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## SCHEDULES

### SCHEDULE 4

Section 29.

#### TRANSITION RELATING TO PART 1

##### *General power to provide for transition relating to Part 1*

1.—(1) Regulations may make such provision as the Department considers necessary or expedient—

- (a) in connection with the coming into operation of any provision of, or repeal relating to, this Part, or
- (b) otherwise for the purposes of, or in connection with, the transition to employment and support allowance.

(2) The following provisions of this Schedule are not to be taken as prejudicing the generality of sub-paragraph (1).

##### **Commencement Information**

- II** Sch. 4 para. 1 wholly in operation at 27.7.2008; Sch. 4 para. 1 not in operation at Royal Assent see s. 60(1); Sch. 4 para. 1(1) in operation for certain purposes at 1.7.2008 and wholly in operation at 27.7.2008 by S.R. 2008/276, art. 2(2)(a); Sch. 4 para. 1(2) in operation at 27.7.2008 by S.R. 2008/276, art. 2(2)(b)

##### *Pre-commencement claims*

2 Regulations may—

- (a) make provision for a claim for incapacity benefit, income support or severe disablement allowance which is made before the appointed day to be treated wholly or partly as a claim for an employment and support allowance;
- (b) make provision for the purpose of enabling claims for an employment and support allowance to be made before the appointed day for a period beginning on or after that day.

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#### Commencement Information

- I2** Sch. 4 para. 2 wholly in operation at 27.7.2008; Sch. 4 para. 2 not in operation at Royal Assent see s. 60(1); Sch. 4 para. 2 in operation for certain purposes at 1.7.2008 and wholly in operation at 27.7.2008 by S.R. 2008/276, art. 2(2)(a)

#### *Post-commencement claims*

#### 3 Regulations may—

- (a) make provision excluding the making of a claim for incapacity benefit or severe disablement allowance on or after the appointed day;
- (b) make provision for a claim for incapacity benefit, income support or severe disablement allowance which is made on or after the appointed day to be treated in prescribed circumstances as a claim for an employment and support allowance;
- (c) make provision for a claim for an employment and support allowance to be treated wholly or partly as a claim for incapacity benefit, income support or severe disablement allowance;
- (d) make provision excluding the making of a claim for an employment and support allowance by a person who is entitled to an existing award.

#### Commencement Information

- I3** Sch. 4 para. 3 partly in operation; Sch. 4 para. 3 not in operation at Royal Assent see s. 60(1); Sch. 4 para. 3(b)-(d) in operation for certain purposes at 1.7.2008 and wholly in operation at 27.7.2008 by S.R. 2008/276, art. 2(2)(a)

PROSPECTIVE

#### *Award of employment and support allowance for pre-commencement period*

#### 4 Regulations may—

- (a) make provision for an employment and support allowance of such a kind as the regulations may provide to be awarded in prescribed circumstances for a period before the appointed day;
- (b) make provision with respect to conditions of entitlement in relation to an award under sub-paragraph (a) and the amount payable by way of an allowance under such an award.

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## PROSPECTIVE

*Matching of awards of employment and support allowance*

**5.—(1)** For the purposes of this paragraph, an award of an employment and support allowance is one that falls to be made on matching terms if—

- (a) it is made in pursuance of a claim by a person who was previously entitled to an existing award, and
- (b) had it continued to be possible to make an award of incapacity benefit, income support on grounds of incapacity for work, or severe disablement allowance, the award which would have been made to him (“the hypothetical award”) would have been made on the basis of the linking of periods of incapacity for work.

(2) Regulations may—

- (a) make provision for the purpose of securing that an award of an employment and support allowance that falls to be made on matching terms is made on terms which match in whole or part the hypothetical award;
- (b) make provision for the modification of matched awards for the purpose of securing that the person with the award is put in the position he would have been had he been made the hypothetical award which was then the subject of conversion under paragraph 7.

(3) In sub-paragraph (2)(b), the reference to matched awards is to awards of an employment and support allowance that have been the subject of matching in pursuance of regulations under sub-paragraph (2)(a).

**6.—(1)** For the purposes of this paragraph an award of an employment and support allowance is one which falls to be made on matching terms if—

- (a) it is made in pursuance of a claim by a person who was previously entitled to an existing award,
- (b) had he continued to be entitled to that award, it would have been the subject of conversion under paragraph 7 before the date of his claim for an employment and support allowance, and
- (c) had it continued to be possible to make an award of incapacity benefit, income support on grounds of incapacity for work, or severe disablement allowance, the award which would have been made to him would have been made on the basis of the linking of periods of incapacity for work.

