative) substitute “child maintenance and liable relative payments”.
- (6) In regulation 118(6) (calculation of tariff income from capital) for “regulations 112 and 126 (income treated as capital and liable relative payments treated as capital)” substitute “regulation 112 (income treated as capital)”.



- (7) In regulation 119 (interpretation)—
- (a) before the definition of “claimant” insert—
- ““child maintenance” means any payment towards the maintenance of a child or young person, including any payment made voluntarily and payments made under—
- (a) the Child Support Act 1991(16);
- (b) the Child Support (Northern Ireland) Order 1991(17);
- (c) a court order;
- (d) a consent order;
- (e) a maintenance agreement registered for execution in the Books of Council and Session or the sheriff court books;”;
- (b) at the appropriate place insert—
- ““claimant’s family” shall be construed in accordance with section 137 of the Contributions and Benefits Act (interpretation of part 7 and supplementary provisions);
- “housing costs” means those costs which may be met under paragraph 1(2) of Schedule 6;”;
- (c) after the definition of “liable relative” insert—
- ““ordinary clothing and footwear” means clothing and footwear for normal daily use but does not include school uniforms;”;
- (d) in the definition of “payment”—
- (i) omit “including, except in the case of a discretionary trust, any payment which would be so made or derived upon application being made by the claimant but which has not been acquired by the claimant but only from the date on which it could be expected to be acquired were an application made;”;
- (ii) for paragraph (d) substitute—
- “(d) made to a third party, or in respect of a third party, unless the payment is—
- (i) in relation to the claimant or the claimant’s family; and
- (ii) the payment is in respect of food, ordinary clothing or footwear, fuel, rent, housing costs, council tax or water charges;”;
- (e) in the definition of “periodical payment”—
- (i) in paragraph (a) omit “in pursuance of a court order or agreement for maintenance”;
- (ii) in paragraph (c), for “not exceeding” substitute “, after the appropriate disregard under paragraph 60 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) has been applied to it, that does not exceed”.
- (8) In regulation 120 (treatment of liable relative payments) for “except where regulation 126(1) (liable relative payments to be treated as capital) applies” substitute “paragraph 60 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings)”.
- (9) For regulation 123 substitute—

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(16) 1991 c. 48.

(17) S.I. 1991/2628 (N.I. 23).

**“Period over which payments other than periodical payments are to be taken into account**

**123.**—(1) The period over which a payment other than a periodical payment (a “non-periodical payment”) is to be taken into account shall be determined as follows.

(2) Except in a case where paragraph (4) applies, the number of weeks over which a non-periodical payment is to be taken into account shall be equal to the number obtained by dividing that payment by the amount referred to in paragraph (3).

(3) The amount is the aggregate of £2 and—

- (a) the amount of employment and support allowance that would be payable had no payment been made, and
- (b) where applicable, the maximum amount of disregard that would apply to the payment under paragraph 60 of Schedule 8.

(4) This paragraph applies in a case where a liable relative makes a periodical payment and a non-periodical payment concurrently and the weekly amount of the periodical payment (as calculated in accordance with regulation 124) is less than B.

(5) In a case where paragraph (4) applies, the non-periodical payment shall, subject to paragraphs (6) and (7), be taken into account over a period of the number of weeks equal to the number obtained by applying the formula—

$$\frac{A}{B - C}$$

(6) If the liable relative ceases to make periodical payments, the balance (if any) of the non-periodical payment shall be taken into account over the number of weeks equal to the number obtained by dividing that balance by the amount referred to in paragraph (3).

(7) If the amount of any subsequent periodical payment varies, the balance (if any) of the non-periodical payment shall be taken into account over a period of the number of weeks equal to the number obtained by applying the formula—

$$\frac{D}{B - E}$$

(8) The period under paragraph (2) or (4) shall begin on the date on which the payment is treated as paid under regulation 125 (date on which a liable relative payment is to be treated as paid) and the period under paragraph (6) or (7) shall begin on the first day of the benefit week in which the cessation or variation of the periodical payment occurred.

(9) Any fraction which arises by applying a calculation or formula referred to in this regulation shall be treated as a corresponding fraction of a week.

