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## STATUTORY INSTRUMENTS

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**2008 No. 1082**

### **SOCIAL SECURITY**

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

<i>Made</i>	- - - -	<i>14th April 2008</i>
<i>Laid before Parliament</i>		<i>18th April 2008</i>
<i>Coming into force</i>	- -	<i>27th October 2008</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by sections 130(2) to (4), 135(1), 136(3), 137(1) and (2)(d) and (i) and 175(1), (2), (3) and (4) of the Social Security Contributions and Benefits Act 1992 <sup>M1</sup>, sections 5(1)(a), (i) and (p), 6(1)(a) and (k), 75(4) 189(1), (3) and (4) to (6) and 191 of the Social Security Administration Act 1992 <sup>M2</sup>, sections 34(1), 79(1), (3), (4) and (6) and 84 of the Social Security Act 1998 <sup>M3</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>M4</sup> and sections 32(1) and 34(6) of the Welfare Reform Act 2007 <sup>M5</sup>.

These Regulations are made in consequence of the Welfare Reform Act 2007 and are made within six months beginning with the coming into force of those provisions <sup>M6</sup>.

In accordance with section 176(1) <sup>M7</sup> of the Social Security Administration Act 1992 the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

#### **Marginal Citations**

- M1** 1992 c. 4. Section 137(1) is cited for the meaning given to “prescribed”.
- M2** 1992 c. 5. Section 5(1) was amended by section 74 of, and paragraph 79(1)(a) of Schedule 7 and Schedule 8 to, the [Social Security Act 1998 \(c. 14\)](#) and paragraph 21(1) of Schedule 7 to the [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#). Section 6(1) was amended by paragraph 12 of Schedule 9 to the [Local Government Finance Act 1992 \(c. 14\)](#) and Schedule 8 to the Social Security Act 1998, paragraph 21(2) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000. Section 191 is cited for the meaning given to “prescribed”.
- M3** 1998 c. 14. Section 84 is cited for the meaning given to “prescribed”.
- M4** 2000 c. 19. Paragraph 23(1) of Schedule 7 is cited for the meaning given to “prescribed”.
- M5** 2007 c. 5. Section 34 is cited for the meaning given to “prescribed”.
- M6** 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.

- M7** [Section 176\(1\)](#) was amended by paragraph 23 of Schedule 9 to the Local Government Finance Act 1992, 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.

## PART 1

### General

#### Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance (Consequential Provisions) Regulations 2008 and shall come into force on 27th October 2008.

## PART 2

### Common provisions

#### Amendment of the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006

2. In paragraph 5(2) of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 <sup>M8</sup> (transitional and savings provisions), in the paragraph inserted as paragraph (4) of regulation 13 of both the Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 after sub-paragraph (c) insert—

- “(ca) has limited capability for work [<sup>F1</sup>within the meaning of section 1(4)] of the Welfare Reform Act 2007; or
- (cb) is treated as not having limited capability for work in accordance with regulations made under paragraph 1(a) of Schedule 2 to that Act (employment and support allowance: supplementary provisions); or”.

- F1** Words in [reg. 2](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), [regs. 1\(2\), 25](#)

#### Marginal Citations

- M8** [S.I. 2006/217](#). Paragraph 5(2) was amended by [SI. 2007/2870](#) and [2008/1042](#).

#### [<sup>F2</sup>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 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 (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) 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
  - (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.”].

**F2** [Reg. 3](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **26**

## PART 3

### The Housing Benefit Regulations 2006

#### General

4. The Housing Benefit Regulations 2006 <sup>M9</sup> are amended in accordance with this Part.

## Marginal Citations

**M9** S.I. 2006/213.

## Amendment of regulation 2

**5.—**(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1)—

- (a) in the definition of “appropriate DWP office” for “or a jobseeker's allowance” substitute “, a jobseeker's allowance or an employment and support allowance ”;
  - (b) in the definition of “the benefit Acts” for “and the Jobseekers Act” substitute “, the Jobseekers Act and the Welfare Reform Act ”;
  - (c) 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;”;
  - (d) after the definition of “employed earner” insert—  
““Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008 <sup>M10</sup>;”;
  - (e) after the definition of “an 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;”;
  - [<sup>F3</sup>(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;”];
  - (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;”;
  - (g) in the definition of “qualifying contributory benefit”<sup>M11</sup> after sub-paragraph (b) add—  
“(c) contributory employment and support allowance;”;
  - (h) in the definition of “qualifying income-related benefit” after sub-paragraph (b) add—  
“(c) income-related employment and support allowance;”;
  - (i) after the definition of “water charges” insert—  
““Welfare Reform Act” means the Welfare Reform Act 2007;”.
- (3) After paragraph (3) insert—  
“(3A) For the purposes of these Regulations, a person is on an income-related employment and support allowance on any day in respect of which an income-related employment and support allowance is payable to him and on any day—  
(a) in respect of which he satisfies the conditions for entitlement to an income-related employment and support allowance but where the allowance is not paid in accordance with section 18 of the Welfare Reform Act (disqualification); or

- (b) which is a waiting day for the purposes of paragraph 2 of Schedule 2 to that Act and which falls immediately before a day in respect of which an income-related employment and support allowance is payable to him or would be payable to him but for section 18 of that Act.”.

**F3** [Reg. 5\(2\)\(ee\)](#) inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **27**

#### **Marginal Citations**

**M10** [S.I. 2008/794](#).

**M11** Definitions of “qualifying contributory benefit” and “qualifying income-related benefit” were inserted by [S.I. 2008/959](#).

### **Amendment of regulation 5**

**6.** In regulation 5(1)(b) (persons who have attained the qualifying age for state pension credit) for “or on an income-based jobseeker's allowance” substitute “, on an income-based jobseeker's allowance or on an income-related employment and support allowance ”.

### **Amendment of regulation 6**

**7.** In regulation 6(6) (remunerative work) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance ”.

### **[<sup>F4</sup>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”.]

**F4** [Reg. 7A](#) inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **28**

### **Amendment of regulation 10**

**8.** In regulation 10(3B)(k) <sup>M12</sup> (persons from abroad) for “or on an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or on an income-related employment and support allowance ”.

