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STATUTORY INSTRUMENTS

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**2008 No. 1879**

**SOCIAL SECURITY**

**The Employment and Support Allowance  
(Consequential Provisions) (No. 3) Regulations 2008**

<i>Made</i>	- - - -	<i>16th July 2008</i>
<i>Laid before Parliament</i>		<i>18th July 2008</i>
<i>Coming into force</i>	- -	<i>27th October 2008</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section 28(2) of the Welfare Reform Act 2007<sup>(1)</sup>.

This Instrument contains only Regulations made consequential upon Part 1 of the Welfare Reform Act 2007 and is made before the end of the period of 6 months beginning with the coming into force of that Part<sup>(2)</sup>.

**PART 1**

**General**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Consequential Provisions) (No. 3) Regulations 2008 and come into force on 27th October 2008.

(2) These Regulations extend to England and Wales and Scotland except as provided below.

(3) Where an enactment that is amended by these Regulations has a more limited extent than that referred to in paragraph (2), the amendment has the same extent as the enactment to which it refers.

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(1) [2007 c. 5](#). Under section 24(1) of the Welfare Reform Act 2007 these regulations fall to be made by the Secretary of State.  
(2) *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.

## PART 2

### Employment

#### **Amendment of the Employment Rights Act 1996**

**2.** In section 90 of the Employment Rights Act 1996<sup>(3)</sup> (short-term incapacity benefit and industrial injury benefit)—

- (a) in the heading after “short-term incapacity benefit” insert “, contributory employment and support allowance”; and
- (b) in subsection (1)(b) after “short-term incapacity benefit” insert “, contributory employment and support allowance”.

#### **Amendment of the National Minimum Wage Regulations 1999**

**3.** In regulation 12(11)(b)(i) of the National Minimum Wage Regulations 1999<sup>(4)</sup> (workers who do not qualify for the national minimum wage) for “or income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance or income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007”.

## PART 3

### Children and Education

#### **Amendment of the Education (Assisted Places) (Incidental Expenses) Regulations 1997**

**4.** In regulation 9(3) of the Education (Assisted Places) (Incidental Expenses) Regulations 1997<sup>(5)</sup> (remission of charges for school meals) after sub-paragraph (c) add—

“or

- (d) an income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007.”.

#### **Amendment of the Education (Non-Maintained Special Schools) (England) Regulations 1999**

**5.** In paragraph 12(3) of the Schedule to the Education (Non-Maintained Special Schools) (England) Regulations 1999<sup>(6)</sup> (milk, meals and refreshment) after “income support” insert “, an income-related employment and support allowance (payable under Part 1 of the Welfare Reform Act 2007)”.

#### **Amendment of the Education (Student Loans) (Repayment) Regulations 2000**

**6.** In regulation 15(5) of the Education (Student Loans) (Repayment) Regulations 2000<sup>(7)</sup> (time for and amount of repayments)—

- (a) after sub-paragraph (h) omit “and”; and
- (b) after sub-paragraph (i) add—

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(3) 1996 c. 18.

(4) S.I. 1999/584.

(5) S.I. 1997/1969. Regulation 9(3) was amended by S.I. 2003/1707.

(6) S.I. 1999/2257.

(7) S.I. 2000/944. Regulation 15(5) amended by S.I. 2002/2087, 2004/2752 and 2006/745.

- “and  
(j) employment and support allowance.”.

#### **Amendment of the Special Guardianship Regulations 2005**

7. In regulation 9(c) of the Special Guardianship Regulations 2005(8) (cessation of financial support) for “or jobseeker’s allowance” substitute “, jobseeker’s allowance or employment and support allowance”.

### **PART 4**

#### **Utilities**

#### **Amendment of the Water Industry (Charges) (Vulnerable Groups) Regulations 1999**

8. In regulation 2(4) of the Water Industry (Charges) (Vulnerable Groups) Regulations 1999(9) (special provision to be included in charges schemes) after sub-paragraph (d) insert—

- “(e) income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007.”.

