
STATUTORY INSTRUMENTS

2008 No. 2428

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

PART 3

Miscellaneous Amendments

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

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

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

22. In regulation 7(1) of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988⁽²⁾ (duplication and prescribed income) for “and income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance, income-related employment and support allowance”.

Amendment of the Social Security Administration Act 1992

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

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

24. The Employment and Support Allowance (Consequential Provisions) Regulations 2008⁽⁴⁾ are amended as follows.

(1) [S.I. 1983/1598](#). Regulation 20 amended by [S.I. 1995/829](#) and [S.I. 1996/1345](#).
(2) [S.I. 1988/664](#). Paragraph 1 was substituted by [S.I. 1993/650](#) and amended by [S.I. 1996/1345](#) and [S.I. 2002/3019](#).
(3) 1992 c. 5. Subsection 3(c) was amended by paragraph 50 of Schedule 2 to the Jobseekers Act 1995.
(4) [S.I. 2008/1082](#).

Amendment of regulation 2

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

Amendment of regulation 3

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

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

3.—(1) The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001⁽⁵⁾ 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⁽⁶⁾ (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)⁽⁷⁾ insert—

⁽⁵⁾ [S.I. 2001/1002](#).

⁽⁶⁾ [S.I. 2008/794](#).

⁽⁷⁾ Paragraph (14C) was inserted by [S.I. 2007/2474](#).

“(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.”.”.

Amendment of regulation 5

27. In regulation 5(2) (amendment of regulation 2) after sub-paragraph (e) insert—

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

Regulation 7A

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

“Amendment of regulation 7

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

Amendment of regulation 11

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

Amendment of regulation 12

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

Amendment of regulation 23

31. In regulation 23 (amendment of Schedule 3)—

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

“PART 5

The components

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

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

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

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

The work-related activity component

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

The support component

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

PART 6

Amount of components

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

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

Amendment of regulation 24

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

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

Amendment of regulation 29

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

- (a) after sub-paragraph (b) insert—

“(bb) after the definition of “the Consequential Provisions Regulations” insert—
““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;”,,”; and

- (b) for sub-paragraph (e) substitute—

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

Amendment of regulation 30

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

Amendment of regulation 35

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

Amendment of regulation 43

36. In regulation 43(2) (amendment of regulation 2)—

- (a) after sub-paragraph (e) insert—

“(ee) after the definition of “Jobseeker’s Allowance Regulations” insert—
““limited capability for work” has the meaning given in section 1(4) of the Welfare Reform Act;
“limited capability for work-related activity” has the meaning given in section 2(5) of the Welfare Reform Act;”,,” and

- (b) for sub-paragraph (f) substitute—

“(f) after the definition of “the Macfarlane Trust” insert—
““main phase employment and support allowance” means an employment and support allowance where the calculation of the amount payable in respect of the claimant includes a component under section 2(1)(b) or 4(2) (b) of the Welfare Reform Act;”,,”.

Amendment of regulation 48

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

Amendment of regulation 49

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

Amendment of regulation 59

39. In regulation 59 (amendment of Schedule 1)—

- (a) in sub-paragraph (b) in added paragraph (10) omit “within the meaning of section 1(4) of the Welfare Reform Act”;
- (b) in sub-paragraph (c) for the inserted sub-paragraph (a) substitute—
 - “(a) the Secretary of State has decided that the claimant has, or is to be treated as having, limited capability for work-related activity; or”; and
- (c) for sub-paragraph (d) substitute—
 - “(d) after Part 4 (amounts of premiums specified in Part 3) add—

“PART 5

The components

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

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

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

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

The work-related activity component

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

The support component

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

PART 6

Amount of components

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

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

Amendment of regulation 66

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

(a) for sub-paragraph (f) substitute—

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

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

(b) after sub-paragraph (f) insert—

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

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

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

41.—(1) The Employment and Support Allowance (Consequential Provisions) (No. 2) Regulations 2008(8) are amended as follows.

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

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

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

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

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

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

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

42. In regulation 1(4) of the Employment and Support Allowance (Transitional Provisions) Regulations 2008⁽⁹⁾ (interpretation) after “regulation” omit “6(4)(a) or”.

⁽⁹⁾ S.I. 2008/795.