#### **Marginal Citations**

**M12** Paragraph (3B) was substituted by [S.I. 2006/1026](#) and amended by [S.I. 2006/2528](#) and 3341.

### **Amendment of regulation 11**

**9.** In regulation 11 (eligible housing costs)—

- (a) in 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 ”  
; and

- (b) in paragraph (4) for “or an income-based jobseeker's allowance” each time it occurs substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance”.

#### **Amendment of regulation 19**

**10.** In regulation 19(2)(a) <sup>M13</sup> (persons of prescribed description) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance”.

#### **Marginal Citations**

**M13** Sub-paragraph (a) was amended by [S.I. 2006/718](#).

#### **Amendment of regulation 22**

**11.** In regulation 22 (applicable amounts) after sub-paragraph (d) add—

“(e) the amount of either the—

(i) work-related activity component; or

(ii) <sup>F5</sup>...support component,

which may be applicable to him in accordance with Part 5 of Schedule 3 (the components).”.

**F5** Word in [reg. 11](#) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008](#) (S.I. 2008/2428), regs. 1(2), **29**

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

**12.** In regulation 23 (polygamous marriages) after sub-paragraph (e) add—

“(f) the amount of either the—

(i) work-related activity component; or

(ii) <sup>F6</sup>...support component,

which may be applicable to him in accordance with Part 5 of Schedule 3 (the components).”.

**F6** Word in [reg. 12](#) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008](#) (S.I. 2008/2428), regs. 1(2), **30**

#### **Amendment of regulation 26**

**13.** In regulation 26(1) (circumstances in which income of non-dependant is to be treated as claimant's) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance”.

#### **Amendment of regulation 28**

**14.** In regulation 28 (treatment of child care charges)—

(a) in paragraph (2)—

- (i) after sub-paragraph (b) insert—
  - “(ba) is paid an employment and support allowance;” and
- (ii) in sub-paragraph (d) after “incapacity for work” insert “ or limited capability for work ”;
- (b) in paragraph (3)(a) after “short-term incapacity benefit” insert “ , an employment and support allowance ”;
- (c) in paragraph (11) <sup>M14</sup>—
  - (i) in sub-paragraph (a) after “incapacity” add “ or the support component or the work-related activity component on account of the other member having limited capability for work ”;
  - (ii) after sub-paragraph (b) insert—
    - “(ba) the claimant's applicable amount would include the support component or the work-related activity component on account of the other member having limited capability for work but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations;”;
  - (iii) after sub-paragraph (c) insert—
    - “(ca) the claimant (within the meaning of regulation 2(1)) has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period;”;
  - (iv) in sub-paragraph (d) after (vi) add—
    - “(vii) main phase employment and support allowance;”;
- (d) after paragraph (12) insert—
  - “(12A) For the purposes of paragraph (11), once paragraph (11)(ca) applies to the claimant, if he then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is, on his again having, or being treated as having, limited capability for work at the end of that period, immediately thereafter to apply to him for so long as he has, or is treated as having, limited capability for work.”.

#### Marginal Citations

**M14** Paragraph (11) was amended by [S.I. 2008/1042](#).

### Amendment of regulation 40

- 15.** In regulation 40 (calculation of income other than earnings) after paragraph (5) insert—

“(5A) Where the claimant or, where the claimant is a member of a couple, his partner is receiving a contributory employment and support allowance and 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.”.

### Amendment of regulation 50

**16.** In regulation 50 (diminishing notional capital rule)—

(a) in paragraph (3)—

(i) at the end of paragraph (c) omit “and”; and

(ii) after sub-paragraph (d) add—

“and

(e) where the claimant has also claimed an employment and support allowance, the amount of an income-related employment and support allowance to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations (notional capital).”;

(b) in paragraph (4) <sup>M15</sup> after sub-paragraph (d) add—

“(e) if the claimant would, but for regulation 115 of the Employment and Support Allowance Regulations, have been entitled to an income-related employment and support allowance in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount must be determined by dividing the amount of the income-related employment and support allowance to which he would have been so entitled by the number equal to the number of days in that part-week and multiplying the quotient so obtained by 7.”; and

(c) in paragraph (8)(b)—

(i) for “and (d)” substitute “, (d) and (e) ”; and

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

#### Marginal Citations

**M15** Paragraph (4) was amended by [S.I. 2007/2868](#).

### Amendment of regulation 56

**17.** In regulation 56(2) <sup>M16</sup> (full-time students to be treated as not liable to make payments in respect of a dwelling)—

(a) in sub-paragraph (a) 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) after sub-paragraph (e) insert—

“(ea) who has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period.”.



#### Marginal Citations

**M16** Paragraph (2) was amended by [S.I. 2006/718](#) and 2008/1042.

#### Amendment of regulation 74

**18.** In regulation 74(8) <sup>M17</sup> (non-dependant deductions) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance which does not include an amount under section 4(2)(b) of the Welfare Reform Act (the support component and the work-related activity component) ”.

#### Marginal Citations

**M17** Paragraph (8) was substituted by [S.I. 2007/2868](#).

#### Amendment of regulation 83

**19.** In regulation 83 (time and manner in which claims are to be made)—

(a) in paragraph (4) <sup>M18</sup>—

- (i) in sub-paragraph (a) for “or a jobseeker's allowance” substitute “, a jobseeker's allowance or an employment and support allowance ”;
- (ii) in sub-paragraph (c) for “or a jobseeker's allowance” substitute “, a jobseeker's allowance or an employment and support allowance ”;

(b) in paragraph (5) <sup>M19</sup>—

(i) in sub-paragraph (a)—

- (aa) for “or an income-based jobseeker's allowance” each time it occurs substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance ”;
- (bb) for “or jobseeker's allowance” substitute “, jobseeker's allowance or employment and support allowance ”; and
- (cc) omit “ and for the purposes of” to the end; and

(ii) 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

(c) after paragraph (5) insert—

“(5A) For the purposes only of sub-paragraph (5)(a) a person who has been awarded an income-based jobseeker's allowance or an income-related employment and support allowance is to be treated as entitled to that allowance for any days which immediately precede the first day in that award and on which he would have been entitled to that allowance but for regulations made under—

- (a) in the case of income-based jobseeker's allowance, paragraph 4 of Schedule 1 to the Jobseekers Act (waiting days); or
- (b) in the case of income-related employment and support allowance, paragraph 2 of Schedule 2 to the Welfare Reform Act (waiting days).”.