#### **Amendment of the Home Energy Efficiency Scheme (England) Regulations 2005**

9. In regulation 4(2) of the Home Energy Efficiency Scheme (England) Regulations 2005(10) (persons who may apply for a grant)—

- (a) after sub-paragraph (b) omit “and”; and  
(b) after sub-paragraph (c) insert—

“and

- (d) an income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007.”.

### **PART 5**

#### **Health**

#### **Amendment of the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005**

10.—(1) The Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005(11) are amended as follows.

(2) In regulation 2(1) (interpretation) after the definition of “income-based jobseeker’s allowance” insert—

““income-related employment and support allowance” means an income-related allowance payable under Part 1 of the Welfare Reform Act 2007 (employment and support allowance);”.

(3) In regulation 3(3)(a)(12) (entitlement to benefit) after sub-paragraph (iii) insert—

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(8) [S.I. 2005/1109](#).

(9) [S.I. 1999/3441](#). Regulation 2(4) was amended by [S.I. 2003/552](#).

(10) [S.I. 2005/1530](#).

(11) [S.I. 2005/3262](#).

(12) Regulation 3(3) was amended by [S.I. 2006/2818](#) and [S.I. 2008/408](#).

“or

(iv) an income-related employment and support allowance;”.

(4) In Schedule 2(**13**) (application for benefit) in paragraph 4(1)(a)—

(a) after sub-paragraph (ii) omit “or”;

(b) at the end of sub-paragraph (iii) for “and” substitute—

“or

(iv) an income-related employment and support allowance; and”.

## PART 6

### Immigration and Asylum

#### **Amendment of the Asylum Support Regulations 2000**

**11.** In regulation 4(6)(a) of the Asylum Support Regulations 2000(**14**) (persons excluded from support)—

(a) after sub-paragraph (i) omit “or”; and

(b) after sub-paragraph (ii) add—

“or

(iii) income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007;”.

## PART 7

### Transport

#### **Amendment of the Bus Service Operators Grant (England) Regulations 2002**

**12.** In regulation 3(4) of the Bus Service Operators Grant (England) Regulations 2002(**15**) (eligibility for grant) after sub-paragraph (d) insert—

“(dd) persons in receipt of employment and support allowance payable under Part 1 of the Welfare Reform Act 2007;”.

## PART 8

### Courts and Tribunals

#### **Amendment of the Community Legal Service (Financial) Regulations 2000**

**13.** In regulation 4(2) of the Community Legal Service (Financial) Regulations 2000(**16**) (eligibility, assessment, contributions)—

(a) after sub-paragraph (b) omit “, or”; and

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(13) Schedule 2 was amended by [S.I. 2008/408](#).

(14) [S.I. 2000/704](#).

(15) [S.I. 2002/1015](#).

(16) [S.I. 2000/516](#). Regulation 4 was substituted by [S.I. 2001/3663](#) and paragraph (2) was substituted by [S.I.2005/589](#).

(b) after sub-paragraph (c) insert—

“; or

(d) income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007.”.

#### **Amendment of the Criminal Defence Service (General) (No 2) Regulations 2001**

**14.**—(1) The Criminal Defence Service (General) (No 2) Regulations 2001<sup>(17)</sup> are amended as follows.

(2) In regulation 2 (interpretation) after the definition of “funded services” insert—

““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance);”;

(3) In regulation 5 (advice and assistance - financial eligibility)—

(a) in paragraph (8)—

(i) in sub-paragraph (d) omit “and”; and

(ii) after sub-paragraph (e) insert—

“and

(f) income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007.”; and

(b) in paragraph (9) for “or guarantee state pension credit” substitute “guarantee state pension credit or income-related employment and support allowance”.