(10) In paragraphs (4) to (7)—

- A = the amount of the non-periodical payment;
- B = the aggregate of £2 and the amount of employment and support allowance that would be payable had the periodical payment not been made and, where applicable, the maximum disregard under paragraph 60 of Schedule 8;
- C = the weekly amount of the periodical payment;
- D = the balance (if any) of the non-periodical payment;
- E = the weekly amount of any subsequent periodical payment.”.

(10) In paragraph 60 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) for sub-paragraphs (3) and (4) substitute—

“(3) No more than £20 shall be disregarded in respect of each week to which any payment of child maintenance is attributed in accordance with regulations 120 to 125 (child maintenance and liable relatives).

(4) In this paragraph, “child maintenance” shall have the same meaning as in regulation 119.”.

## PART 3

### Miscellaneous Amendments

#### **Amendment of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983**

**21.** In regulation 20(1) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983(**18**) (special provision for certain persons who have been employed abroad) for “and short-term incapacity benefit” substitute “, short-term incapacity benefit and contributory employment and support allowance”.

#### **Amendment of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988**

**22.** In regulation 7(1) of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988(**19**) (duplication and prescribed income) for “and income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance, income-related employment and support allowance”.

#### **Amendment of the Social Security Administration Act 1992**

**23.** In section 74(3) of the Social Security Administration Act 1992(**20**) (income support and other payments) in paragraph (c), and in the full-out words after that paragraph, for “or an income-based jobseeker’s allowance”, in each place, substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”.

#### **Amendment of the Employment and Support Allowance (Consequential Provisions) Regulations 2008**

**24.** The Employment and Support Allowance (Consequential Provisions) Regulations 2008(**21**) are amended as follows.

#### **Amendment of regulation 2**

**25.** In regulation 2 (amendment of the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006) in inserted sub-paragraph (ca) for “in accordance with section 8” substitute “within the meaning of section 1(4)”.

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(18) [S.I. 1983/1598](#). Regulation 20 amended by [S.I. 1995/829](#) and [S.I. 1996/1345](#).

(19) [S.I. 1988/664](#). Paragraph 1 was substituted by [S.I. 1993/650](#) and amended by [S.I. 1996/1345](#) and [S.I. 2002/3019](#).

(20) [1992 c. 5](#). Subsection 3(c) was amended by paragraph 50 of Schedule 2 to the Jobseekers Act 1995.

(21) [S.I. 2008/1082](#).

### Amendment of regulation 3

26. For regulation 3 (amendment of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001) substitute—

**“Amendment of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001**

3.—(1) The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(22) are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation) after the definition of “relevant decision” add—

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

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

(a) in sub-paragraph (i) at the beginning insert “except where sub-paragraph (o) applies,”; and

(b) after sub-paragraph (n) add—

“(o) where—

(i) the claimant has been awarded entitlement to housing benefit or council tax benefit;

(ii) the claimant or the claimant’s partner has made a claim for employment and support allowance;

(iii) subsequent to the first day of the period to which entitlement to housing benefit or council tax benefit relates, the Secretary of State has decided that the claimant or the claimant’s partner has, or is to be treated as having, limited capability for work within the meaning of section 1(4) of the Welfare Reform Act or limited capability for work-related activity within the meaning of section 2(5) of that Act; and

(iv) either—

(aa) the assessment phase as defined in section 24(2) of the Welfare Reform Act has ended; or

(bb) regulation 7 of the Employment and Support Allowance Regulations 2008(23) (circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work related activity component arises does not apply) applies.”.

(4) In regulation 8 (date from which a decision superseding an earlier decision takes effect) after paragraph (14C)(24) insert—

“(14D) Where the decision is superseded in accordance with regulation 7(2)(o), the decision shall take effect from—

(a) the first day of entitlement to an amount in consequence of the decision of the Secretary of State referred to in regulation 7(2)(o)(iii); or

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(22) S.I. 2001/1002.

(23) S.I. 2008/794.

(24) Paragraph (14C) was inserted by S.I. 2007/2474.

- (b) the first day that there would have been such entitlement had the claimant or the claimant's partner been entitled to an employment and support allowance by virtue of section 1 of the Welfare Reform Act,  
if that day is the first day of the benefit week but, if it is not, from the next following such day.””.

