



# Welfare Reform Act 2007

## 2007 CHAPTER 5

### PART 1

#### EMPLOYMENT AND SUPPORT ALLOWANCE

##### *Entitlement*

VALID FROM 27/10/2008

#### **1 Employment and support allowance**

- (1) An allowance, to be known as an employment and support allowance, shall be payable in accordance with the provisions of this Part.
- (2) Subject to the provisions of this Part, a claimant is entitled to an employment and support allowance if he satisfies the basic conditions and either—
  - (a) the first and the second conditions set out in Part 1 of Schedule 1 (conditions relating to national insurance) or the third condition set out in that Part of that Schedule (condition relating to youth), or
  - (b) the conditions set out in Part 2 of that Schedule (conditions relating to financial position).
- (3) The basic conditions are that the claimant—
  - (a) has limited capability for work,
  - (b) is at least 16 years old,
  - (c) has not reached pensionable age,
  - (d) is in Great Britain,
  - (e) is not entitled to income support, and
  - (f) is not entitled to a jobseeker's allowance (and is not a member of a couple who are entitled to a joint-claim jobseeker's allowance).
- (4) For the purposes of this Part, a person has limited capability for work if—

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- (a) his capability for work is limited by his physical or mental condition, and
  - (b) the limitation is such that it is not reasonable to require him to work.
- (5) An employment and support allowance is payable in respect of a week.
- (6) In subsection (3)—
- “joint-claim jobseeker's allowance” means a jobseeker's allowance entitlement to which arises by virtue of section 1(2B) of the Jobseekers Act 1995 (c. 18);
  - “pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995 (c. 26).
- (7) In this Part—
- “contributory allowance” means an employment and support allowance entitlement to which is based on subsection (2)(a);
  - “income-related allowance” means an employment and support allowance entitlement to which is based on subsection (2)(b).

## 2 Amount of contributory allowance

- (1) In the case of a contributory allowance, the amount payable in respect of a claimant shall be calculated by—
- (a) taking such amount as may be prescribed,
  - (b) if in his case the conditions of entitlement to the support component or the work-related activity component are satisfied, adding the amount of that component, and
  - (c) making prescribed deductions in respect of any payments to which section 3 applies.
- (2) The conditions of entitlement to the support component are—
- (a) that the assessment phase has ended,
  - (b) that the claimant has limited capability for work-related activity, and
  - (c) that such other conditions as may be prescribed are satisfied.
- (3) The conditions of entitlement to the work-related activity component are—
- (a) that the assessment phase has ended,
  - (b) that the claimant does not have limited capability for work-related activity, and
  - (c) that such other conditions as may be prescribed are satisfied.
- (4) Regulations may—
- (a) prescribe circumstances in which paragraph (a) of subsection (2) or (3) is not to apply;
  - (b) prescribe circumstances in which entitlement under subsection (2) or (3) is to be backdated;
  - (c) make provision about the amount of the component under subsection (2) or (3).
- (5) For the purposes of this Part, a person has limited capability for work-related activity if—

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- (a) his capability for work-related activity is limited by his physical or mental condition, and
- (b) the limitation is such that it is not reasonable to require him to undertake such activity.

#### Commencement Information

**II** S. 2(1)(a)(c)(4)(a)(c) in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)

### 3 Deductions from contributory allowance: supplementary

(1) This section applies to payments of the following kinds which are payable to the claimant—

- (a) pension payments,
- (b) PPF periodic payments, and
- (c) payments of a prescribed description made to a person who is a member of, or has been appointed to, a prescribed body carrying out public or local functions.

(2) Regulations may—

- (a) disapply section 2(1)(c), so far as relating to pension payments or PPF periodic payments, in relation to persons of a prescribed description;
- (b) provide for pension payments or PPF periodic payments of a prescribed description to be treated for the purposes of that provision as not being payments to which this section applies;
- (c) provide for sums of a prescribed description to be treated for the purposes of this section as payable to persons as pension payments or PPF periodic payments (including, in particular, sums in relation to which there is a deferred right of receipt);
- (d) make provision for the method of determining how payments to which this section applies are, for the purposes of section 2, to be related to periods for which a person is entitled to a contributory allowance.

(3) In this section—

“pension payment” means—

- (a) a periodical payment made in relation to a person under a personal pension scheme or, in connection with the coming to an end of an employment of his, under an occupational pension scheme or a public service pension scheme,
- (b) a payment of a prescribed description made under an insurance policy providing benefits in connection with physical or mental illness or disability, and
- (c) such other payments as may be prescribed;

“PPF periodic payment” means—

- (a) any periodic compensation payment made in relation to a person, payable under the pension compensation provisions as specified in section 162(2) of the Pensions Act 2004 (c. 35) or Article 146(2) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) (the pension compensation provisions), and
- (b) any periodic payment made in relation to a person, payable under section 166 of the Pensions Act 2004 or Article 150 of the Pensions

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(Northern Ireland) Order 2005 (duty to pay scheme benefits unpaid at assessment date etc.).