#### **Amendment of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003**

**15.** In regulation 8(1) of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003<sup>(18)</sup> (waiver and reduction of fees)—

(a) after sub-paragraph (d) omit “or”; and

(b) after sub-paragraph (e) add—

“or

(f) an income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007.”.

#### **Amendment of the Gender Recognition (Application Fees) Order 2006**

**16.** In regulation 5 of the Gender Recognition (Application Fees) Order 2006<sup>(19)</sup> (definition of qualifying benefit) after sub-paragraph (d) add—

“(e) income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007.”.

#### **Amendment of the Residential Property Tribunal (Fees) (England) Regulations 2006**

**17.** In regulation 5(2) of the Residential Property Tribunal (Fees) (England) Regulations 2006<sup>(20)</sup> (liability to pay fee and waiver of fees) after sub-paragraph (d) add—

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<sup>(17)</sup> S.I. 2001/1437. Regulation 5 was amended by S.I. 2003/644, 2003/2378 and 2006/2490.

<sup>(18)</sup> S.I. 2003/2098.

<sup>(19)</sup> S.I. 2006/758.

<sup>(20)</sup> S.I. 2006/830.

“(e) income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007.”.

#### **Amendment of the Criminal Defence Service (Financial Eligibility) Regulations 2006**

**18.** In regulation 5(4) of the Criminal Defence Service (Financial Eligibility) Regulations 2006(21) (assessment by representation authority) after sub-paragraph (c) add—

“(d) income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007.”.

#### **Amendment of the Gambling Appeals Tribunal Fees Regulations 2006**

**19.** In regulation 3(2) of the Gambling Appeals Tribunal Fees Regulations 2006(22) (exemptions, reductions, waivers and refunds) after sub-paragraph (d) add—

“(e) income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007.”.

## **PART 9**

### **Tax Credits and Child Benefit**

#### **Amendment of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002**

**20.**—(1) The Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(23) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of “claimant” insert—

““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;” and

(ii) after the definition of “week” insert—

““the Welfare Reform Act” means the Welfare Reform Act 2007.”; and

(b) after paragraph (4)(24) add—

“(5) For the purpose of these Regulations—

(a) two or more periods of entitlement to employment and support allowance are linked together if they satisfy the conditions in regulation 145 of the Employment and Support Allowance Regulations 2008(50); and

(b) a period of entitlement to employment and support allowance is linked together with a period of entitlement to statutory sick pay if it follows that period within 12 weeks.”.

(3) In regulation 6(25) (periods of illness or incapacity for work)—

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(21) S.I. 2006/2492.

(22) S.I. 2006/3287.

(23) S.I. 2002/2005.

(24) Paragraph (4) was inserted by S.I. 2003/701.

(50) S.I. 2008/794.

(25) Regulation 6 was substituted by S.I. 2003/701.

- (a) in the heading for “or incapacity for work” substitute “, incapacity for work or limited capability for work”;
- (b) in paragraph (1)—
  - (i) after sub-paragraph (c) for “or” substitute—
    - “(cc) is paid an employment and support allowance under Part 1 of the Welfare Reform Act, or”;
  - (ii) in sub-paragraph (d) after “on the grounds of incapacity for work” insert “or limited capability for work”;
- (c) in paragraph (4)—
  - (i) after “paragraph (1)(c)” insert “or employment and support allowance as specified in paragraph (1)(cc)”;
  - (ii) after “income support” the second time it occurs insert “or employment and support allowance”.
- (4) In regulation 9(26) (disability element and workers who are to be treated as at a disadvantage in getting a job)—
  - (a) for paragraph (2) substitute—
    - “(2) Case A is where the person has, for at least one day in the preceding 182 days (“the qualifying day”), been in receipt of—
      - (a) higher rate short-term incapacity benefit;
      - (b) long-term incapacity benefit;
      - (c) severe disablement allowance; or
      - (d) employment and support allowance where entitlement to employment and support allowance or statutory sick pay has existed for a period of 28 weeks immediately preceding the qualifying day comprising one continuous period or two or more periods which are linked together.”;
  - (b) in paragraph (6)—
    - (i) for sub-paragraph (a) substitute—
      - “(a) has received—
        - (i) on account of his incapacity for work, statutory sick pay, occupational sick pay, short-term incapacity benefit payable at the lower rate or income support, for a period of 140 qualifying days, or has been credited with Class 1 or Class 2 contributions under the Contributions and Benefits Act for a period of 20 weeks on account of incapacity for work, and where the last of those days or weeks (as the case may be) fell within the preceding 56 days; or
        - (ii) on account of his having limited capability for work, an employment and support allowance for a period of 140 qualifying days, or has been credited with Class 1 or Class 2 contributions under the Contributions and Benefits Act for a period of 20 weeks on account of having limited capability for work, and where the last of those days or weeks (as the case may be) fell within the preceding 56 days;”;

