

**The Employment and Support Allowance  
(Transitional Provisions, Housing Benefit  
and Council Tax Benefit)  
(Existing Awards) Regulations 2010  
(S.I.2010 No.875)**

**Report by the Social Security Advisory Committee  
under Sections 173(4) and 174(2) of the Social Security  
Administration Act 1992 and the statement by the Secretary  
of State for Work and Pensions in accordance with Sections  
173(4) and 174(2) of that Act.**

*Presented to Parliament by the Secretary of State for Work and Pensions pursuant to  
Sections 173(4) and 174(2) of the Social Security Administration Act 1992.*

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# **Statement by the Secretary of State for Social Security in accordance with Sections 173(4) and 174(2) of the Social Security Administration Act 1992.**

## **The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010.**

### **Introduction**

Employment and Support Allowance (ESA) was introduced as the benefit for new customers with a health condition or disability from 27 October 2008. ESA provides income replacement for people who are unable to work because of illness or disability and its associated, work focused, regime also provides support to help customers to return to work where they are able to do so. More severely disabled customers also receive higher rates of benefit.

Following consultation, the Government set out in the White Paper 'Raising expectations and increasing support' (Cm 7506), published in December 2008, that it intended to migrate people on existing incapacity benefits (Incapacity Benefit (IB), Severe Disablement Allowance (SDA) and Income Support is paid on the grounds of incapacity ) to ESA between 2010-2013. It has now been decided that migration will start gradually from October 2010, with full national implementation from February 2011, with a planned completion date by the end of March 2014.

Schedule 4 to the Welfare Reform Act 2007 provides the powers to make regulations to migrate people receiving awards of incapacity benefit to ESA. The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 were referred to the Social Security Advisory Committee (SSAC) on 18 December 2009 in accordance with section 170 of the Social Security Administration Act 1992.

The draft Regulations are intended to provide for the conversion of existing awards of the old style incapacity benefits to ESA. The Regulations also provide for the award of transitional additions where appropriate to protect the cash level of benefit for those who move onto ESA. The draft Regulations also make consequential amendments to Housing Benefit and Council Tax Benefit provisions to reflect the conversion of the previous benefit award to ESA.

DWP officials discussed the Regulations with the SSAC on 6 January 2010. After scrutiny, the Committee selected the Regulations for formal referral, and requested some further information from the Department to support this process.

As a result of the meeting the Department agreed to make a number of minor changes to the draft Regulations and to update the Impact Assessment.

The impact assessment is a 'living' document and has now been updated to reflect the latest available information. The main change is that further analysis has been conducted on the proportions of migrating customers that will be assessed to be fit for work when they go through the Work Capability Assessment (WCA) – which is a key part of establishing entitlement to ESA – and who will therefore not be eligible for ESA. As a result of the further analysis, we have increased our estimate of the proportion in this group from 15% to around 23%. This change arises from a more accurate assessment of the impact of the WCA on those cases that, under IB rules, do not currently have a face to face assessment. The impact of this increased proportion, including the associated increase to the estimated net savings from those found fit for work, has been reflected in the updated Impact Assessment.

The Department has noted the concerns expressed by the Committee about the taxation and tax credit interactions that arise from this change, and is considering the taxation position for people who were claiming Invalidity Benefit (IVB) and Severe Disablement Allowance (SDA) who are not currently liable to income tax on that portion of their income. Therefore this section has been removed from the Impact Assessment. If Ministers decide to exempt these customers from the tax on that portion of their income when migrated to contributory ESA, the impacts will be assessed in the appropriate instrument.

The Committee published the Regulations for consultation on 11 January 2010. The consultation period ended on 8 February and the Committee subsequently issued its report on 15 March 2010.

I am very grateful both to the Committee and to those who made representations to it. The arguments for amending the legislation have been advanced in a clear and forceful way and I have considered these very carefully.

This statement sets out, in accordance with sections 173(4) and 174(2) of the Social Security Administration Act 1992, my reasons as to why I have not felt it appropriate to give effect to the Committee's recommendations in full on this occasion. I have been unable to accept all the Committee's main recommendations. In particular I do not share the Committee's view that the migration of existing incapacity benefit claims should be delayed. Nor do I agree that the period during which we will be trialling the migration process from October 2010 should be extended. However, I have been able to address some of the concerns expressed by the Committee, and have consequently decided to make some changes to the original proposals.

## **The Committee's Report and the Government's response**

### ***Introduction***

**1. Given that ESA is a key element of the welfare to work system the Committee understands the rationale for phasing out the alternative incapacity benefit regimes and accept that this will reduce the complexity of having two different benefits and two different assessment regimes. The Committee also believes that the transitional protection approach seems the most sensible and are pleased that officials have taken into consideration SSAC's published guidelines on the use of transitional protection (SSAC 12th Annual Report, May 1997 – March 1999).**

**2. The Committee believes that transitional protection needs to cushion the transition for those who are affected, break the linking period and deal with the knock-on affects for other benefits, it believes that these Regulations go some way to achieving this and particularly welcomes the continued disregard of income from occupational and private pensions for certain clients.**

3. The Government is grateful for the Committee's acknowledgement of the simplification of the benefits system that the phasing-out of the incapacity benefits regime is trying to achieve. The Government is also pleased that the Committee agrees that the transitional protection approach is the most sensible in this case and is grateful to the Committee for establishing guidelines which contributed to the development of its proposals. The Government has committed on a number of occasions to protecting the cash level of benefits on migration to Employment and Support Allowance (ESA) and transitional protection will ensure that this is the case. The transitional arrangements will also ensure that over time people in similar circumstances receive the same financial support. The Government also welcomes the Committee's endorsement of the proposals to protect recipients who could otherwise see a reduction in their benefit such as those who have occupational or personal pension income.