#### Marginal Citations

**M18** Paragraph (4) was amended by [S.I. 2006/2967](#) and 2007/2911.

**M19** Paragraph (5) was amended by [S.I. 2007/2911](#).

#### Amendment of regulation 88

**20.** In regulation 88(3)(d) <sup>M20</sup> (duty to notify changes of circumstances)—

- (a) for “or income-based jobseeker's allowance” substitute “ , an income-based jobseeker's allowance or an income-related employment and support allowance ”; and
- (b) for “or an income-based jobseeker's allowance” each time it occurs substitute “ , an income-based jobseeker's allowance or an income-related employment and support allowance ”.

#### Marginal Citations

**M20** Regulation 88 was amended by [S.I. 2008/1042](#).

#### Amendment of regulation 95

**21.** In regulation 95(1)(a) (circumstances in which payment is to be made to a landlord) for “or a jobseeker's allowance” substitute “ , a jobseeker's allowance or an employment and support allowance ”.

#### Amendment of regulation 105

**22.** In regulation 105(1) (recovery of overpayments from prescribed benefits) after sub-paragraph (e) add—

“(f) an employment and support allowance.”.

#### Amendment of Schedule 3

**23.** In Schedule 3 (applicable amounts)—

- (a) in Part 1 (personal allowances) for sub-paragraphs (1) to (3) of paragraph 1 <sup>M21</sup> substitute—

<i>“Column (1) Person or couple</i>	<i>Column (2) Amount</i>
(1) A single claimant who—	(1)
(a) is entitled to main phase employment and support allowance;	(a) £60.50;
(b) is aged not less than 25;	(b) £60.50;
(c) is aged less than 25.	(c) £47.95.
(2) Lone parent who—	(2)
(a) is entitled to main phase employment and support allowance;	(a) £60.50;

- |     |                              |     |         |
|-----|------------------------------|-----|---------|
| (b) | is aged not less than 18; or | (b) | £60.50; |
| (c) | is aged less than 18.        | (c) | £47.95. |
- (3) Couple where— (3)
- |     |  |     |          |
|-----|--|-----|----------|
| (a) | the claimant is entitled to main phase employment and support allowance; | (a) | £94.95;  |
| (b) | at least one member is aged not less than 18;                            | (b) | £94.95;  |
| (c) | both members are aged less than 18.                                      | (c) | £72.35.” |
- 
- (b) in Part 3 (premiums) after sub-paragraph (8) of paragraph 13 <sup>M22</sup> (additional conditions for the Disability Premium) add—
- “(9) The claimant is not entitled to the disability premium if the claimant has, or is treated as having, limited capability for work <sup>F7</sup> ....”;
- (c) in paragraph 15 (enhanced disability premium) for sub-paragraph (1) substitute—
- “(1) Subject to sub-paragraph (2), the condition is that—
- [<sup>F8</sup>(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]
- (b) the care component of disability living allowance is, or would, but for a suspension of benefit in accordance with regulations made under section 113(2) of the Act or but for an abatement as a consequence of hospitalisation be payable at the highest rate prescribed under section 72(3) of the Act in respect of—
- (i) the claimant; or
- (ii) a member of the claimant's family,
- who is aged less than 60.”.
- (d) after Part 4 (amounts of premiums specified in Part 3) add—

## [<sup>F9</sup>“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. ”].

- |           |  |
|-----------|--|
| <b>F7</b> | Words in <a href="#">reg. 23(b)</a> omitted (27.10.2008) by virtue of <a href="#">The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428)</a> , regs. 1(2), <b>31(a)</b> |
| <b>F8</b> | Words in <a href="#">reg. 23(c)</a> substituted (27.10.2008) by <a href="#">The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428)</a> , regs. 1(2), <b>31(b)</b>       |
| <b>F9</b> | <a href="#">Reg. 23(d)</a> substituted (27.10.2008) by <a href="#">The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428)</a> , regs. 1(2), <b>31(c)</b>                |

### **Marginal Citations**

- M21** Paragraph 1 was amended by SI. 2006/217 and 645 and 2007/688.  
**M22** Paragraph 13 was amended by [S.I. 2008/1042](#).

### **Amendment of Schedule 4**

**24.** In Schedule 4 (sums to be disregarded in the calculation of earnings)—

- in paragraph 3(2) for “or severe disability premium” substitute “, severe disability premium, work-related activity component or support component ”;
- in paragraph 12 for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance ”
- in paragraph 17(2)(b)(iv) <sup>M23</sup>—
  - for paragraph (aa) substitute—

“(aa) the claimant's applicable amount includes a disability premium under paragraph 12, the work-related activity component under paragraph 23 or the support component under paragraph 24 of Schedule 3 <sup>F10</sup>...;” and

(ii) in paragraph (bb) for “<sup>F11</sup>... disability premium” substitute “, a disability premium, the work-related activity component or the support component”.

- F10** Word in reg. 24(c)(i) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **32(a)**
- F11** Word in reg. 24(c)(ii) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **32(b)**

#### Marginal Citations

**M23** Paragraph 17 was amended by [S.I. 2007/688](#) and 2008/1042.

### Amendment of Schedule 5

**25.** In Schedule 5 (sums to be disregarded in the calculation of income other than earnings)—

- (a) in paragraph 4 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 paragraph 7 after sub-paragraph (c) add—
  - “(d) an income-related employment and support allowance.”.

### Amendment of Schedule 6

**26.** In Schedule 6 (capital to be disregarded)—

- (a) in paragraph 5 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 paragraph 9(1) after sub-paragraph (e) add—
  - “(f) an income-related employment and support allowance.”.

### Amendment of Schedule 9

**27.** In Schedule 9 (matters to be included in decision notice)—

- (a) in paragraph 9—
  - (i) in the heading, for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance, an income-related employment and support allowance”; and
  - (ii) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance”;
- (b) in paragraph 10—
  - (i) in the heading for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance”; and

- (ii) for “or on an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or on an income-related employment and support allowance”; and
- (c) in paragraph 14(a)(ii) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance”.