- (ii) after “Contributions and Benefits Act” the second time it occurs add “or a period of limited capability for work within the meaning of regulation 2(1) of the Employment and Support Allowance Regulations 2008”; and
- (c) in paragraph (7) for sub-paragraph (b) substitute—
  - “(b) has, within 56 days before the first day of that period of training for work, received—
    - (i) higher rate short-term incapacity benefit;
    - (ii) long-term incapacity benefit;
    - (iii) severe disablement allowance; or
    - (iv) contributory employment and support allowance where entitlement to that allowance or statutory sick pay has existed for a period of 28 weeks comprising one continuous period or two or more periods which are linked together provided that, if the person received statutory sick pay, the person satisfied the first and second contribution conditions set out in paragraphs 1 and 2 of Schedule 1 to the Welfare Reform Act.”.
- (5) In regulation 13(6) (entitlement to child care element of working tax credit) after sub-paragraph (g) add—
  - “(h) contributory employment and support allowance where entitlement to that allowance or statutory sick pay has existed for a period of 28 weeks comprising one continuous period or two or more periods which are linked together provided that, if the person received statutory sick pay, the person satisfied the first and second contribution conditions set out in paragraphs 1 and 2 of Schedule 1 to the Welfare Reform Act.”.
- (6) In regulation 18(5) (50 plus element)—
  - (a) after sub-paragraph (e) omit “or”; and
  - (b) after sub-paragraph (f) add—
    - “or
    - (g) an employment and support allowance.”.

### **Amendment of the Tax Credits (Definition and Calculation of Income) Regulations 2002**

**21.**—(1) The Tax Credits (Definition and Calculation of Income) Regulations 2002(27) are amended as follows.

- (2) In regulation 7 (social security income)—
  - (a) in paragraph (1)(a)(28) for “or the Jobseekers Act 1995” substitute “, the Jobseekers Act 1995 or Part 1 of the Welfare Reform Act 2007”; and
  - (b) in paragraph (3)(29) in Table 3—
    - (i) in the heading for “or the Jobseekers Act 1995” substitute “, the Jobseekers Act 1995 or Part 1 of the Welfare Reform Act 2007”; and
    - (ii) after “25. A payment in lieu of milk tokens or the supply of vitamins under the Welfare Foods Regulations 1996.” add—
      - “**26.** An income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007.”.

(27) [S.I. 2002/2006](#).

(28) Paragraph (1) was amended by [S.I. 2003/732](#).

(29) In paragraph (3) Table 3 was amended by [S.I. 2003/732](#) and [2815](#).



### **Amendment of the Child Tax Credit Regulations 2002**

**22.**—(1) The Child Tax Credit Regulations 2002(**30**) are amended as follows.

(2) In regulation 3(1) (circumstances in which a person is or is not responsible for a child or qualifying young person) in Rule 4, Case E, after “incapacity benefit” the first time it occurs insert “or contributory employment and support allowance payable under Part 1 of the Welfare Reform Act 2007”.