- (4) For the purposes of subsection (3), “occupational pension scheme”, “personal pension scheme” and “public service pension scheme” each have the meaning given by section 1 of the Pension Schemes Act 1993 (c. 48), except that “personal pension scheme” includes—
- (a) an annuity contract or trust scheme approved under section 620 or 621 of the Income and Corporation Taxes Act 1988 (c. 1), and
  - (b) a substituted contract within the meaning of section 622(3) of that Act, which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(f) of Schedule 36 to the Finance Act 2004 (c. 12).

#### Commencement Information

- I2** S. 3(1)(c)(2)(b)(d) in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)  
**I3** S. 3(3) in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)

#### 4 Amount of income-related allowance

- (1) In the case of an income-related allowance, the amount payable in respect of a claimant shall be—
- (a) if he has no income, the applicable amount;
  - (b) if he has an income, the amount by which the applicable amount exceeds his income.
- (2) Subject to subsection (3), the applicable amount for the purposes of subsection (1) shall be calculated by—
- (a) taking such amount, or the aggregate of such amounts, as may be prescribed, and
  - (b) if in the claimant's case the conditions of entitlement to the support component or the work-related activity component are satisfied, adding the amount of that component.
- (3) Regulations may provide that, in prescribed cases, the applicable amount for the purposes of subsection (1) shall be nil.
- (4) The conditions of entitlement to the support component are—
- (a) that the assessment phase has ended,
  - (b) that the claimant has limited capability for work-related activity, and
  - (c) that such other conditions as may be prescribed are satisfied.
- (5) The conditions of entitlement to the work-related activity component are—
- (a) that the assessment phase has ended,
  - (b) that the claimant does not have limited capability for work-related activity, and
  - (c) that such other conditions as may be prescribed are satisfied.
- (6) Regulations may—
- (a) prescribe circumstances in which paragraph (a) of subsection (4) or (5) is not to apply;

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- (b) prescribe circumstances in which entitlement under subsection (4) or (5) is to be backdated;
- (c) make provision about the amount of the component under subsection (4) or (5).

#### Commencement Information

**I4** S. 4(2)(a)(3)(6)(a)(c) in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)

### 5 Advance award of income-related allowance

- (1) This section applies to claims for an employment and support allowance by a person who—
  - (a) would be entitled to an income-related allowance, but for the fact that he does not satisfy the condition in paragraph 6(1)(a) of Schedule 1,
  - (b) would satisfy that condition if he were entitled to the component mentioned in section 4(4) or (5), and
  - (c) is not entitled to a contributory allowance.
- (2) In relation to claims to which this section applies, section 5(1) of the Administration Act (regulations about claims for benefit) shall have effect as if—
  - (a) in paragraph (d) (power to permit an award on a claim for benefit for a future period to be made subject to the condition that the claimant satisfies the requirements for entitlement when the benefit becomes payable under the award), there were inserted at the end “ and to such other conditions as may be prescribed ”, and
  - (b) in paragraph (e) (power to provide for such an award to be revised or superseded under the Social Security Act 1998 (c. 14) if any of those requirements are found not to have been satisfied), for “any of those requirements” there were substituted “ any of the conditions to which the award is made subject ”.
- (3) Regulations may, in relation to claims to which this section applies, make provision enabling an award to be made on terms such that the time at which benefit becomes payable under the award is later than the start of the period for which the award is made.

#### Commencement Information

**I5** S. 5(2)(3) in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)

VALID FROM 27/10/2008

### 6 Amount payable where claimant entitled to both forms of allowance

- (1) This section applies where a claimant is entitled to both a contributory allowance and an income-related allowance.
- (2) If the claimant has no income, the amount payable by way of an employment and support allowance shall be the greater of—

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- (a) his personal rate, and
  - (b) the applicable amount.
- (3) If the claimant has an income, the amount payable by way of an employment and support allowance shall be the greater of—
- (a) his personal rate, and
  - (b) the amount by which the applicable amount exceeds his income.
- (4) Where the amount payable to the claimant by way of an employment and support allowance does not exceed his personal rate, the allowance shall be treated as attributable to the claimant's entitlement to a contributory allowance.
- (5) Where the amount payable to the claimant by way of an employment and support allowance exceeds his personal rate, the allowance shall be taken to consist of two elements, namely—
- (a) an amount equal to his personal rate, and
  - (b) an amount equal to the excess.
- (6) The element mentioned in subsection (5)(a) shall be treated as attributable to the claimant's entitlement to a contributory allowance.
- (7) The element mentioned in subsection (5)(b) shall be treated as attributable to the claimant's entitlement to an income-related allowance.
- (8) In this section—
- “applicable amount” means the amount which, in the claimant's case, is the applicable amount for the purposes of section 4(1);
  - “personal rate” means the amount calculated in accordance with section 2(1).

VALID FROM 27/10/2008

## **7 Exclusion of payments below prescribed minimum**

Except in such circumstances as regulations may provide, an employment and support allowance shall not be payable where the amount otherwise payable would be less than a prescribed minimum.

