
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to secondary legislation consequential on sections 15, 16 and 17 of the Welfare Reform and Work Act 2016 (“the 2016 Act”).

Section 15 of the 2016 Act amends sections 2 and 4 of the Welfare Reform Act 2007, which provides for an award of an employment and support allowance where the claimant is found to have limited capability for work to include an amount referred to as the work-related activity component as may be prescribed in regulations.

Section 16 of the 2016 Act amends section 12 of the Welfare Reform Act 2012, which provides for an award of universal credit to include an amount in respect of such particular needs or circumstances as may be prescribed in regulations. It removes the provision in section 12(2)(a) of the 2012 Act that the fact that a claimant has limited capability for work is a need or circumstance that may be prescribed.

Section 17 of the 2016 Act makes amendments to Chapter 2 of Part 1 of the Welfare Reform Act 2012 (claimant responsibilities) so that—

- (a) responsible carers with a child aged 3 or 4 are subject to all work-related requirements; and
- (b) responsible carers with a child aged 2 may be required to undertake work-focused interview requirements and work preparation requirements.

Regulation 1 provides for the citation and commencement of these Regulations. In particular, these Regulations will come into force on 3rd April 2017 to coincide with the commencement of sections 15, 16 and 17 of the 2016 Act.

Regulation 2 amends provisions in the Employment and Support Allowance Regulations 2008 (S.I. 2008/794) that, amongst other things, provide for a basic rate of an employment and support allowance, and, on top of this, a work-related activity or support component. If a claimant is found to have limited capability for work they are entitled to the work-related activity component. References to the work-related activity component are omitted and other amendments consequential on the removal of that element are made. Regulation 3 makes similar amendments to the Employment and Support Allowance Regulations 2013 (S.I. 2013/379).

Regulation 4 amends provisions in the Universal Credit Regulations 2013 (S.I. 2013/376) that provide for an award of universal credit to include an amount for the fact that a claimant has limited capability for work (“the LCW element”). References to the LCW element are omitted and other amendments consequential on the removal of that element are made. The table in regulation 36, which sets out the amounts of elements payable, is amended so as to omit the amount for the LCW element.

Regulation 5 makes amendments to the Universal Credit (Transitional Provisions) Regulations 2014 (S.I. 2014/1230) which are consequential on the removal of the LCW element and the work-related activity component.

Regulation 6 amends regulation 88 of the Universal Credit Regulations 2013, which makes provision for the number of hours that a claimant is expected to comply with a work search requirement in any week. New sub-paragraph (aa) is inserted into regulation 88(2) which applies to responsible carers of a child under compulsory school age and makes provision for their expected number of hours to be the number of hours that the Secretary of State considers is compatible with their caring responsibilities. Responsible carers of a child under compulsory school age will no longer have to show that they have reasonable prospects of finding work within the expected number of hours set.

Changes to legislation: *There are currently no known outstanding effects for the The Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional and Savings Provisions) Regulations 2017. (See end of Document for details)*

Regulation 7 introduces Schedule 1, which makes consequential amendments to other secondary legislation, and Schedule 2, which makes transitional and savings provisions.

Paragraphs 1 to 9 of Schedule 1 make amendments to secondary legislation to omit or substitute references to the work-related activity component and paragraphs 10 to 17 of that Schedule make amendments to secondary legislation in consequence of the removal of the LCW element.

Paragraphs 1 to 7 of Schedule 2 make savings and transitional provisions so that the amendments to the Employment and Support Allowance Regulations 2008 in regulation 2, the amendments to the Employment and Support Allowance Regulations 2013 in regulation 3, the amendments to other secondary legislation in paragraphs 1 to 9 of Schedule 1 and the amendments to section 15 (1) to (3) of the 2016 Act (which removes the work-related activity component from an award of employment and support allowance), do not apply in the following circumstances.