(3) In regulation 5(4)(c)(**31**) (maximum age and prescribed conditions for a qualifying young person) after “income support” insert “, income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007”.

### **Amendment of the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002**

**23.** In regulation 4 of the Tax Credits (Income Thresholds and Determinations of Rates) Regulations 2002(**32**) (social security benefits prescribed for the purposes of section 7(2) of the Act) after sub-paragraph (d) add—

“(e) an income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007.”.

### **Amendment of the Child Benefit (General) Regulations 2006**

**24.** In regulation 8(2) of the Child Benefit (General) Regulations 2006(**33**) (child benefit not payable in respect of qualifying young person: other financial support)—

(a) after sub-paragraph (c) omit “or”; and

(b) after sub-paragraph (d) add—

“or

(e) employment and support allowance payable under Part 1 of the Welfare Reform Act 2007.”.

## **PART 10**

### **Wales**

### **Amendment of the Bus Service Operators Grant (Wales) Regulations 2002**

**25.** In regulation 3(4) of the Bus Service Operators Grant (Wales) Regulations 2002(**34**) (eligibility for a grant) after sub-paragraph (d) insert—

“(dd) persons in receipt of employment and support allowance payable under Part 1 of the Welfare Reform Act 2007;”.

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(30) [S.I. 2002/2007](#). In regulation 3(1), Rule 4, Case E was inserted by [S.I. 2004/762](#).

(31) Regulation 5(4) was amended by [S.I. 2006/222](#).

(32) [S.I. 2002/2008](#). Regulation 4 was amended by [S.I. 2003/2815](#).

(33) [S.I. 2006/223](#).

(34) [S.I. 2002/2022](#).

**Amendment of the Individual Learning Accounts Wales Regulations 2003**

26. In the Schedule to the Individual Learning Accounts Wales Regulations 2003(35) (qualifying benefits or allowances) after “7 Working Tax Credit.” add—

“8 Employment and support allowance (Income-related).”.

**Amendment of the Leasehold Valuation Tribunals (Fees) (Wales) Regulations 2004**

27. In regulation 8(1) of the Leasehold Valuation Tribunals (Fees) (Wales) Regulations 2004(36) (waiver and reduction of fees)—

(a) after sub-paragraph (d) omit “or”; and

(b) after sub-paragraph (e) insert—

“or

(f) an income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007.”.

**Amendment of the Adoption Support Services (Local Authorities) (Wales) Regulations 2005**

28. In regulation 17(7)(c) of the Adoption Support Services (Local Authorities) (Wales) Regulations 2005(37) (review of financial support) for “or jobseeker’s allowance” substitute “, jobseeker’s allowance or employment and support allowance payable under Part 1 of the Welfare Reform Act 2007”.

**Amendment of the Special Guardianship (Wales) Regulations 2005**

29. In regulation 12(10)(b)(ii) of the Special Guardianship (Wales) Regulations 2005(38) (review of the provision of special guardianship support services) after “Contributions and Benefits Act 1992” insert “, employment and support allowance payable under Part 1 of the Welfare Reform Act 2007”.

**Amendment of the Residential Property Tribunal (Fees) (Wales) Regulations 2006**

30. In regulation 5(2) of the Residential Property Tribunal (Fees) (Wales) Regulations 2006(39) (liability to pay fee and waiver of fees) after sub-paragraph (d) add—

“(e) an income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007.”.

**Amendment of the Homelessness (Wales) Regulations 2006**

31.—(1) The Homelessness (Wales) Regulations 2006(40) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (3) after sub-paragraph (b) omit “and”; and

(b) after sub-paragraph (c) add—

“and

(35) S.I. 2003/918. Schedule was inserted by S.I. 2005/1722.

(36) S.I. 2004/683.

(37) S.I. 2005/1512.

(38) S.I. 2005/1513.

(39) S.I. 2006/1642.

(40) S.I. 2006/2646.