### *Assessments relating to entitlement*

## **8 Limited capability for work**

- (1) For the purposes of this Part, whether a person's capability for work is limited by his physical or mental condition and, if it is, whether the limitation is such that it is not reasonable to require him to work shall be determined in accordance with regulations.
- (2) Regulations under subsection (1) shall—
- (a) provide for determination on the basis of an assessment of the person concerned;

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- (b) define the assessment by reference to the extent to which a person who has some specific disease or bodily or mental disablement is capable or incapable of performing such activities as may be prescribed;
  - (c) make provision as to the manner of carrying out the assessment.
- (3) Regulations under subsection (1) may, in particular, make provision—
- (a) as to the information or evidence required for the purpose of determining the matters mentioned in that subsection;
  - (b) as to the manner in which that information or evidence is to be provided;
  - (c) for a person in relation to whom it falls to be determined whether he has limited capability for work to be called to attend for such medical examination as the regulations may require.
- (4) Regulations under subsection (1) may include provision—
- (a) for a person to be treated as not having limited capability for work if he fails without good cause—
    - (i) to provide information or evidence which he is required under such regulations to provide,
    - (ii) to provide information or evidence in the manner in which he is required under such regulations to provide it, or
    - (iii) to attend for, or submit himself to, a medical examination for which he is called under such regulations to attend;
  - (b) as to matters which are, or are not, to be taken into account in determining for the purposes of any provision made by virtue of paragraph (a) whether a person has good cause for any act or omission;
  - (c) as to circumstances in which a person is, or is not, to be regarded for the purposes of any such provision as having good cause for any act or omission.
- (5) Regulations may provide that, in prescribed circumstances, a person in relation to whom it falls to be determined whether he has limited capability for work, shall, if prescribed conditions are met, be treated as having limited capability for work until such time as—
- (a) it has been determined whether he has limited capability for work, or
  - (b) he falls in accordance with regulations under this section to be treated as not having limited capability for work.
- (6) The prescribed conditions referred to in subsection (5) may include the condition that it has not previously been determined, within such period as may be prescribed, that the person in question does not have, or is to be treated as not having, limited capability for work.

**Commencement Information**

**I6** S. 8(1)-(3)(4)(a)(b)(5)(6) in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)

**9 Limited capability for work-related activity**

- (1) For the purposes of this Part, whether a person's capability for work-related activity is limited by his physical or mental condition and, if it is, whether the limitation is such that it is not reasonable to require him to undertake such activity shall be determined in accordance with regulations.

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- (2) Regulations under subsection (1) shall—
- (a) provide for determination on the basis of an assessment of the person concerned;
  - (b) define the assessment by reference to such matters as the regulations may provide;
  - (c) make provision as to the manner of carrying out the assessment.
- (3) Regulations under subsection (1) may, in particular, make provision—
- (a) as to the information or evidence required for the purpose of determining the matters mentioned in that subsection;
  - (b) as to the manner in which that information or evidence is to be provided;
  - (c) for a person in relation to whom it falls to be determined whether he has limited capability for work-related activity to be called to attend for such medical examination as the regulations may require.
- (4) Regulations under subsection (1) may include provision—
- (a) for a person to be treated as not having limited capability for work-related activity if he fails without good cause—
    - (i) to provide information or evidence which he is required under such regulations to provide,
    - (ii) to provide information or evidence in the manner in which he is required under such regulations to provide it, or
    - (iii) to attend for, or submit himself to, a medical examination for which he is called under such regulations to attend;
  - (b) as to matters which are, or are not, to be taken into account in determining for the purposes of any provision made by virtue of paragraph (a) whether a person has good cause for any act or omission;
  - (c) as to circumstances in which a person is, or is not, to be regarded for the purposes of any such provision as having good cause for any act or omission.

#### Commencement Information

**I7** S. 9(1)-(3)(4)(a)(b) in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)

VALID FROM 27/10/2008

#### **10** Report

The Secretary of State shall lay before Parliament an independent report on the operation of the assessments under sections 8 and 9 annually for the first five years after those sections come into force.



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## Conditionality

### 11 Work-focused health-related assessments

- (1) Regulations may make provision for or in connection with imposing on a person who is—
  - (a) entitled to an employment and support allowance, and
  - (b) not a member of the support group,a requirement to take part in one or more work-focused health-related assessments as a condition of continuing to be entitled to the full amount payable to him in respect of the allowance apart from the regulations.
- (2) Regulations under this section may, in particular, make provision—
  - (a) prescribing circumstances in which such a person is subject to a requirement to take part in one or more work-focused health-related assessments;
  - (b) for notifying such a person of any such requirement;
  - (c) prescribing the work-focused health-related assessments in which a person who is subject to such a requirement is required to take part;
  - (d) for the determination, and notification, of the time and place of any such assessment;
  - (e) prescribing circumstances in which a person attending such an assessment is to be regarded as having, or not having, taken part in it;
  - (f) for securing that the appropriate consequence follows if a person who is required under the regulations to take part in a work-focused health-related assessment—
    - (i) fails to take part in the assessment, and
    - (ii) does not, within a prescribed period, show that he had good cause for that failure;
  - (g) prescribing matters which are, or are not, to be taken into account in determining whether a person had good cause for any failure to comply with the regulations;
  - (h) prescribing circumstances in which a person is, or is not, to be regarded as having good cause for any such failure.
- (3) For the purposes of subsection (2)(f), the appropriate consequence of a failure falling within that provision is that the amount payable to the person in question in respect of an employment and support allowance is reduced in accordance with regulations.
- (4) Regulations under subsection (3) may, in particular, make provision for determining—
  - (a) the amount by which an allowance is to be reduced,
  - (b) when the reduction is to start, and
  - (c) how long it is to continue,and may include provision prescribing circumstances in which the amount of the reduction is to be nil.
- (5) Regulations under this section shall include provision for a requirement to take part in one or more work-focused health-related assessments to cease to have effect if the person subject to the requirement becomes a member of the support group.
- (6) Regulations under this section may include provision—