#### **Amendment of regulation 5**

27. In regulation 5(2) (amendment of regulation 2) after sub-paragraph (e) insert—  
“(ee) after the definition of “Jobseeker’s Allowance Regulations” insert—  
““limited capability for work” has the meaning given in section 1(4) of the Welfare Reform Act;  
“limited capability for work-related activity” has the meaning given in section 2(5) of the Welfare Reform Act;””.

#### **Regulation 7A**

28. After regulation 7 (amendment of regulation 6) insert—

##### **“Amendment of regulation 7**

- 7A. In regulation 7(8)(c)(ii) (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) after “Schedule 3” add “or a component under paragraph 23 or 24 of that Schedule””.

#### **Amendment of regulation 11**

29. In regulation 11 (amendment of regulation 22) in inserted sub-paragraph (e)(ii) omit “the”.

#### **Amendment of regulation 12**

30. In regulation 12 (amendment of regulation 23) in inserted sub-paragraph (f)(ii) omit “the”.

#### **Amendment of regulation 23**

31. In regulation 23 (amendment of Schedule 3)—  
(a) in sub-paragraph (b) in added paragraph (9) omit “within the meaning of section 1(4) of the Welfare Reform Act”;  
(b) in sub-paragraph (c) for the inserted sub-paragraph (a) substitute—  
“(a) the Secretary of State has decided that the claimant has, or is to be treated as having, limited capability for work-related activity; or”; and  
(c) for sub-paragraph (d) substitute—  
“(d) after Part 4 (amounts of premiums specified in Part 3) add—

### **“PART 5**

#### **The components**

21. Subject to paragraph 22, the claimant is entitled to one, but not both, of the components in paragraphs 23 or 24 if—

- (a) the claimant or the claimant’s partner has made a claim for employment and support allowance;
- (b) the Secretary of State has decided that the claimant or the claimant’s partner has, or is to be treated as having, limited capability for work or limited capability for work-related activity; and
- (c) either—
  - (i) the assessment phase as defined in section 24(2) of the Welfare Reform Act has ended; or
  - (ii) regulation 7 of the Employment and Support Allowance Regulations (circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work related activity component arises does not apply) applies.

**22.—(1)** The claimant has no entitlement under paragraph 23 or 24 if the claimant is entitled to the disability premium under paragraphs 12 and 13.

(2) Where the claimant and the claimant’s partner each satisfies paragraph 23 or 24, the component to be included in the claimant’s applicable amount is that which relates to the claimant.

#### **The work-related activity component**

**23.** The claimant is entitled to the work-related activity component if the Secretary of State has decided that the claimant or the claimant’s partner has, or is to be treated as having, limited capability for work.

#### **The support component**

**24.** The claimant is entitled to the support component if the Secretary of State has decided that the claimant or the claimant’s partner has, or is to be treated as having, limited capability for work-related activity.

## **PART 6**

### **Amount of components**

**25.** The amount of the work-related activity component is £24.00.

**26.** The amount of the support component is £29.00.”.”.

#### **Amendment of regulation 24**

**32.** In regulation 24(c) (amendment of Schedule 4)—

- (a) in sub-paragraph (i) in substituted paragraph (aa) omit “respectively”; and
- (b) in sub-paragraph (ii) omit “or” the first time it occurs.

#### **Amendment of regulation 29**

**33.** In regulation 29(2) (amendment of regulation 2)—

- (a) after sub-paragraph (b) insert—

- “(bb) after the definition of “the Consequential Provisions Regulations” insert—  
    ““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;”,;” and
- (b) for sub-paragraph (e) substitute—
  - “(e) after the definition of “the Macfarlane Trust” insert—  
    ““main phase employment and support allowance” means an employment and support allowance where the calculation of the amount payable in respect of the claimant includes a component under section 2(1)(b) or 4(2) (b) of the Welfare Reform Act;”,;”.