(d) “an income-related employment and support allowance” means an employment and support allowance payable under Part 1 of the Welfare Reform Act 2007 entitlement to which is based on the claimant satisfying conditions which include those set out in Part 2 of Schedule 1 to that Act.”

(3) In regulation 3(1)(i) (classes of persons subject to immigration control who are eligible for housing assistance) after “allowance” insert “, an income-related employment and support allowance”.

#### **Amendment of the Home Energy Efficiency Schemes (Wales) Regulations 2007**

**32.** In regulation 5(3) of the Home Energy Efficiency Schemes (Wales) Regulations 2007(41) (persons who may apply for a grant) after “of the 1992 Act)” insert “, an income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007”.

#### **Amendment of the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007**

**33.**—(1) The National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulation 2007(42) are amended as follows.

(2) In regulation 2 (interpretation) after the definition of “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 2007 (employment and support allowance);”.

(3) In regulation 5(1)(d) (entitlement to full remission and payment) after “income-based jobseeker’s allowance” insert “, income-related employment and support allowance”.

## **PART 11**

### **Scotland**

#### **Amendment of the Community Charges (Deductions from Income Support) (Scotland) Regulations 1989**

**34.**—(1) The Community Charges (Deductions from Income Support) (Scotland) Regulations 1989(43) are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)—

(a) after the definition of “Commissioner” insert—

““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;”;

(b) after the definition of “debtor” insert—

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

(c) after the definition of “5 per cent of the personal allowance for a single claimant aged not less than 25” insert—

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(41) S.I. 2007/375.

(42) S.I. 2007/1104.

(43) S.I. 1989/507. Amended by S.I. 1990/113, 1996/2334, 1998/563, 1999/3178, 2002/3019 and 3197.

- ““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act;”;
- (d) in the definition of “personal allowance for a couple where both members are aged not less than 18”—
- (i) after sub-paragraph (a) omit “or” and
- (ii) after sub-paragraph (b) add—
- “or
- (c) in the case of a person who is entitled to an income-related employment and support allowance, the amount for the time being specified in paragraph 1(3)(a) of column (2) of Schedule 4 to the Employment and Support Allowance Regulations;”;
- (e) in the definition of “personal allowance for a single claimant aged not less than 25”—
- (i) after sub-paragraph (a) omit “or” and
- (ii) after sub-paragraph (b) add—
- “or
- (c) in the case of a person who is entitled to an income-related employment and support allowance, the amount for the time being specified in paragraph 1(1)(b) of column (2) of Schedule 4 to the Employment and Support Allowance Regulations;”;
- (f) after the definition of “unmarried couple” add—
- ““Welfare Reform Act” means the Welfare Reform Act 2007.”.
- (3) In regulation 2 (applications for deductions etc.)—
- (a) in the heading for “or jobseeker’s allowance” substitute “, jobseeker’s allowance or employment and support allowance”;
- (b) in paragraph (1) for “or jobseeker’s allowance” substitute “, jobseeker’s allowance or employment and support allowance”; and
- (c) in paragraph (2)(e) for “or jobseeker’s allowance” substitute “, jobseeker’s allowance or employment and support allowance”.
- (4) In regulation 3 (deductions from debtor’s income support etc.)—
- (a) in the heading for “or jobseeker’s allowance” substitute “, jobseeker’s allowance or employment and support allowance”;
- (b) in paragraph (1) for “or income-based jobseeker’s allowance” substitute “, income-based jobseeker’s allowance or income-related employment and support allowance”;
- (c) in paragraph (2)—
- (i) in sub-paragraph (a) after “contribution-based jobseeker’s allowance” add “or contributory employment and support allowance”; and
- (ii) for sub-paragraph (b) substitute—
- “(b) the amount payable, before any deductions under this paragraph, of—
- (i) contribution-based jobseeker’s allowance is equal to or more than one-third of the age-related amount applicable to the debtor under section 4(1)(a) of the Jobseekers Act; or
- (ii) contributory employment and support allowance is equal to or more than one-third of the amount applicable to the debtor under section 2(1)(a) of the Welfare Reform Act,

as the case may be,”; and

(iii) after “Jobseekers Act” the second time it occurs insert “or under section 2(1)(a) of the Welfare Reform Act”.