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- (a) that in such circumstances as the regulations may prescribe a requirement to take part in a work-focused health-related assessment that would otherwise apply to a person by virtue of such regulations is not to apply, or is to be treated as not having applied;
  - (b) that in such circumstances as the regulations may prescribe such a requirement is not to apply until a prescribed time;
  - (c) that in such circumstances as the regulations may prescribe the time and place of a work-focused health-related assessment in which a person is required by regulations under this section to take part may be redetermined.
- (7) In this section, “work-focused health-related assessment” means an assessment by a health care professional approved by the Secretary of State which is carried out for the purpose of assessing—
- (a) the extent to which a person still has capability for work,
  - (b) the extent to which his capability for work may be improved by the taking of steps in relation to his physical or mental condition, and
  - (c) such other matters relating to his physical or mental condition and the likelihood of his obtaining or remaining in work or being able to do so, as may be prescribed.
- (8) In subsection (7), “health care professional” means—
- (a) a registered medical practitioner,
  - (b) a registered nurse,
  - (c) an occupational therapist or physiotherapist registered with a regulatory body established by an Order in Council under section 60 of the Health Act 1999 (c. 8), or
  - (d) a member of such other profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17) as may be prescribed.

#### **Commencement Information**

**I8** S. 11(1)(2)(a)-(g)(3)-(5)(6)(a)(7)(c) in force at 18.3.2008 for specified purposes by [S.I. 2008/787](#), [art. 2\(1\)](#)

## **12 Work-focused interviews**

- (1) Regulations may make provision for or in connection with imposing on a person who is—
- (a) entitled to an employment and support allowance, and
  - (b) not a member of the support group,
- a requirement to take part in one or more work-focused interviews as a condition of continuing to be entitled to the full amount payable to him in respect of the allowance apart from the regulations.
- (2) Regulations under this section may, in particular, make provision—
- (a) prescribing circumstances in which such a person is subject to a requirement to take part in one or more work-focused interviews;
  - (b) for notifying such a person of any such requirement;

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- (c) prescribing the work-focused interviews in which a person who is subject to such a requirement is required to take part;
  - (d) for determining, in relation to work-focused interviews under the regulations, when and how the interview is to be conducted and, if it is to be conducted face to face, where it is to take place;
  - (e) for notifying persons who are required under the regulations to take part in a work-focused interview of what is determined in respect of the matters mentioned in paragraph (d);
  - (f) prescribing circumstances in which a person who is a party to a work-focused interview under the regulations is to be regarded as having, or not having, taken part in it;
  - (g) for securing that the appropriate consequence follows if a person who is required under the regulations to take part in a work-focused interview—
    - (i) fails to take part in the interview, and
    - (ii) does not, within a prescribed period, show that he had good cause for that failure;
  - (h) prescribing matters which are, or are not, to be taken into account in determining whether a person had good cause for any failure to comply with the regulations;
  - (i) prescribing circumstances in which a person is, or is not, to be regarded as having good cause for any such failure.
- (3) For the purposes of subsection (2)(g), the appropriate consequence of a failure falling within that provision is that the amount payable to the person in question in respect of an employment and support allowance is reduced in accordance with regulations.
- (4) Regulations under subsection (3) may, in particular, make provision for determining—
- (a) the amount by which an allowance is to be reduced,
  - (b) when the reduction is to start, and
  - (c) how long it is to continue,
- and may include provision prescribing circumstances in which the amount of the reduction is to be nil.
- (5) Regulations under this section shall include provision for a requirement to take part in one or more work-focused interviews to cease to have effect if the person subject to the requirement becomes a member of the support group.
- (6) Regulations under this section may include provision—
- (a) that in such circumstances as the regulations may prescribe a requirement to take part in a work-focused interview that would otherwise apply to a person by virtue of such regulations is not to apply, or is to be treated as not having applied;
  - (b) that in such circumstances as the regulations may prescribe such a requirement is not to apply until a prescribed time;
  - (c) that in such circumstances as the regulations may prescribe matters mentioned in subsection (2)(d) may be redetermined.
- (7) In this section, “work-focused interview” means an interview by the Secretary of State conducted for such purposes connected with getting the person interviewed into work, or keeping him in work, as may be prescribed.