#### **Amendment of regulation 30**

**34.** In regulation 30 (amendment of regulation 5) in the substituted words insert “on” before “an income-based”.

#### **Amendment of regulation 35**

**35.** In regulation 35(a) (amendment of regulation 48) in the inserted paragraph, before “(e)” insert “and”.

#### **Amendment of regulation 43**

- 36.** In regulation 43(2) (amendment of regulation 2)—
- (a) after sub-paragraph (e) insert—
    - “(ee) after the definition of “Jobseeker’s Allowance Regulations” insert—  
    ““limited capability for work” has the meaning given in section 1(4) of the Welfare Reform Act;  
    “limited capability for work-related activity” has the meaning given in section 2(5) of the Welfare Reform Act;”,;” and
  - (b) for sub-paragraph (f) substitute—
    - “(f) after the definition of “the Macfarlane Trust” insert—  
    ““main phase employment and support allowance” means an employment and support allowance where the calculation of the amount payable in respect of the claimant includes a component under section 2(1)(b) or 4(2) (b) of the Welfare Reform Act;”,;”.

#### **Amendment of regulation 48**

**37.** In regulation 48 (amendment of regulation 12) in inserted sub-paragraph (e)(ii) omit “the”.

#### **Amendment of regulation 49**

**38.** In regulation 49 (amendment of regulation 13) in inserted sub-paragraph (f)(ii) omit “the”.

#### **Amendment of regulation 59**

- 39.** In regulation 59 (amendment of Schedule 1)—
- (a) in sub-paragraph (b) in added paragraph (10) omit “within the meaning of section 1(4) of the Welfare Reform Act”;

- (b) in sub-paragraph (c) for the inserted sub-paragraph (a) substitute—
  - “(a) the Secretary of State has decided that the claimant has, or is to be treated as having, limited capability for work-related activity; or”;
- (c) for sub-paragraph (d) substitute—
  - “(d) after Part 4 (amounts of premiums specified in Part 3) add—

## “PART 5

### The components

**21.** Subject to paragraph 22 the claimant is entitled to one, but not both, of the components in paragraph 23 or 24 if—

- (a) the claimant or the claimant’s partner has made a claim for employment and support allowance;
- (b) the Secretary of State has decided that the claimant or the claimant’s partner has, or is to be treated as having, limited capability for work or limited capability for work-related activity; and
- (c) either—
  - (i) the assessment phase as defined in section 24(2) of the Welfare Reform Act has ended; or
  - (ii) regulation 7 of the Employment and Support Allowance Regulations (circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work related activity component arises does not apply) applies.

**22.—(1)** The claimant has no entitlement under paragraph 23 or 24 if the claimant is entitled to the disability premium under paragraphs 12 and 13.

(2) Where the claimant and the claimant’s partner each satisfies paragraph 23 or 24, the component to be included in the claimant’s applicable amount is that which relates to the claimant.

### **The work-related activity component**

**23.** The claimant is entitled to the work-related activity component if the Secretary of State has decided that the claimant or the claimant’s partner has, or is to be treated as having, limited capability for work.

### **The support component**

**24.** The claimant is entitled to the support component if the Secretary of State has decided that the claimant or the claimant’s partner has, or is to be treated as having, limited capability for work-related activity.

## PART 6

### Amount of components

**25.** The amount of the work-related activity component is £24.00.



26. The amount of the support component is £29.00. ””.

#### **Amendment of regulation 66**

40. In regulation 66(2) (amendment of regulation 2)—

(a) for sub-paragraph (f) substitute—

“(f) after the definition of “the Macfarlane Trust” insert—

““main phase employment and support allowance” means an employment and support allowance where the calculation of the amount payable in respect of the claimant includes a component under section 2(1)(b) or 4(2)(b) of the Welfare Reform Act;”” and

(b) after sub-paragraph (f) insert—

“(ff) in the definition of “qualifying contributory benefit” after sub-paragraph (b) add—

“(c) contributory employment and support allowance;””.

#### **Amendment of the Employment and Support Allowance (Consequential Provisions) (No. 2) Regulations 2008**

41.—(1) The Employment and Support Allowance (Consequential Provisions) (No. 2) Regulations 2008(25) are amended as follows.

