
STATUTORY INSTRUMENTS

2008 No. 1082

**The Employment and Support Allowance
(Consequential Provisions) Regulations 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⁽¹⁾ (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 in accordance with section 8 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”.

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

3. In regulation 8 of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001⁽²⁾ (date from which a decision superseding an earlier decision takes effect)—

- (a) in paragraph (14), at the beginning insert “Subject to paragraph (17),”; and
- (b) after paragraph (15) insert—

“(16) Where the decision is superseded in accordance with regulation 7(2)(a)(i) and the relevant circumstances are that the claimant has a non-dependant who has become entitled to main phase employment and support allowance, the superseding decision shall take effect from the date of the decision awarding main phase employment and support allowance to the non-dependant.

(17) Where the decision is superseded under regulation 7(2)(i) on the basis that the claimant or the claimant’s partner is entitled to main phase employment and support allowance, the decision shall take effect from the day on which entitlement arose if it is the first day of a benefit week or, if it is not, from the first day of the next following benefit week.

- (18) For the purposes of paragraphs (16) and (17)—

(1) S.I. 2006/217. Paragraph 5(2) was amended by S.I. 2007/2870 and 2008/1042.

(2) S.I. 2001/1002. Paragraph (14) was inserted by S.I. 2003/2275 and paragraph (15) was substituted by S.I. 2007/2870..

- (a) “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 2007;” and
- (b) “non-dependant” has the meaning prescribed in regulation 3(3) of the Housing Benefit Regulations.”.