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### Commencement Information

**19** S. 12(1)(2)(a)-(h)(3)-(7) in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)

VALID FROM 28/10/2008

### 13 Work-related activity

- (1) Regulations may make provision for or in connection with imposing on a person who is subject to a requirement imposed under section 12(1) a requirement to undertake work-related activity in accordance with regulations as a condition of continuing to be entitled to the full amount payable to him in respect of an employment and support allowance apart from the regulations.
- (2) Regulations under this section may, in particular, make provision—
  - (a) prescribing circumstances in which such a person is subject to a requirement to undertake work-related activity in accordance with regulations;
  - (b) for notifying such a person of any such requirement;
  - (c) prescribing the time or times at which a person who is subject to such a requirement is required to undertake work-related activity and the amount of work-related activity he is required at any time to undertake;
  - (d) prescribing circumstances in which a person who is subject to such a requirement is, or is not, to be regarded as undertaking work-related activity;
  - (e) for securing that the appropriate consequence follows if a person who is subject to such a requirement—
    - (i) fails to comply with the regulations, and
    - (ii) does not, within a prescribed period, show that he had good cause for that failure;
  - (f) prescribing the evidence which a person who is subject to such a requirement needs to provide in order to show that he has complied with the regulations;
  - (g) prescribing matters which are, or are not, to be taken into account in determining whether a person has complied with the regulations;
  - (h) prescribing matters which are, or are not, to be taken into account in determining whether a person had good cause for any failure to comply with the regulations;
  - (i) prescribing circumstances in which a person is, or is not, to be regarded as having good cause for any such failure.
- (3) For the purposes of subsection (2)(e), the appropriate consequence of a failure falling within that provision is that the amount payable to the person in question in respect of an employment and support allowance is to be reduced in accordance with regulations.
- (4) Regulations under subsection (3) may, in particular, make provision for determining—
  - (a) the amount by which an allowance is to be reduced,
  - (b) when the reduction is to start, and
  - (c) how long it is to continue,

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and may include provision prescribing circumstances in which the amount of the reduction is to be nil.

- (5) Regulations under this section shall include provision for a requirement to undertake work-related activity in accordance with regulations to cease to have effect if the person subject to the requirement becomes a member of the support group.
- (6) Regulations under this section may include provision that in such circumstances as the regulations may provide a person's obligation under the regulations to undertake work-related activity at a particular time is not to apply, or is to be treated as not having applied.
- (7) In this Part, “work-related activity”, in relation to a person, means activity which makes it more likely that the person will obtain or remain in work or be able to do so.

#### 14 Action plans in connection with work-focused interviews

- (1) The Secretary of State shall in prescribed circumstances provide a person subject to a requirement imposed under section 12(1) with a document prepared for such purposes as may be prescribed (in this section referred to as an action plan).
- (2) Regulations may make provision about—
  - (a) the form of action plans;
  - (b) the content of action plans;
  - (c) the review and updating of action plans.
- (3) Regulations under this section may, in particular, make provision for action plans which are provided to a person who is subject under section 13 to a requirement to undertake work-related activity to contain particulars of activity which, if undertaken, would enable the requirement to be met.
- (4) Regulations may make provision for reconsideration of an action plan at the request of the person to whom the plan is provided and may, in particular, make provision about—
  - (a) the circumstances in which reconsideration may be requested;
  - (b) the period within which any reconsideration must take place;
  - (c) the matters to which regard must be had when deciding on reconsideration whether the plan should be changed;
  - (d) notification of the decision on reconsideration;
  - (e) the giving of directions for the purpose of giving effect to the decision on reconsideration.

#### Commencement Information

**I10** S. 14(1)(2)(a)(b) in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)

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VALID FROM 11/02/2011

## 15 Directions about work-related activity

- (1) In prescribed circumstances, the Secretary of State may by direction given to a person subject to a requirement imposed under section 13(1) provide that the undertaking of activity specified in the direction is, in his case, to be treated as not being the undertaking of work-related activity.
- (2) The power under subsection (1) to give directions—
  - (a) is exercisable by instrument in writing, and
  - (b) includes power to vary or revoke a direction given in previous exercise of the power.
- (3) Where a direction under subsection (1) varies or revokes a previous direction, it may provide for the variation or revocation to have effect from a time before the giving of the direction.

## 16 Contracting out

- (1) The following functions of the Secretary of State may be exercised by, or by employees of, such person (if any) as the Secretary of State may authorise for the purpose, namely—
  - (a) conducting interviews under section 12;
  - (b) providing documents under section 14;
  - (c) giving, varying or revoking directions under section 15.
- (2) Regulations may provide for any of the following functions of the Secretary of State to be exercisable by, or by employees of, such person (if any) as the Secretary of State may authorise for the purpose—
  - (a) any function under regulations under any of sections 11 to 15, except the making of a decision to which subsection (3) applies (an “excluded decision”);
  - (b) the function under section 9(1) of the Social Security Act 1998 (c. 14) (revision of decisions), so far as relating to decisions, except excluded decisions, that relate to any matter arising under such regulations;
  - (c) the function under section 10(1) of that Act (superseding of decisions), so far as relating to decisions, except excluded decisions, of the Secretary of State that relate to any matter arising under such regulations;
  - (d) any function under Chapter 2 of Part 1 of that Act (social security decisions), except section 25(2) and (3) (decisions involving issues that arise on appeal in other cases), which relates to the exercise of any of the functions falling within paragraphs (a) to (c).
- (3) This subsection applies to the following decisions—
  - (a) a decision about whether a person has failed to comply with a requirement imposed by regulations under section 11, 12 or 13;
  - (b) a decision about whether a person had good cause for failure to comply with such a requirement;
  - (c) a decision about reduction of an employment and support allowance in consequence of failure to comply with such a requirement.