(2) In regulation 2(11) (amendment of the Income Support (General) Regulations 1987)—

(a) in sub-paragraph (f)(ii) in inserted sub-paragraph (15) after “in a case where” insert “a claimant, a claimant’s partner or”; and

(b) in sub-paragraph (g) in inserted paragraph (i) omit “2(2) or (3) or”.

(3) In regulation 3(25)(f)(ii) (amendment of the Jobseeker’s Allowance Regulations 1996) in inserted paragraph (i) omit “2(2) or (3) or”.

(4) In regulation 4(8)(e) (amendment of the State Pension Credit Regulations 2002) in inserted paragraph (g) omit “2(2) or (3) or”.

#### **Amendment of the Employment and Support Allowance (Transitional Provisions) Regulations 2008**

42. In regulation 1(4) of the Employment and Support Allowance (Transitional Provisions) Regulations 2008(26) (interpretation) after “regulation” omit “6(4)(a) or”.

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

*William D.McKenzie*  
Parliamentary Under-Secretary of State,  
Department for Work and Pensions

10th September 2008

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(25) S.I. 2008/1554.

(26) S.I. 2008/795.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

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

The regulations contained in this Instrument are made by virtue of or consequential on provisions in the Welfare Reform Act 2007 (c. 5) (“the 2007 Act”). This Instrument is made before the expiry of the period of 6 months beginning with the coming into force of those provisions; the regulations in it are therefore exempt in accordance with section 173(5) of the Social Security Administration Act 1992 from the requirement in section 172(1) of that Act to refer proposals to make Regulations to the Social Security Advisory Committee and are made without reference to that Committee.

Part 1 of these Regulations amends the Employment and Support Allowance Regulations 2008 (“the principal Regulations”) from the date the principal Regulations come into force.

Regulations 3(a), 8(3), 8(4) and 8(6) remove references to “starting rate” and where appropriate replaces them with “basic rate” to reflect that as from April 2008, the starting rate of tax was abolished and taxation commences at the basic rate.

Regulation 5 ensures that, when an Employment and Support Allowance (“ESA”) claimant receives a training allowance, benefit entitlement is lost.

Regulations 6(2), 7(3) and 19 increase the earnings limit from £88.50 to £92.00 a week.

Regulation 7 makes provision for deductions from ESA (Contributory) to be made where the claimant is in receipt of a payment under the Financial Assistance Scheme.

Regulation 9 amends the requirement for a claimant to serve waiting days when he or she is a member of a couple, one of whom is already in receipt of income-related ESA.

Regulation 18 aligns the treatment of concessionary payments with the Housing Benefit and Council Tax Benefit provisions. Concessionary payments in lieu of income-based jobseeker’s allowance or contributory ESA will now be taken into account.

Part 2 further amends the principal regulations to reflect child maintenance reform.

This part makes provision for all payments of child maintenance income to be treated equally and taken into account in the same manner regardless of source. This part also increases the disregard on child maintenance income to £20 per household and extends the disregard to all forms of child maintenance.

Part 3 of these Regulations makes miscellaneous amendments.

Regulations 21 to 23 make consequential amendments by adding references to employment and support allowance to—

- the Social Security Administration Act 1992;
- the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988;
- the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983.

Regulations 24 to 40 make amendments to the Employment and Support Allowance (Consequential Provisions) Regulations 2008 which made amendments in consequence of the introduction of employment and support allowance by the 2007 Act.

Regulation 25 amends the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 in respect of Housing Benefit.

Regulations 26 to 35 amend provisions that relate to Housing Benefit.

Regulations 36 to 40 amend provisions that relate to Council Tax Benefit.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Regulation 41 amends the Employment and Support Allowance (Consequential Provisions) (No. 2) Regulations 2008 (which made amendments in consequence of the introduction of employment and support allowance by the 2007 Act) in respect of provisions that relate to Income Support, Jobseeker's Allowance and State Pension Credit.

Regulation 42 amends the Employment and Support Allowance (Transitional Provisions) Regulations 2008 to enable certain disabled workers to claim income support if they are not entitled to employment and support allowance.

The Regulations make other minor amendments to the principal regulations which correct errors or make necessary changes to ensure consistency.

A full impact assessment has not been published for these Regulations as they have no impact on the private or voluntary sectors.