## PART 4

### The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

#### General

**28.** The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 <sup>M24</sup> are amended in accordance with this Part.

#### Marginal Citations

**M24** [S.I. 2006/214](#).

#### Amendment of regulation 2

**29.**—(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1)—

- (a) in the definition of “appropriate DWP office” for “or a jobseeker's allowance” substitute “, a jobseeker's allowance or an employment and support allowance”;
- (b) in the definition of “the benefit Acts” after “the Jobseekers Act” insert “, the Welfare Reform Act”;

[<sup>F12</sup>(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;”];

(c) after the definition of “employed earner” insert—

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

(d) after the definition of “an 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;”;

(e) [<sup>F13</sup>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;”];

(f) in the definition of “qualifying contributory benefit”<sup>M25</sup> after sub-paragraph (b) add—

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

- (g) in the definition of “qualifying income-related benefit” after sub-paragraph (b) add—  
 “(c) income-related employment and support allowance;”;
- (h) after the definition of “water charges” insert—  
 ““Welfare Reform Act” means the Welfare Reform Act 2007;”.
- (3) After paragraph (3) insert—  
 “(3A) For the purposes of these Regulations, a person is on an income-related employment and support allowance on any day in respect of which an income-related employment and support allowance is payable to him and on any day—  
 (a) in respect of which he satisfies the conditions for entitlement to an income-related employment and support allowance but where the allowance is not paid in accordance with section 18 of the Welfare Reform Act (disqualification); or  
 (b) which is a waiting day for the purposes of paragraph 2 of Schedule 2 to that Act and which falls immediately before a day in respect of which an income-related employment and support allowance is payable to him or would be payable to him but for section 18 of that Act.”.

**F12** Reg. 29(2)(bb) inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **33(a)**

**F13** Reg. 29(2)(e) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **33(b)**

#### Marginal Citations

**M25** Definitions of “qualifying contributory benefit” and “qualifying income-related benefit” were inserted by [S.I. 2008/959](#).

### Amendment of regulation 5

**30.** In regulation 5(2) (persons who have attained the qualifying age for state pension credit) for “or on an income-based jobseeker's allowance” substitute “, [<sup>F14</sup>on] an income-based jobseeker's allowance or on an income-related employment and support allowance”.

**F14** Word in [reg. 30](#) inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **34**

### Amendment of regulation 6

**31.** In regulation 6(6) (remunerative work) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance”.

### Amendment of regulation 19

**32.** In regulation 19(2)(a) <sup>M26</sup> (persons of prescribed description) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance”.

### Marginal Citations

**M26** Paragraph (2) was amended by [S.I. 2006/718](#).

### Amendment of regulation 29

**33.** In regulation 29(4) (meaning of “income”) after sub-paragraph (c) add—

“(d) section 3 of the Welfare Reform Act (deductions from contributory employment and support allowance in respect of pensions and councillor's allowances).”.

### Amendment of regulation 31

**34.** In regulation 31 (treatment of child care charges)—

(a) in paragraph (2)—

(i) after sub-paragraph (b) insert—

“(ba) is paid an employment and support allowance;” and

(ii) in sub-paragraph (d) after “incapacity for work” insert “ or limited capability for work ”;

(b) in paragraph (3)(a) after “short-term incapacity benefit” insert “ , an employment and support allowance ”;

(c) in paragraph (11) <sup>M27</sup>—

(i) after sub-paragraph (b) insert—

“(ba) the claimant's applicable amount would include the support component or the work-related activity component on account of the other member having limited capability for work but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations;”;

(ii) after sub-paragraph (c) insert—

“(ca) the claimant (within the meaning of regulation 2(1)) has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period;”;

(iii) in sub-paragraph (d) after (vi) add—

“(vii) main phase employment and support allowance;” and

(d) after paragraph (12) insert—

“(12A) For the purposes of paragraph (11), once paragraph (11)(ca) applies to the claimant, if he then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is, on his again having, or being treated as having, limited capability for work at the end of that period, immediately thereafter to apply to him for so long as he has, or is treated as having, limited capability for work.”.



#### Marginal Citations

**M27** Paragraph (11) was amended by [S.I. 2008/1042](#).

### Amendment of regulation 48

**35.** In regulation 48 (diminishing notional capital rule)—

(a) in paragraph (3) after sub-paragraph (d) add—

“; [<sup>F15</sup>and]

(e) where the claimant has also claimed an employment and support allowance, the amount of an income-related employment and support allowance to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations (notional capital).”;

(b) in paragraph (4) <sup>M28</sup> after sub-paragraph (d) add—

“(e) if the claimant would, but for regulation 115 of the Employment and Support Allowance Regulations, have been entitled to an income-related employment and support allowance in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount must be determined by dividing the amount of the income-related employment and support allowance to which he would have been so entitled by the number equal to the number of days in that part-week and multiplying the quotient so obtained by 7.”; and

(c) in paragraph (8)(a)—

(i) for “and (d)” substitute “, (d) and (e)”; and

(ii) in paragraph (i) after “state pension credit” insert “, an income-related employment and support allowance”.

**F15** Word in [reg. 35\(a\)](#) inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), [regs. 1\(2\), 35](#)

#### Marginal Citations

**M28** Paragraph (4) was amended by [S.I. 2007/2869](#).

### Amendment of regulation 54

**36.** In regulation 54 (continuing payments where state pension credit claimed)—

(a) in paragraph (1)(c)(i) after “income-based jobseeker's allowance” insert “ or income-related employment and support allowance”;

(b) in paragraph (2)(a)(ii) after “jobseeker's allowance” insert “or income-related employment and support allowance”;

(c) in paragraph (3) after “income support” insert “, income-related employment and support allowance”.

### Amendment of regulation 55

**37.** In regulation 55(8) <sup>M29</sup> (non-dependant deductions) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance which does not include an amount under section 4(2)(b) of the Welfare Reform Act (the support component and the work-related activity component)”.