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- (4) Regulations under subsection (2) may provide that a function to which that subsection applies may be exercised—
  - (a) either wholly or to such extent as the regulations may provide,
  - (b) either generally or in such cases or areas as the regulations may provide, and
  - (c) either unconditionally or subject to the fulfilment of such conditions as the regulations may provide.
- (5) An authorisation given by virtue of subsection (1), or by virtue of regulations under subsection (2), may authorise the exercise of the function concerned—
  - (a) either wholly or to such extent as may be specified in the authorisation,
  - (b) either generally or in such cases or areas as may be so specified, and
  - (c) either unconditionally or subject to the fulfilment of such conditions as may be so specified.
- (6) In the case of an authorisation given by virtue of regulations under subsection (2), subsection (5) is subject to the provisions of the regulations.
- (7) An authorisation given by virtue of subsection (1), or by virtue of regulations under subsection (2)—
  - (a) may specify its duration,
  - (b) may be revoked at any time by the Secretary of State, and
  - (c) shall not prevent the Secretary of State or any other person from exercising the function to which the authorisation relates.
- (8) Where a person is authorised to exercise any function by virtue of subsection (1), or by virtue of regulations under subsection (2), anything done or omitted to be done by or in relation to him (or an employee of his) in, or in connection with, the exercise or purported exercise of the function shall be treated for all purposes as done or omitted to be done by or in relation to the Secretary of State.
- (9) Subsection (8) shall not apply—
  - (a) for the purposes of so much of any contract made between the authorised person and the Secretary of State as relates to the exercise of the function, or
  - (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by the authorised person (or an employee of his).
- (10) Any decision which a person authorised to exercise any function by virtue of subsection (1), or by virtue of regulations under subsection (2), makes in exercise of the function shall have effect as a decision of the Secretary of State under section 8 of the Social Security Act 1998 (c. 14).
- (11) Where—
  - (a) a person is authorised to exercise any function by virtue of subsection (1), or by virtue of regulations under subsection (2), and
  - (b) the authorisation is revoked at a time when a relevant contract is subsisting, the authorised person shall be entitled to treat the relevant contract as repudiated by the Secretary of State (and not as frustrated by reason of the revocation).
- (12) In subsection (11), the reference to a relevant contract is to so much of any contract made between the authorised person and the Secretary of State as relates to the exercise of the function.
- (13) In this section, references to functions of the Secretary of State under—

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- (a) an enactment contained in, or in regulations under, this Part, or
  - (b) an enactment contained in Chapter 2 of Part 1 of the Social Security Act 1998,
- include a reference to any function which the Secretary of State has by virtue of the application in relation to that enactment of section 8(1)(c) of that Act (decisions under certain enactments to be made by the Secretary of State).

#### Commencement Information

**I11** S. 16(2)(a)(4) in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)

### Miscellaneous

## 17 Income and capital: general

- (1) In relation to a claim for an employment and support allowance, the income and capital of a person shall be calculated or estimated in such manner as may be prescribed.
- (2) A person's income in respect of a week shall be calculated in accordance with prescribed rules, which may provide for the calculation to be made by reference to an average over a period (which need not include the week concerned).
- (3) Circumstances may be prescribed in which—
  - (a) a person is to be treated as possessing capital or income which he does not possess;
  - (b) capital or income which a person does possess is to be disregarded;
  - (c) income is to be treated as capital;
  - (d) capital is to be treated as income.
- (4) Regulations may provide that a person's capital shall be deemed for the purposes of this Part to yield him an income at a prescribed rate.

#### Commencement Information

**I12** S. 17 in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)

## 18 Disqualification

- (1) Regulations may provide for a person to be disqualified for receiving an employment and support allowance, or treated for such purposes as the regulations may provide as not having limited capability for work, if—
  - (a) he has become someone who has limited capability for work through his own misconduct,
  - (b) he remains someone who has limited capability for work through his failure without good cause to follow medical advice, or
  - (c) he fails without good cause to observe any prescribed rules of behaviour.
- (2) Regulations under subsection (1) shall provide for any such disqualification, or treatment, to be for such period not exceeding 6 weeks as may be determined in accordance with Chapter 2 of Part 1 of the Social Security Act 1998 (c. 14).



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- (3) Regulations may prescribe for the purposes of subsection (1)—
  - (a) matters which are, or are not, to be taken into account in determining whether a person has good cause for any act or omission;
  - (b) circumstances in which a person is, or is not, to be regarded as having good cause for any act or omission.
- (4) Except where regulations otherwise provide, a person shall be disqualified for receiving a contributory allowance for any period during which he is—
  - (a) absent from Great Britain, or
  - (b) undergoing imprisonment or detention in legal custody.

#### Commencement Information

**I13** S. 18(1)(2)(4) in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)

VALID FROM 27/10/2008

## 19 Pilot schemes

- (1) Any regulations to which this subsection applies may be made so as to have effect for a specified period not exceeding 24 months.
- (2) Subject to subsection (3), subsection (1) applies to—
  - (a) regulations which are made under any provision of this Part, other than sections 3, 8 and 9;
  - (b) regulations which are made under the Administration Act, so far as they relate to an employment and support allowance.
- (3) Subsection (1) only applies to regulations if they are made with a view to ascertaining whether their provisions will or will be likely to—
  - (a) encourage persons to obtain or remain in work, or
  - (b) make it more likely that persons will obtain or remain in work or be able to do so.
- (4) Regulations which, by virtue of subsection (1), are to have effect for a limited period are referred to in this section as a “pilot scheme”.
- (5) A pilot scheme may provide that its provisions are to apply only in relation to—
  - (a) one or more specified areas;
  - (b) one or more specified classes of person;
  - (c) persons selected—
    - (i) by reference to prescribed criteria, or
    - (ii) on a sampling basis.
- (6) A pilot scheme may make consequential or transitional provision with respect to the cessation of the scheme on the expiry of the specified period.
- (7) A pilot scheme may be replaced by a further pilot scheme making the same or similar provision.