(5) In regulation 4 (circumstances, time of making and termination of deductions)—

(a) in paragraph (1)(a) for “or jobseeker’s allowance” substitute “, jobseeker’s allowance or employment and support allowance”; and

(b) in paragraph (2) for “or jobseeker’s allowance” each time it occurs substitute “, jobseeker’s allowance or employment and support allowance”.

### **Amendment of the Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996**

**35.**—(1) The Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996<sup>(44)</sup> are amended as follows.

(2) In regulation 2 (interpretation)—

(a) after the definition of “child” insert—

““contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance);”;

(b) after the definition of “employment tribunal” insert—

““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance);”.

(3) In regulation 4(a) (applications for advice and assistance) after “income support” insert “, an income-related employment and support allowance”.

(4) In regulation 16 (2) (payment of fees and outlays from property recovered or preserved)—

(a) in sub-paragraph (a)(v) after “129 of the 1992 Act” insert “, an income-related employment and support allowance”;

(b) in sub-paragraph (c) after “Schedule 7 to the 1992 Act” insert “, contributory employment and support allowance”.

(5) In Schedule 2 (assessment of disposable capital and disposable income) after paragraph 5(j) insert—

“(k) contributory employment and support allowance.”.

### **Amendment of the Repayment of Student Loans (Scotland) Regulations 2000**

**36.** In regulation 2 of the Repayment of Student Loans (Scotland) Regulations 2000<sup>(45)</sup> (interpretation) in the definition of “disability related benefit” after “Social Security Contributions and Benefits Act 1992,” add “an employment and support allowance payable under Part 1 of the Welfare Reform Act 2007”.

### **Amendment of the Bus Service Operators Grant (Scotland) Regulations 2002**

**37.** In regulation 3(4) of the Bus Service Operators Grant (Scotland) Regulations 2002<sup>(46)</sup> (eligibility for grant) after sub-paragraph (d) insert—

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<sup>(44)</sup> S.I. 1996/2447. Paragraph 5 of Schedule 2 was inserted by S.S.I 2003/421.

<sup>(45)</sup> S.S.I. 2000/110.

<sup>(46)</sup> S.S.I. 2002/289.

“(dd) persons in receipt of employment and support allowance payable under Part 1 of the Welfare Reform Act 2007;”.

#### **Amendment of the Civil Legal Aid (Scotland) Regulations 2002**

**38.**—(1) The Civil Legal Aid (Scotland) Regulations 2002<sup>(47)</sup> are amended as follows.

(2) In regulation 2(1) (interpretation) after the definition of “income” insert—

““income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance);”.

(3) In regulation 33(a)(v) (payments out of property recovered or preserved: exceptions) after “the 1992 Act” insert “, an income-related employment and support allowance”.

(4) In Schedule 2 (rules for computing disposable income) in paragraph 5 after sub-paragraph (e) add—

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

(5) In Schedule 3 (rules for computing disposable capital) in paragraph 7 after “(payable under the Jobseekers Act 1995)” insert “or an income-related employment and support allowance”.

#### **Amendment of the Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003**

**39.** In article 4(2) of the Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003<sup>(48)</sup> (the severely mentally impaired)—

(a) after sub-paragraph (j) omit “and”; and

(b) after sub-paragraph (k) insert—

“and

(l) employment and support allowance payable under Part 1 of the Welfare Reform Act 2007.”.

#### **Amendment of the Education Maintenance Allowances (Scotland) Regulations 2007**

**40.** In paragraph 3(e) of Schedule 2 to the Education Maintenance Allowances (Scotland) Regulations 2007<sup>(49)</sup> (ordinary residence) after “income support” add “or income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007”.