The circumstances are –

- (a) where the claim for employment and support allowance was made before 3rd April 2017 and that claim results in an award;
- (b) where the claim was made on or after 3rd April 2017 but the claimant had previously been entitled to employment and support allowance and their period of limited capability for work started before 3rd April 2017;
- (c) where the claimant is or will become a notified person for the purposes of conversion from an incapacity benefit to employment and support allowance and is subsequently found to have limited capability for work or limited capability for work related activity;
- (d) where the claim was made on or after 3rd April 2017 but the claimant's employment and support allowance is payable before 3rd April 2017;
- (e) where the claim was made on or after 3rd April 2017 but the claimant's assessment phase is deemed to have started before 3rd April 2017;
- (f) where a claimant (who was previously entitled to an employment and support allowance as part of a claim made before 3rd April 2017) having been in receipt of a maternity allowance (which because they were receiving contributory employment and support allowance terminated their award to an employment and support allowance) makes a new claim for an employment and support allowance within 12 weeks of the date that their maternity allowance ended.

Paragraphs 8 to 15 of Schedule 2 make savings and transitional provisions so that the amendments to the Universal Credit Regulations 2013 in regulation 4, the amendments to the Universal Credit (Transitional Provisions) Regulations 2014 in regulation 5 and the amendments to other secondary legislation in paragraphs 13, 16 and 17 of Schedule 1, do not apply in the following circumstances for so long as the claimant is entitled to universal credit and has limited capability for work.

The circumstances are –

- (a) where the award of universal credit included the LCW element immediately before 3rd April 2017 or would have but for regulation 28(1) of the Universal Credit Regulations 2013;
- (b) where the award of universal credit includes an amount in respect of the fact that the claimant has limited capability for work and work-related activity immediately before 3rd April 2017 and it is determined, on or after that date, that the claimant has limited capability for work (provided the claimant had limited capability for work and work-related activity for the period beginning before 3rd April 2017 until the date of the determination that the claimant has limited capability for work);
- (c) where before 3rd April 2017 it has yet to be determined whether the claimant has limited capability for work and the claimant has provided evidence of having limited capability for work in accordance with the Social Security (Medical Evidence) Regulations 1976

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- (S.I. 1976/615) and where it is determined on or after 3rd April 2017 that the claimant has limited capability for work, including on appeal or revision;
- (d) where the award of universal credit is revised under section 9 of the Social Security Act 1998 to include the LCW element, in accordance with article 24 of the Welfare Reform Act 2012 (Commencement No 9 and Transitional and Transitory Provisions and Commencement No 8 and Savings and Transitional Provisions (Amendment)) Order 2013 following an appeal or revision of a decision not to award employment and support allowance under Part 1 of the Welfare Reform Act 2007 (where the claim was made before 3rd April 2017);
 - (e) where the claimant was entitled to employment and support allowance immediately before 3rd April 2017 (provided the claimant was continuously entitled to employment and support allowance from 3rd April 2017 to the date on which the claim for universal credit is made);
 - (f) where the claimant entitled to the award was entitled to be credited with earnings equal to the lower earnings limit then in force in respect of a week to which regulation 8B(2)(a)(iv), (iva) or (v) of the Social Security (Credits) Regulations 1975 (S.I. 1975/556) applies, and the claimant was not entitled to employment and support allowance, immediately before 3rd April 2017 (provided the claimant is entitled to be so credited in respect of each week that falls in the period beginning with 3rd April 2017 to the date on which the claim for universal credit is made or treated as made);
 - (g) where regulation 22, 23, 24, 26 or 27 of the Universal Credit (Transitional Provisions) Regulations 2014 applies to the claimant throughout the period beginning immediately before the 3rd April 2017 and ending with the date on which the claim for universal credit is made or treated as made.

The regulations contained in this instrument are either made by virtue of, or are consequential upon, sections 15, 16 and 17 of the 2016 Act. 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.

An impact assessment has not been produced for this instrument as it has no impact on business or civil society organisations.

Changes to legislation:

There are currently no known outstanding effects for the The Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional and Savings Provisions) Regulations 2017.