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## 20 Relationship with statutory payments

- (1) A person is not entitled to an employment and support allowance in respect of a day if, for the purposes of statutory sick pay, that day—
  - (a) is a day of incapacity for work in relation to a contract of service, and
  - (b) falls within a period of entitlement (whether or not it is a qualifying day).
- (2) Except as regulations may provide, a woman who is entitled to statutory maternity pay is not entitled to a contributory allowance in respect of a day that falls within the maternity pay period.
- (3) Regulations may provide that—
  - (a) an amount equal to a woman's statutory maternity pay for a period shall be deducted from a contributory allowance in respect of the same period,
  - (b) a woman shall only be entitled to a contributory allowance if there is a balance after the deduction, and
  - (c) if there is such a balance, a woman shall be entitled to a contributory allowance at a weekly rate equal to it.
- (4) Except as regulations may provide, a person who is entitled to statutory adoption pay is not entitled to a contributory allowance in respect of a day that falls within the adoption pay period.
- (5) Regulations may provide that—
  - (a) an amount equal to a person's statutory adoption pay for a period shall be deducted from a contributory allowance in respect of the same period,
  - (b) a person shall only be entitled to a contributory allowance if there is a balance after the deduction, and
  - (c) if there is such a balance, a person shall be entitled to a contributory allowance at a weekly rate equal to it.
- (6) Except as regulations may provide, a person who is entitled to additional statutory paternity pay is not entitled to a contributory allowance in respect of a day that falls within the additional paternity pay period.
- (7) Regulations may provide that—
  - (a) an amount equal to a person's additional statutory paternity pay for a period shall be deducted from a contributory allowance in respect of the same period,
  - (b) a person shall only be entitled to a contributory allowance if there is a balance after the deduction, and
  - (c) if there is such a balance, a person shall be entitled to a contributory allowance at a weekly rate equal to it.
- (8) In this section—
  - “the additional paternity pay period” has the meaning given in section 171ZEE(2) of the Contributions and Benefits Act;
  - “the adoption pay period” has the meaning given in section 171ZN(2) of that Act;
  - “the maternity pay period” has the meaning given in section 165(1) of that Act.

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#### Commencement Information

**I14** S. 20(2)-(7) in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)

VALID FROM 27/10/2008

### 21 Deemed entitlement for other purposes

Regulations may provide for a person who would be entitled to an employment and support allowance but for the operation of any provision of, or made under, this Part, the Administration Act or Chapter 2 of Part 1 of the Social Security Act 1998 (c. 14) (social security decisions and appeals) to be treated as if entitled to the allowance for the purposes of any rights or obligations (whether his own or another's) which depend on his entitlement, other than the right to payment of it.

### 22 Supplementary provisions

Schedule 2 (which contains further provisions in relation to an employment and support allowance) has effect.

#### Commencement Information

**I15** S. 22 in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)

### 23 Recovery of sums in respect of maintenance

- (1) Regulations may make provision for the court to have power to make a recovery order against any person where an award of income-related allowance has been made to that person's spouse or civil partner.
- (2) The reference in subsection (1) to a recovery order is to an order requiring the person against whom it is made to make payments to the Secretary of State or to such other person or persons as the court may determine.
- (3) Regulations under subsection (1) may include—
  - (a) provision as to the matters to which the court is, or is not, to have regard in determining any application under the regulations;
  - (b) provision as to the enforcement of orders under the regulations;
  - (c) provision for the transfer by the Secretary of State of the right to receive payments under, and to exercise rights in relation to, orders under the regulations.
- (4) In this section, “the court” means—
  - (a) in relation to England and Wales, a magistrates' court;
  - (b) in relation to Scotland, the sheriff.

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### Commencement Information

**I16** S. 23(1)(3) in force at 18.3.2008 for specified purposes by S.I. 2008/787, **art. 2(1)**

## *General*

### **24 Interpretation of Part 1**

(1) In this Part—

“claimant” means a person who has claimed an employment and support allowance;

“contributory allowance” has the meaning given by section 1(7);

“employment” and “employed” have the meanings prescribed for the purposes of this Part;

“entitled”, in relation to an employment and support allowance, is to be construed in accordance with—

- (a) the provisions of this Act,
- (b) section 1 of the Administration Act (entitlement dependent on making of claim), and
- (c) section 27 of the Social Security Act 1998 (c. 14) (restrictions on entitlement in certain cases of error);

“income-related allowance” has the meaning given by section 1(7);

“income support” means income support under section 124 of the Contributions and Benefits Act;

“limited capability for work” shall be construed in accordance with section 1(4);

“limited capability for work-related activity” shall be construed in accordance with section 2(5);

“period of limited capability for work” has the meaning prescribed for the purposes of this Part;

“prescribed” means specified in, or determined in accordance with, regulations;

“regulations” means regulations made by the Secretary of State;

“week” means a period of 7 days beginning with a Sunday or such other period of 7 days as may be prescribed;

“work-related activity” has the meaning given by section 13(7).