#### Marginal Citations

**M29** Paragraph (8) was substituted by S.I. 20072868.

### Amendment of regulation 64

**38.** In regulation 64(5) <sup>M30</sup> (time and manner in which claims are to be made) —

- (a) in sub-paragraph (a) for “or a jobseeker's allowance” substitute “, a jobseeker's allowance or an employment and support allowance”; and
- (b) in sub-paragraph (c) for “or a jobseeker's allowance” substitute “, a jobseeker's allowance or an employment and support allowance”;

#### Marginal Citations

**M30** Paragraph (5) was amended by [S.I. 2006/2976](#) and 2007/2911.

### Amendment of regulation 86

**39.** In regulation 86(1) (recovery of overpayments from prescribed benefits) after sub-paragraph (e) add—

“(f) an employment and support allowance.”.

### Amendment of Schedule 4

**40.** In paragraph 5(1)(a) of Schedule 4 (sums disregarded from claimant's earnings)—

- (a) in paragraph (v), at the end, omit “or”; and
- (b) after paragraph (vi) add—
  - “(vii) main phase employment and support allowance; or”.

### Amendment of Schedule 6

**41.** In Schedule 6 (capital to be disregarded)—

- (a) in paragraph 21(2)—
  - (i) in paragraph (k) <sup>M31</sup> omit “or”; and
  - (ii) after sub-paragraph (1) add—
    - “or
    - (m) income-related employment and support allowance.”; and
- (b) in paragraph 22(2) after sub-paragraph (d) add—
  - “(e) paragraph 11(2) of Schedule 9 to the Employment and Support Allowance Regulations.”.

#### Marginal Citations

**M31** Paragraph (k) was inserted by [S.I. 2006/2502](#).

## PART 5

### Council Tax Benefit Regulations 2006

#### General

**42.** The Council Tax Benefit Regulations 2006 <sup>M32</sup> are amended in accordance with this Part.

#### Marginal Citations

**M32** [S.I. 2006/215](#).

#### Amendment of regulation 2

**43.**—(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1)—

- (a) in the definition of “appropriate DWP office” for “or a jobseeker's allowance” substitute “, a jobseeker's allowance or an employment and support allowance ”;
- (b) in the definition of “the benefit Acts” for “and the Jobseekers Act” substitute “, the Jobseekers Act and the Welfare Reform Act ”;
- (c) 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;”;
- (d) after the definition of “employed earner” insert—  
““Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;”;
- (e) after the definition of “an 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;”;

[<sup>F16</sup>(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;”];

(f) [<sup>F17</sup>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;”];

(g) in the definition of “qualifying contributory benefit”<sup>M33</sup> after sub-paragraph (b) add—

- “(c) contributory employment and support allowance;”;
- (h) in the definition of “qualifying income-related benefit” after sub-paragraph (b) add—
  - “(c) income-related employment and support allowance;”;
- (i) after the definition of “water charges” insert—
  - ““Welfare Reform Act” means the Welfare Reform Act 2007;”.
- (3) After paragraph (4) insert—
  - “(4A) For the purposes of these Regulations, a person is on an income-related employment and support allowance on any day in respect of which an income-related employment and support allowance is payable to him and on any day—
    - (a) in respect of which he satisfies the conditions for entitlement to an income-related employment and support allowance but where the allowance is not paid in accordance with section 18 of the Welfare Reform Act (disqualification); or
    - (b) which is a waiting day for the purposes of paragraph 2 of Schedule 2 to that Act and which falls immediately before a day in respect of which an income-related employment and support allowance is payable to him or would be payable to him but for section 18 of that Act.”.

- F16** Reg. 43(2)(ee) inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **36(a)**
- F17** Reg. 43(2)(f) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **36(b)**

#### Marginal Citations

- M33** Definitions of “qualifying contributory benefit” and “qualifying income-related benefit” were inserted by [S.I. 2008/959](#).

### Amendment of regulation 5

**44.** In regulation 5(1)(b) (persons who have attained the qualifying age for state pension credit) for “or on an income-based jobseeker's allowance” substitute “, on an income-based jobseeker's allowance or on an income-related employment and support allowance”.

### Amendment of regulation 6

**45.** In regulation 6(6) (remunerative work) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance”.

### Amendment of regulation 7

**46.** In regulation 7(4A)(k) <sup>M34</sup> (persons from abroad) for “or on an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or on an income-related employment and support allowance”.

#### Marginal Citations

- M34** Paragraph (4A) was substituted by [S.I. 2006/1026](#) and amended by 2006/2528 and 3341.

### Amendment of regulation 9

47. In regulation 9(2)(a) <sup>M35</sup> (persons of prescribed description) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance”.

#### Marginal Citations

M35 Paragraph (2) was amended by [S.I. 2006/718](#).

### Amendment of regulation 12

48. In regulation 12 (applicable amounts) after sub-paragraph (d) add—

“(e) the amount of either the—

(i) work-related activity component; or

(ii) <sup>F18</sup>...support component

which may be applicable to him in accordance with Part 5 of Schedule 1 (the components).”.

F18 Word in [reg. 48](#) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), [37](#)

### Amendment of regulation 13

49. In regulation 13 (polygamous marriages) after sub-paragraph (e) add—

“(f) the amount of either the—

(i) work-related activity component; or

(ii) <sup>F19</sup>...support component

which may be applicable to him in accordance with Part 5 of Schedule 1 (the components).”.

F19 Word in [reg. 49](#) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), [38](#)

### Amendment of regulation 16

50. In regulation 16(1) (circumstances in which income of non-dependant is to be treated as claimant's) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance”.

### Amendment of regulation 18

51. In regulation 18 (treatment of child care charges)—

(a) in paragraph (2)—

(i) after sub-paragraph (b) insert—

“(ba) is paid an employment and support allowance;” and

- (ii) in sub-paragraph (d) after “incapacity for work” insert “ or limited capability for work ”;
- (b) in paragraph (3)(a) after “short-term incapacity benefit” insert “ , an employment and support allowance ”;
- (c) in paragraph (11) <sup>M36</sup>—
  - (i) in sub-paragraph (a) after “incapacity” add “ or the support component or the work-related activity component on account of his having limited capability for work ”;
  - (ii) after sub-paragraph (b) insert—
    - “(ba) the claimant's applicable amount would include the support component or the work-related activity component on account of the other member having limited capability for work but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations;”;
  - (iii) after sub-paragraph (c) insert—
    - “(ca) the claimant (within the meaning of regulation 2(1)) has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period;”;
  - (iv) in sub-paragraph (d) after (vi) add—
    - “(vii) main phase employment and support allowance;”;
- (d) after paragraph (12) insert—
  - “(12A) For the purposes of paragraph (11), once paragraph (11)(ca) applies to the claimant, if he then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is, on his again having, or being treated as having, limited capability for work at the end of that period, immediately thereafter apply to him for so long as he has, or is treated as having, limited capability for work.”.