(2) Regulations may make provision for the purpose of securing that an award of an employment and support allowance that falls to be made on matching terms is made on terms which match in whole or part the award that would have

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resulted from conversion under paragraph 7 had entitlement to the existing award continued.

VALID FROM 09/09/2010

### *Treatment of existing awards*

#### 7.—(1) Regulations may—

- (a) make provision for converting existing awards into awards of an employment and support allowance, and with respect to the terms of conversion;
- (b) make provision for the termination of existing awards in prescribed circumstances.

#### (2) Regulations under sub-paragraph (1)(a) may, in particular—

- (a) make provision for conversion of an existing award—
  - (i) on application, in accordance with the regulations, by the person entitled to the award, or
  - (ii) without application;
- (b) make provision about the conditions to be satisfied in relation to an application for conversion;
- (c) make provision about the timing of conversion;
- (d) provide for an existing award to have effect after conversion as an award of an employment and support allowance—
  - (i) of such a kind,
  - (ii) for such period,
  - (iii) of such an amount, and
  - (iv) subject to such conditions,as the regulations may provide;
- (e) make provision for determining in connection with conversion of an existing award whether a person has limited capability for work-related activity.

(3) Regulations under sub-paragraph (1)(a) may, in relation to existing awards which have been the subject of conversion under this paragraph, include provision about revision under Article 10 of the 1998 Order, or supersession under Article 11 of that Order in respect of the period before conversion.

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*Transitional allowances*

**8** Regulations may—

- (a) make provision for a person's continuing entitlement to an employment and support allowance awarded by virtue of regulations under paragraph 7 (a “transitional allowance”) to be determined by reference to such provision as may be made by the regulations;
- (b) make provision for the review of an award of a transitional allowance;
- (c) make provision for the termination of an award of a transitional allowance;
- (d) make provision for this Part, or any other statutory provision relating to social security, to have effect with prescribed modifications in relation to a person with a transitional allowance;
- (e) make provision for the purpose of enabling a transitional allowance to be revised under Article 10 of the 1998 Order or superseded under Article 11 of that Order.

PROSPECTIVE

**9.—(1)** Regulations may prescribe circumstances in which a person who is entitled to a transitional allowance immediately before reaching pensionable age is to be treated as having satisfied the condition in paragraph 5(2) of Schedule 3 to the Contributions and Benefits Act (first contribution condition for entitlement to state pension).

(2) In this paragraph, “pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995 (NI 22).

PROSPECTIVE

*Post-commencement up-rating of incapacity benefit and severe disablement allowance*

**10** Regulations may provide for section 132 of the Administration Act (annual up-rating of benefits), so far as relating to—

- (a) incapacity benefit under section 30A of the Contributions and Benefits Act, or

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(b) severe disablement allowance,

to have effect with prescribed modifications in relation to tax years beginning on or after the appointed day.

### *Interpretation*

#### **11** In this Schedule—

“appointed day” means the day appointed for the coming into operation of section 1;

“existing award” means—

- (a) an award of incapacity benefit,
- (b) an award of severe disablement allowance, and
- (c) an award of income support made to a person to whom regulation 6(4) (a) or 13(2)(b) or (bb) of, or paragraph 7(a) or (b), 10, 12 or 13 of Schedule 1B to, the Income Support (General) Regulations (Northern Ireland) 1987 (SR 1987/459) (persons incapable of work or disabled) applies;

“incapacity benefit” (except in paragraph 10(a)) means—

- (a) incapacity benefit under section 30A, 40 or 41 of the Contributions and Benefits Act;
- (b) long-term incapacity benefit under regulation 11(4) of the Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995 (SR 1995/35) (former sickness benefit); and
- (c) invalidity benefit which has effect by virtue of regulation 17(1) of those regulations as if it were long-term incapacity benefit;

“income support” means income support under section 123 of the Contributions and Benefits Act;

“severe disablement allowance” means severe disablement allowance under section 68 of that Act (as it has effect by virtue of Article 4 of the Welfare Reform and Pensions (1999 Order) (Commencement No. 6 and Transitional and Savings Provisions) Order (Northern Ireland) 2000 (SR 2000/332));

“transitional allowance” has the meaning given by paragraph 8(a).

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