
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made either by virtue of, or in consequence of, provisions in the Part 1 of the Welfare Reform Act 2007 (“the Act”). The Regulations are made before the end of the period of 6 months beginning with the coming into force of those provisions and are therefore exempted from the requirement in section 172(1) of the Social Security Administration Act 1992 (c. 5) to refer proposals to make them to the Social Security Advisory Committee and are made without reference to that Committee.

Section 1 of the Act introduces a new benefit, employment and support allowance (“ESA”), for claimants assessed as having “limited capability for work” because of a health condition or disability. ESA will replace Incapacity Benefit, and Income Support on the basis of incapacity. ESA has a contributory strand accessible via a National Insurance Contribution test and an income-related strand accessible via an income test. Most claimants will be required to serve an assessment phase which will normally last for 13 weeks from the start of the claim (regulations 4 – 7). During this period claimants will receive a rate of benefit that depends on whether they are aged 16-24 years or 25 years and over. Recipients of the income-related strand may also qualify for certain premiums and housing costs (regulations 67 – 71 and Schedules 4 and 6).

Once the assessment phase is complete and subject to satisfying the assessment of “limited capability for work” (see Part 5 and Schedule 2) claimants will move onto the main phase of the benefit. Their entitlement will then consist of the basic rate – a flat rate of benefit, regardless of age - and, on top of this, a work-related activity or support component. The majority of claimants will be entitled to the work-related activity component and will be required to engage in “conditionality” (Part 8). This will be work-focused health-related assessments (Chapter 1 of Part 8) and work-focused interviews (Chapter 2 of Part 8). Failure to engage can lead to the imposition of a reduction in benefit (Chapter 3 of Part 8).

Claimants who demonstrate “limited capability for work-related activity” (Part 6 and Schedule 3) will be entitled to the support component instead of the work-related activity component, in addition to the basic rate. These claimants will be those with the most severe health conditions and will not be subject to any conditionality requirements.

Part 2 of these Regulations provides detailed provisions on when the assessment phase will end.

Part 3 deals with conditions of entitlement to a contributory allowance including special provision for young people who are unable to satisfy the contribution conditions (regulations 9 – 13).

Part 4 deals with conditions of entitlement to an income-related allowance, dealing in particular with the circumstances in which a claimant is to be treated as receiving or not receiving education (regulations 14 – 18).

Part 5 deals with the determination of whether or not a claimant has limited capability for work. The assessment used to determine this is set out in Schedule 2. It also provides for the circumstances in which a claimant is to be treated as having or not having limited capability for work.

Part 6 deals with the determination of whether or not a claimant has limited capability for work-related activity. The assessment used to determine this is set out in Schedule 3. It also provides for the circumstances in which a claimant is to be treated as having or not having limited capability for work-related activity.

Part 7 provides for the circumstances in which the work a claimant does affects the claimant's entitlement to ESA.

Part 8 deals with conditionality. Chapter 1 provides for requirements to attend work-focused health-related assessments. Chapter 2 provides for requirements to attend work-focused interviews. Chapter 3 provides for a reduction in ESA in respect of claimants who do not engage

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Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008. (See end of Document for details)

in work-focused health-related assessments or work-focused interviews. Chapter 4 provides for notification under this Part and Chapter 5 provides for the modification of the Act in relation to advance claims.

Part 9 deals with amounts of the allowance. Chapter 1 provides for prescribed amounts. The amounts themselves are set out in Schedules 4, 5, and 6. Chapter 2 provides for deductions from the contributory allowance. Chapter 3 deals with the effect of statutory maternity pay, statutory adoption pay and statutory paternity pay on a contributory allowance.

Part 10 deals with the calculation of a claimant's income and capital. Chapter 1 deals with general provisions. Chapter 2 provides for the calculation of income. Chapter 3 deals with employed earners and Chapter 4 deals with self-employed earners. Chapter 5 deals with participants in the self-employed route and Chapter 6 deals with the calculation of other income. Chapter 7 deals with the calculation of capital and Chapter 8 provides for the treatment of liable relative payments. Chapter 9 deals with the treatment of payments of child support maintenance and Chapter 10 deals with modification of the provisions which apply for purposes of calculating of the income and capital of students. Schedule 7 provides the detail of sums to be disregarded in the calculation of earnings and Schedule 8 provides the detail of sums to be disregarded in the calculation of income other than earnings. Schedule 9 provides the detail of capital to be disregarded.

Part 11 provides for supplementary provisions. Chapter 1 deals with miscellaneous provisions, such as providing that a claimant must wait a number of days at the start of a period of limited capability for work before becoming entitled to ESA (regulation 144), rules which enable two periods of limited capability for work separated by not more than 12 weeks to be linked together (regulation 145), advance awards (regulation 146) and recovery orders (regulation 147). Chapter 2 provides specific rules for "work or training beneficiaries" which extend the normal linking period for certain claimants who leave ESA for work to 104 weeks. Chapter 3 deals with temporary absence abroad and Chapter 4 provides for the circumstances in which a person is to be treated as being or not being a member of the claimant's household.

Part 12 provides for the circumstances in which a claimant may be disqualified from receiving ESA and includes provision to deal with the situation where this would leave a person in hardship. Part 13 deals with urgent cases and Part 14 deals with periods of less than a week.

An impact assessment has not been completed for these regulations as they have no impact on the private or voluntary sectors. An assessment of the impact of these regulations on the public sector has been made. Copies of this Impact Assessment have been made available in the libraries of both Houses of Parliament. Copies may be obtained from the Better Regulation Unit of the Department for Work and Pensions, level 4, The Adelphi, 1-11 John Adam Street, London WC2N 6HT, or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.

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