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#### Marginal Citations

**M36** Paragraph (11) was amended by [S.I. 2008/1042](#).

#### Amendment of regulation 30

- 52.** In regulation 30 (calculation of income other than earning) after paragraph (5) insert—

“(5A) Where the claimant or, where he is a member of a couple, his partner is receiving a contributory employment and support allowance and 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.”.

#### Amendment of regulation 40

- 53.** In regulation 40 (diminishing notional capital rule)—

- (a) in paragraph (3)—

- (i) at the end of sub-paragraph (c) omit “and”; and
- (ii) after sub-paragraph (d) add—
  - “and
  - (e) where the claimant has also claimed an employment and support allowance, the amount of an income-related employment and support allowance to which he would have been entitled in respect of the whole or part of benefit week to which paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations (notional capital).”;
- (b) in paragraph (4)—
  - (i) at the end of sub-paragraph (c) omit “and”; and
  - (ii) after sub-paragraph (d) add—
    - “and
    - (e) if the claimant would, but for regulation 115 of the Employment and Support Allowance Regulations, have been entitled to an income-related employment and support allowance in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount must be determined by dividing the amount of the income-related employment and support allowance to which he would have been so entitled by the number equal to the number of days in that part-week and multiplying the quotient so obtained by 7.”; and
- (c) in paragraph (8)(a)(iii)—
  - (i) for “and (d)” substitute “ , (d) and (e) ”; and
  - (ii) in paragraph (aa) after “income support” insert “ , an income-related employment and support allowance ”.

#### **Amendment of regulation 45**

- 54.** In regulation 45(3) <sup>M37</sup> (students excluded from entitlement to council tax benefit)—
- (a) in sub-paragraph (a) 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) after sub-paragraph (e) insert—
    - “(ea) who has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days, and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period.”.

#### **Marginal Citations**

**M37** Paragraph (3) was amended by [S.I. 2006/718](#).

### Amendment of regulation 58

**55.** In regulation 58(8)(a) (non-dependant deductions) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance.”.

### Amendment of regulation 69

**56.** In regulation 69 (time and manner in which claims are to be made)—

- (a) in paragraph (4) <sup>M38</sup>—
  - (i) in sub-paragraph (a) for “or a jobseeker's allowance” substitute “, a jobseeker's allowance or an employment and support allowance”;
  - (ii) in sub-paragraph (c) for “or a jobseeker's allowance” substitute “, a jobseeker's allowance or an employment and support allowance”;
- (b) in paragraph (5)—
  - (i) in sub-paragraph (a)—
    - (aa) for “or an income-based jobseeker's allowance” each time it occurs substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance”;
    - (bb) for “or jobseeker's allowance” substitute “, jobseeker's allowance or employment and support allowance”; and
    - (cc) omit “and for the purposes of” to the end; and
  - (ii) 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”;
- (c) after paragraph (5) insert—
 

“(5A) For the purposes only of sub-paragraph (5)(a) a person who has been awarded an income-based jobseeker's allowance or an income-related employment and support allowance must be treated as entitled to that allowance for any days which immediately precede the first day in that award and on which he would, but for regulations made under—

  - (a) in the case of income-based jobseeker's allowance, paragraph 4 of Schedule 1 to the Jobseekers Act (waiting days); or
  - (b) in the case of income-related employment and support allowance, paragraph 2 of Schedule 2 to the Welfare Reform Act (waiting days),

have been entitled to that allowance.”.

#### Marginal Citations

**M38** Paragraph (4) was amended by [S.I. 2006/6967](#) and 2007/2911.

### Amendment of regulation 74

**57.** In regulation 74 (duty to notify changes of circumstances)—

- (a) in paragraph (3)(d) for “or an income-based jobseeker's allowance” each time it occurs substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance”; and



- (b) in paragraph (5) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance”.

### Amendment of regulation 90

**58.** In regulation 90(1) (recovery of excess benefit from prescribed benefits) after sub-paragraph (d) add—

- “(e) an employment and support allowance.”.

### Amendment of Schedule 1

**59.** In Schedule 1 (applicable amounts)—

- (a) in Part 1 (personal allowances) for sub-paragraph 1(1) <sup>M39</sup> substitute—

“(1) A single claimant who—	(1)
(a) is entitled to main phase employment and support allowance;	(a) £60.50;
(b) is aged not less than 25;	(b) £60.50;
(c) is aged not less than 18 but less than 25.	(c) £47.95.”

- (b) in Part 3 (premiums) after sub-paragraph (9) <sup>M40</sup> of paragraph 13 (additional conditions for the Disability Premium) add—

“(10) The claimant is not entitled to the disability premium if the claimant has, or is treated as having, limited capability for work<sup>F20</sup> ....”;

- (c) in paragraph 15 (enhanced disability premium) for sub-paragraph (1) substitute—

“(1) Subject to sub-paragraph (2), the condition is that—

[<sup>F21</sup>(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]

(b) the care component of disability living allowance is, or would, but for a suspension of benefit in accordance with regulations made under section 113(2) of the Act or but for an abatement as a consequence of hospitalisation be payable at the highest rate prescribed under section 72(3) of the Act in respect of—

(i) the claimant; or

(ii) a member of the claimant's family,  
who is aged less than 60.”.

- (d) after Part 4 (amount of premiums specified in Part 3) add—

## [<sup>F22</sup>“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. ”]

- F20** Words in [reg. 59\(b\)](#) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), [39\(a\)](#)
- F21** Words in [reg. 59\(c\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), [39\(b\)](#)
- F22** [Reg. 59\(d\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), [39\(c\)](#)

#### **Marginal Citations**

- M39** Paragraph 1 was amended by [S.I.2007/688](#).
- M40** Paragraph (9) was amended by [S.I. 2008/1042](#).