(2) For the purposes of this Part, the assessment phase, in relation to a claimant, is the period—

- (a) beginning, subject to subsection (3), with the first day of the period for which he is entitled to an employment and support allowance, and
- (b) ending with such day as may be prescribed.

(3) Regulations may prescribe circumstances in which the assessment phase is to begin with such day as may be prescribed.

(4) For the purposes of this Part, a person is a member of the support group if he is a person in respect of whom it is determined that he has, or is to be treated as having, limited capability for work-related activity.

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#### Commencement Information

- I17** S. 24(1) in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)  
**I18** S. 24(2)(b)(3) in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)

## 25 Regulations

- (1) Any power under this Part to make regulations shall be exercisable by statutory instrument.
- (2) Any such power may be exercised—
  - (a) in relation to all cases to which it extends,
  - (b) in relation to those cases subject to specified exceptions, or
  - (c) in relation to any specified cases or classes of case.
- (3) Any such power may be exercised so as to make, as respects the cases in relation to which it is exercised—
  - (a) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);
  - (b) the same provision for all cases in relation to which it is exercised, or different provision for different cases or different classes of case or different provision as respects the same case or class of case for different purposes of this Part;
  - (c) any such provision either unconditionally or subject to any specified condition.
- (4) Where any such power is expressed to be exercisable for alternative purposes, it may be exercised in relation to the same case for all or any of those purposes.
- (5) Any such power includes power—
  - (a) to make such incidental, supplementary, consequential or transitional provision or savings as appear to the Secretary of State to be expedient;
  - (b) to provide for a person to exercise a discretion in dealing with any matter.
- (6) Without prejudice to the generality of the provisions of this section, regulations under any of sections 11 to 15 may make provision which applies only in relation to an area or areas specified in the regulations.
- (7) The fact that a power to make regulations is conferred by this Part is not to be taken to prejudice the extent of any other power to make regulations so conferred.

#### Commencement Information

- I19** S. 25(1)-(5) in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)  
**I20** S. 25(2)(b) in force at 27.7.2008 in so far as not already in force by S.I. 2008/787, art. 2(3)(b)

## 26 Parliamentary control

- (1) None of the following regulations shall be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament—
  - (a) regulations under section 2(2)(c) or (3)(c) or 4(4)(c) or (5)(c);

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- (b) the first regulations under section 13;
  - (c) regulations which by virtue of section 19(1) are to have effect for a limited period.
- (2) A statutory instrument that—
- (a) contains regulations made under this Part, and
  - (b) is not subject to a requirement that a draft of the instrument be laid before, and approved by a resolution of, each House of Parliament,
- shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Commencement Information

**I21** S. 26(2) in force at 18.3.2008 for specified purposes by S.I. 2008/787, art. 2(1)

VALID FROM 27/10/2008

#### 27 Financial provisions relating to Part 1

- (1) There shall be paid out of the National Insurance Fund so much of any sums payable by way of employment and support allowance as is attributable to entitlement to a contributory allowance.
- (2) There shall be paid out of money provided by Parliament—
  - (a) so much of any sums payable by way of employment and support allowance as is attributable to entitlement to an income-related allowance, and
  - (b) any administrative expenses of the Secretary of State or the Commissioners for Her Majesty's Revenue and Customs in carrying this Part into effect.
- (3) The Secretary of State shall pay into the National Insurance Fund sums estimated by him to be equivalent in amount to sums recovered by him in connection with payments of contributory allowance.
- (4) The Secretary of State shall pay into the Consolidated Fund sums estimated by him to be equivalent in amount to sums recovered by him in connection with payments made by way of income-related allowance.

#### 28 Consequential amendments relating to Part 1

- (1) Schedule 3 (which makes amendments consequential on this Part) has effect.
- (2) Regulations may make provision consequential on this Part amending, repealing or revoking any provision of—
  - (a) an Act passed on or before the last day of the Session in which this Act is passed, or
  - (b) an instrument made under an Act before the passing of this Act.
- (3) In subsection (2), “Act” includes an Act of the Scottish Parliament.

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#### Commencement Information

- I22** S. 28(1) in force at 18.3.2008 for specified purposes by S.I. 2008/787, **art. 2(1)**
- I23** S. 28(1) in force at 27.7.2008 for specified purposes by S.I. 2008/787, **art. 2(3)(a)**
- I24** S. 28(2) in force at 18.3.2008 for specified purposes by S.I. 2008/787, **art. 2(1)**

## 29 Transition relating to Part 1

Schedule 4 (which makes provision with respect to transition in relation to this Part) has effect.

#### Commencement Information

- I25** S. 29 in force at 18.3.2008 for specified purposes by S.I. 2008/787, **art. 2(1)**
- I26** S. 29 in force at 27.7.2008 for specified purposes by S.I. 2008/787, **art. 2(3)(b)**

**Status:**

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**Changes to legislation:**

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