

## SCHEDULES

### SCHEDULE 2

Regulation 16(1)

Modification of enactments: after the conversion phase

#### PART 1

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

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

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

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

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

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

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

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

“(7) In this Part—

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

“income-related allowance” means an employment and support allowance to which a person is entitled by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 which was based on an award of income support to which the person was entitled.”.

3. Section 2 (amount of contributory allowance) is to be read as if—

(a) in subsection (1)(a), after the words “such amount” there were inserted “, or the aggregate of such amounts.”; and

(b) except for the purposes of applying regulation 147A of the 2008 Regulations (claimants appealing a decision), in subsections (2)(a) and (3)(a), references to the assessment phase were to the conversion phase.

4. Section 4 (amount of income-related allowance), except for the purposes of applying regulation 147A of the 2008 Regulations as modified by paragraph 15 of this Schedule, is to be read as if, in subsections (4)(a) and (5)(a), references to the assessment phase were to the conversion phase.

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## PART 2

### MODIFICATION OF OTHER PRIMARY LEGISLATION

#### *Social Security Act 1998*

5. Schedule 3 to the Social Security Act 1998(1) (decisions against which an appeal lies) is to be read as if, after paragraph 8D, there were inserted—

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

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

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

6. Section 44B of the Social Security Contributions and Benefits Act 1992(2) (deemed earnings factors: 2010-11 onwards) is to be read as if, after subsection (5), there were inserted—

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

(a) any entitlement arising by virtue of—

- (i) section 44C(3)(c) below (eligibility for earnings factor enhancement in respect of a week in which severe disablement allowance was payable), or
- (ii) section 44C(3)(d) below (eligibility for earnings factor enhancement in respect of a week in which long-term incapacity benefit was, or would have been, payable); and

(b) where an award of severe disablement allowance or long-term incapacity benefit was converted into an award of an employment and support allowance by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010, any entitlement arising by virtue of regulation 5A(2)(ba) of the Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2001(3) (earnings factor credits eligibility for pensioners to whom employment and support allowance was payable).”.

## PART 3

### MODIFICATION OF THE 2008 REGULATIONS

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

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

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

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

(2) 1992 c. 4. Section 44B was inserted by section 9(1) of the Pensions Act 2007 (c. 22) and amended by paragraph 5 of Schedule 1 to the National Insurance Act 2008 (c. 16).

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

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

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

““specified work” means—

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

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

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

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

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

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

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

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

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

**15.** In its application to a person who has made and is pursuing an appeal against a conversion decision which embodies a determination that the person does not have limited capability for work, Regulation 147A(5) (claimants appealing a decision) is to be read as if there were substituted—

**“Claimants appealing a decision**

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

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

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

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

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

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

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

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

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

(5) Where this regulation applies and—

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

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

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

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

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

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

#### PART 4

#### MODIFICATION OF OTHER SECONDARY LEGISLATION

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

**17.** The Social Security (Claims and Payments) Regulations 1987(6) are to be read subject to the modifications set out in paragraphs 18 to 21 of this Schedule.

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

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

(a) after the words “was made” in paragraph (j)(ii)(7), there were inserted—  
“; or

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

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

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

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

**19.** In regulation 26C(8) (employment and support allowance) any reference to an employment and support allowance includes any transitional addition to which the beneficiary is entitled under the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010.

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

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

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

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

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

(a) in paragraph 1 (interpretation)—

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

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

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

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

(a) immediately before the effective date of the conversion decision made in relation to the beneficiary, any deduction is being made in accordance with

(7) Paragraph (j)(ii) was substituted by regulation 2 of S.I. 2010/840.

(8) Regulation 26C was inserted by S.I. 2008/1554, regulation 21.

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this Schedule from sums payable to the beneficiary by way of the specified benefit; and

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

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

- (b) in paragraph 8—

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

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

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

“(5) The specified provisions are—

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

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

or

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

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

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

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

- (a) in paragraph (1) (interpretation), the existing provision becomes sub-paragraph (1); and
- (b) there were added—

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

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

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

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

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

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

**23.** Regulation 1 of the Community Charges (Deductions from Income Support) (No. 2) Regulations 1990(10) (citation, commencement and interpretation) is to be read as if, after paragraph (2), there were inserted—

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

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

(a) immediately before the effective date of the conversion decision made in relation to the debtor, any deduction is being made under these Regulations from sums payable to the debtor by way of income support; and

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

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

*Fines (Deductions from Income Support) Regulations 1992*

**24.** Regulation 1 of the Fines (Deductions from Income Support) Regulations 1992(11) (citation, commencement and interpretation) is to be read as if, after paragraph (2), there were inserted—

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

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

(a) immediately before the effective date of the conversion decision made in relation to the offender, any deduction is being made under these Regulations from sums payable to the offender by way of income support; and

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

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

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

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

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

25. Regulation 1 of the Council Tax (Deductions from Income Support) Regulations 1993(12) (citation, commencement and interpretation) is to be read as if, after paragraph (2), there were inserted—

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

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

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

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

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

26. Regulation 5A of the Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2001(13) (earnings factor credits eligibility for pensioners to whom employment and support allowance was payable) is to be read as if—

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

“(ba) that allowance was an employment and support allowance to which the pensioner was entitled by virtue of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 and either—

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

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

(13) S.I. 2001/1323. Regulation 5A was inserted by S.I. 2009/2206.