## Amendment of Schedule 2

**60.** In the table in paragraph 1 <sup>M41</sup> of Schedule 2 (amount of alternative maximum council tax benefit) in column 1—

- (a) in sub-paragraph (a) after “income support” insert “ , an income-related employment and support allowance ”;
- (b) in sub-paragraph (b) after “income support” insert “ , an income-related employment and support allowance ”; and
- (c) in sub-paragraph (c) after “state pension credit” insert “ , an income-related employment and support allowance ”.

### Marginal Citations

**M41** Paragraph 1 was amended by [S.I. 2006/588](#) and 2007/688.

## Amendment of Schedule 3

**61.** In Schedule 3 (sums to be disregarded in the calculation of earnings)—

- (a) in paragraph 3(2) for “or severe disability premium” substitute “ , severe disability premium, work-related activity component or support component ”;
- (b) in paragraph 12 for “or an income-based jobseeker's allowance” substitute “ , an income-based jobseeker's allowance or an income-related employment and support allowance ”; and
- (c) in paragraph 16(2)(b)(iv) <sup>M42</sup>—
  - (i) for paragraph (aa) substitute—

“(aa) the claimant's applicable amount includes a disability premium under paragraph 12, the work-related activity component under paragraph 23 or the support component under paragraph 24 of Schedule 1 respectively;”;
  - (ii) in sub-paragraph (bb) after “disability premium” insert “ or either of the components ”.

### Marginal Citations

**M42** Paragraph 16 was amended by S.I. 20081042.

## Amendment of Schedule 4

**62.** In Schedule 4 (sums to be disregarded in the calculation of income other than earnings)—

- (a) in paragraph 4 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 paragraph 8 after sub-paragraph (c) add—

“(d) an income-related employment and support allowance.”.

## Amendment of Schedule 5

**63.** In Schedule 5 (capital to be disregarded)—

- (a) in paragraph 5 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 paragraph 9(1) after sub-paragraph (e) add—
  - “(f) an income-related employment and support allowance,”.

### **Amendment of Schedule 8**

**64.** In Schedule 8 (matters to be included in decision notice)—

- (a) in paragraph 9—
  - (i) in the heading for “or an income-based jobseeker's allowance” substitute “ , an income-based jobseeker's allowance or an income-related employment and support allowance ”; and
  - (ii) for “or an income-based jobseeker's allowance” substitute “ , an income-based jobseeker's allowance or an income-related employment and support allowance ”;
- (b) in paragraph 10—
  - (i) in the heading for “or an income-based jobseeker's allowance” substitute “ , an income-based jobseeker's allowance or an income-related employment and support allowance ”; and
  - (ii) 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 paragraph 12(a)(ii) for “or on an income-based jobseeker's allowance” substitute “ , an income-based jobseeker's allowance or on an income-related employment and support allowance ”; and
- (d) in paragraph 13(e) after “income support” insert “ , an income-related employment and support allowance ”.

## **PART 6**

### **The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006**

#### **General**

**65.** The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 <sup>M43</sup> are amended in accordance with this Part.

#### **Marginal Citations**

**M43** [S.I. 2006/216](#).

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

- 66.—**(1) Regulation 2 (interpretation) is amended as follows.
- (2) In paragraph (1)—
- (a) in the definition of “appropriate DWP office” for “or a jobseeker's allowance” substitute “ , a jobseeker's allowance or an employment and support allowance ”;

- (b) in the definition of “the benefit Acts” after “the Jobseekers Act” insert “ , the Welfare Reform Act ”;
- (c) 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;”;
- (d) after the definition of “employed earner” insert—  
““Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;”;
- (e) after the definition of “an 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;”;
- (f) <sup>F23</sup>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;”];
- <sup>F24</sup>(ff) in the definition of “qualifying contributory benefit” after sub-paragraph (b) add—  
“(c) contributory employment and support allowance;”];
- (g) in the definition of “qualifying income-related benefit” after sub-paragraph (b) add—  
“(c) income-related employment and support allowance;”;
- (h) after the definition of “water charges” insert—  
““Welfare Reform Act” means the Welfare Reform Act 2007;”.
- (3) After paragraph (4) insert—  
“(4A) For the purposes of these Regulations, a person is on an income-related employment and support allowance on any day in respect of which an income-related employment and support allowance is payable to him and on any day—  
(a) in respect of which he satisfies the conditions for entitlement to an income-related employment and support allowance but where the allowance is not paid in accordance with section 18 of the Welfare Reform Act (disqualification); or  
(b) which is a waiting day for the purposes of paragraph 2 of Schedule 2 to that Act and which falls immediately before a day in respect of which an income-related employment and support allowance is payable to him or would be payable to him but for section 18 of that Act.”.

**F23** Reg. 66(2)(f) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **40(a)**

**F24** Reg. 66(2)(ff) inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **40(b)**

## Amendment of regulation 5

**67.** In regulation 5(2) (persons who have attained the qualifying age for state pension credit) for “or on an income-based jobseeker's allowance” substitute “ , an income-based jobseeker's allowance or on an income-related employment and support allowance ”.

### Amendment of regulation 6

**68.** In regulation 6(6) (remunerative work) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance”.

### Amendment of regulation 9

**69.** In regulation 9(2)(a) <sup>M44</sup> (persons of prescribed description) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance”.

#### Marginal Citations

**M44** Paragraph (2) was amended by [S.I. 2006/716](#).

### Amendment of regulation 19

**70.** In regulation 19(5) (meaning of “income”) after sub-paragraph (c) add—

“(d) section 3 of the Welfare Reform Act (deductions from contributory employment and support allowance in respect of pensions and councillor's allowances) and regulations made under it.”.