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

16th July 2008

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

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<sup>(47)</sup> S.S.I. 2002/494. Regulation 33 was amended by S.S.I. 2007/59.

<sup>(48)</sup> S.S.I. 2003/176.

<sup>(49)</sup> S.S.I. 2007/156.

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## EXPLANATORY NOTE

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

The Regulations contained in this Instrument are either made by virtue of, or are consequential upon, provisions in Part 1 of the Welfare Reform Act 2007 (c. 5). 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 makes miscellaneous amendments to legislation relating to employment by adding references to employment and support allowance to—

- the Employment Rights Act 1996;
- the National Minimum Wage Regulations 1999.

Part 3 makes miscellaneous amendments to legislation relating to Children and Education by adding references to employment and support allowance to—

- the Education (Assisted Places) (Incidental Expenses) Regulations 1997;
- the Education (Non-Maintained Special Schools) (England) Regulations 1999;
- the Education (Student Loans) (Repayment) Regulations 2000;
- the Special Guardianship Regulations 2005.

Part 4 makes miscellaneous amendments to legislation relating to Utilities by adding references to employment and support allowance to—

- the Water Industry (Charges) (Vulnerable Groups) Regulations 1999;
- the Home Energy Efficiency Scheme (England) Regulations 2005.

Part 5 amends the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005 by adding references to employment and support allowance.

Part 6 amends the Asylum Support Regulations 2000 by adding a reference to employment and support allowance.

Part 7 amends the Bus Service Operators Grant (England) Regulations 2002 by adding a reference to employment and support allowance.

Part 8 makes miscellaneous amendments to legislation relating to Courts and Tribunals by adding references to employment and support allowance to—

- the Community Legal Service (Financial) Regulations 2000;
- the Criminal Defence Service (General) (No 2) Regulations 2001;
- the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003;
- the Gender Recognition (Application Fees) Order 2006;
- the Residential Property Tribunal (Fees) (England) Regulations 2006;
- the Criminal Defence Service (Financial Eligibility) Regulations 2006;
- the Gambling Appeals Tribunal Fees Regulations 2006.

Part 9 makes miscellaneous amendments to legislation relating to Tax Credits and Child Benefit by adding references to employment and support allowance to—

*Status: This is the original version (as it was originally made).*

- the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002;
- the Tax Credits (Definition and Calculation of Income) Regulations 2002;
- the Child Tax Credit Regulations 2002;
- the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002;
- the Child Benefit (General) Regulations 2006.

Part 10 makes miscellaneous amendments to Welsh legislation by adding references to employment and support allowance to—

- the Bus Service Operators Grant (Wales) Regulations 2002;
- the Individual Learning Accounts Wales Regulations 2003;
- the Leasehold Valuation Tribunals (Fees) (Wales) Regulations 2004;
- the Adoption Support Services (Local Authorities) (Wales) Regulations 2005;
- the Special Guardianship (Wales) Regulations 2005;
- the Residential Property Tribunal (Fees) (Wales) Regulations 2006;
- the Homelessness (Wales) Regulations 2006;
- the Home Energy Efficiency Schemes (Wales) Regulations 2007;
- the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007.

Part 11 makes miscellaneous amendments to Scottish legislation by adding references to employment and support allowance to—

- the Community Charges (Deductions from Income Support) (Scotland) Regulations 1989;
- the Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996;
- the Repayment of Student Loans (Scotland) Regulations 2000;
- the Bus Service Operators Grant (Scotland) Regulations 2002;
- the Civil Legal Aid (Scotland) Regulations 2002;
- the Council Tax (Discounts) (Scotland) Consolidation and Amendment Order 2003;
- the Education Maintenance Allowances (Scotland) Regulations 2007.

These Regulations have no impact on the cost of business, charities or the voluntary sector and an Impact Assessment has not been published.