### Amendment of regulation 21

**71.** In regulation 21 (treatment of child care charges)—

(a) in paragraph (2)—

(i) after sub-paragraph (b) insert—

“(ba) is paid an employment and support allowance;” and

(ii) in sub-paragraph (d) after “incapacity for work” insert “ or limited capability for work ”;

(b) in paragraph (3)(a) after “short-term incapacity benefit” insert “, an employment and support allowance ”;

(c) in paragraph (11) <sup>M45</sup>—

(i) after sub-paragraph (b)—

“(ba) the claimant's applicable amount would include the support component or the work-related activity component on account of the other member having limited capability for work but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations;”;

(ii) after sub-paragraph (c) insert—

“(ca) the claimant (within the meaning of regulation 2(1)) has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days ; and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period;”;

(iii) in sub-paragraph (d) after (vi) add—

“(vii) main phase employment and support allowance.”;

(d) after paragraph (12) insert—

“(12A) For the purposes of paragraph (11), once paragraph (11)(ca) applies to the claimant, if he then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is, on his again having, or being treated as having, limited capability for work at the end of that period, immediately thereafter to apply to him for so long as he has, or is treated as having, limited capability for work.”.

#### **Marginal Citations**

**M45** Paragraph (11) was amended by [S.I. 2008/1042](#).

### **Amendment of regulation 38**

**72.** In regulation 38 (diminishing notional capital rule)—

(a) in paragraph (3) after sub-paragraph (d) add—

“(e) where the claimant has also claimed an employment and support allowance, the amount of an income-related employment and support allowance to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations (notional capital).”;

(b) in paragraph (4) after sub-paragraph (d) add—

“(e) if the claimant would, but for regulation 115 of the Employment and Support Allowance Regulations, have been entitled to an income-related employment and support allowance in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount must be determined by dividing the amount of the income-related employment and support allowance to which he would have been so entitled by the number equal to the number of days in that part-week and multiplying the quotient so obtained by 7.”; and

(c) in paragraph (8)(b)—

(i) for “and (d)” substitute “, (d) and (e) ”; and

(ii) in paragraph (i) after “state pension credit” insert “, an income-related employment and support allowance ”.

### **Amendment to regulation 42**

**73.** In regulation 42(8)(a) <sup>M46</sup> (non-dependant deductions) for “or an income-based jobseeker's allowance” substitute “, an income-based jobseeker's allowance or an income-related employment and support allowance ”.

#### **Marginal Citations**

**M46** Paragraph (8) was amended by [S.I. 2007/2868](#).

### Amendment of regulation 45

74. In regulation 45 (continuing payments where state pension credit is claimed)—
- (a) in paragraph (1)(c)(i) after “income-based jobseeker's allowance” insert “ or income-related employment and support allowance ”;
  - (b) in paragraph (2)(a)(ii) after “income-based jobseeker's allowance” insert “ or income-related employment and support allowance ”;
  - (c) in paragraph (3) after “income-based jobseeker's allowance” insert “ , income-related employment and support allowance ”.

### Amendment of regulation 53

75. In regulation 53 (time and manner in which claims are to be made)—
- (a) in paragraph (4) <sup>M47</sup>—
    - (i) in sub-paragraph (a) for “or a jobseeker's allowance” substitute “ , a jobseeker's allowance or an employment and support allowance ”;
    - (ii) in sub-paragraph (c) for “or a jobseeker's allowance” substitute “ , a jobseeker's allowance or an employment and support allowance ”;

#### Marginal Citations

**M47** Paragraph (4) was amended by [S.I. 2006/2967](#) and 2007/2911.

### Amendment of regulation 59

76. In regulation 59(5) (duty to notify changes of circumstances) for “or an income-based jobseeker's allowance” substitute “ , an income-based jobseeker's allowance or an income-related employment and support allowance ”.

### Amendment of regulation 75

77. in regulation 75(1) (recovery of excess benefit from prescribed benefits) after sub-paragraph (d) add—

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

### Amendment of Schedule 2

78. In paragraph 5(1)(a) of Schedule 2 (sums disregarded from claimant's earnings)—
- (a) in paragraph (v), at the end, omit “or”;
  - (b) after paragraph (vi) add—
 

“(vii) main phase employment and support allowance; or”.

### Amendment of Schedule 4

79. In Schedule 4 (capital to be disregarded)—
- (a) in paragraph 21(2)—
    - (i) in paragraph (k) <sup>M48</sup> omit “or”; and
    - (ii) after sub-paragraph (1) insert—



“or

(m) income-related employment and support allowance,”;

(b) in paragraph 22(2) after sub-paragraph (d) add—

“(e) paragraph 11(2) of Schedule 9 to the Employment and Support Allowance Regulations,”.

#### **Marginal Citations**

**M48** Paragraph (k) was inserted by [S.I. 2006/2502](#).

#### **Amendment of Schedule 6**

**80.** In paragraph 1 of Schedule 6 (amount of alternative maximum council tax benefit) in paragraph (1) <sup>M49</sup> in column 1 of the table—

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

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

(c) in sub-paragraph (c) after “state pension credit” insert “ , an income-related employment and support allowance ”.

#### **Marginal Citations**

**M49** Paragraph (1) was amended by [S.I. 2006/588](#) and 2007/688.

#### **Amendment of Schedule 7**

**81.** In paragraph 13(e) of Schedule 7 (matters to be included in the decision notice) for “or an income-based jobseeker's allowance” substitute “ , an income-based jobseeker's allowance or an income-related employment and support allowance ”.

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

*Stephen C Timms*  
Minister of State, Department for Work and  
Pensions

**Changes to legislation:** There are currently no known outstanding effects for the The Employment and Support Allowance (Consequential Provisions) Regulations 2008. (See end of Document for details)

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## EXPLANATORY NOTE

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

The Regulations contained in this Instrument are 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 2 amends provisions which apply to both Housing Benefit and Council Tax Benefit.

Part 3 amends the Housing Benefit Regulations 2006. Regulations 5 to 10 and 13 to 24 add references to employment and support allowance.

Regulations 11 and 12 provide that the claimant's applicable amount can include the work-related activity component or the support component. Regulation 25 provides for the personal allowance of a claimant. Regulation 31 provides for the amount of the claimant's personal allowance; further conditions for receipt of the disability premium and the enhanced disability premium; for the conditions of entitlement for the work-related activity component and the support component and for the amount of those components.

Parts 4, 5 and 6 include provisions making similar amendments to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006; the Council Tax Benefit Regulations 2006 and the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

A full impact assessment has not been published for this Instrument as it has no impact on business, charities and the voluntary sector.

**Changes to legislation:**

There are currently no known outstanding effects for the The Employment and Support Allowance (Consequential Provisions) Regulations 2008.