4. While the Government does not accept the Committee's recommendation that migration to ESA should not proceed to the current timetable, the Government does recognise that the Committee and stakeholders have some serious concerns about the Regulations which are designed to achieve migration and on the wider implications of migration itself. The Government also notes that the Committee has substantial concerns over people who will potentially see a reduction in overall income as a result of migration from incapacity benefits. These concerns are addressed in the following response to the Committee's report.

### ***The impact of migration on Tax liability and Tax Credits***

**5. The Committee is concerned that while Ministers have committed on several occasions that no existing incapacity benefits customers will see a cash reduction in their benefit on conversion to ESA, the changes on tax liability and on tax credits may mean that those customers who have**

never had a tax liability on their benefit are significantly worse off financially on ESA. This group of customers are those who claimed incapacity benefits before 1995 and had their tax exemption protected when they moved to Incapacity Benefit. The Committee is also concerned that this group of customers may include those with a severe disability who would struggle to cope with a reduction in their income. The Committee is concerned that a full analysis of income levels was not included in the Explanatory Memorandum and that assumptions are being made about a significant minority of claimants.

6. The Department recognises the concerns of the Committee and others about the income tax liability of those migrated to ESA from Incapacity Benefit and is therefore considering this matter further in conjunction with HMRC.

7. In order to inform future working the Government has carried out analysis of the incomes of those who would start paying tax on their benefit on migration to ESA. This shows that those affected are likely to have a household income around the average for the working age population and are likely to have the highest household incomes of those on incapacity benefits, with around half of this group in the top two income deciles for the incapacity benefits population.

8. **The Committee is also concerned that the group referred to above also have their income from IB exempt for tax credits purposes. When these customers are transferred to ESA(C) their benefit will be treated as income for tax credits purposes. This could make a significant difference to payments of Working Tax Credits/Child Tax Credits. The Committee would like to know what analysis DWP has carried out with regard to the effects of these changes for Tax credits purposes.**

9. The Government recognises the Committee's concerns regarding the effect migration to ESA from IB will have on some customers' Tax Credits income and in conjunction with HMRC is considering this matter further as a result.

10. As above the Government has also carried out analysis of the household incomes of those who could see a reduction in their tax credits if their benefit was taxable and thus treated as income in their tax credits calculation on migration to ESA. This shows that 80 per cent are in the top half of the working age income distribution and 80 per cent are in the top two income deciles for the incapacity benefits population.

11. **The Committee would like to know how the Department proposes to prepare those affected by these changes to taxation and tax credits if they are implemented as they stand. It stresses that any communication strategy will have to be geared to reflect the needs of the different segments of the customer base and they must be provided with different messages in relation to taxation.**

12. As stated above, the Government is looking again at the position of people who would have had their taxation and tax credits position changed as a result of migration to ESA. More generally work is ongoing at the moment to ensure that messaging for migration is clear and suitable for different customer

groups, giving them the information and time they need to adjust to a change in circumstances. The Department will draw on evidence from the introduction of ESA in October 2008 and is also working with PricewaterhouseCoopers on segmentation of the customer group to ensure that people receive the appropriate communications, which reflects their needs.

**13. The Committee is also concerned about the iniquities that will arise in connection with a phased migration. It is concerned that claimants who are migrated earlier in the process will potentially face reductions in income several years before other claimants.**

14. The Government recognises the Committee's concern in relation to the timing of individuals' migration to ESA. However, given the scale and complexity of the migration exercise (a diverse group of 1.5 million people, some of whom will have complex personal circumstances), it would not have been practicable to migrate all customers at the same time. The Department has therefore designed the order of migration in the fairest way possible; the timing in each case will be determined by the review date for the Personal Capability Assessment that the customer currently has to undergo in connection with their claim for incapacity benefits. This date is set according to the Health Care Professional's prognosis of when a condition may have changed. It may be necessary in some cases to adjust the date to ensure that these are spread evenly over the conversion period.

#### ***Trial of the conversion process***

**15. The Committee welcomes a trial of the conversion process as it anticipates migration of existing claimants will raise broader and deeper issues than the introduction of ESA for new claimants. However it is not convinced that the trial as currently planned will allow for robust evaluation. The Committee feels that the trial should be extended to at least six months, allowing more time before national roll out. It is also concerned that the clerical nature of the test will not provide a true test of the migration process and Committee members would welcome more detail about the scope of the trial, including locations and numbers of claimants.**

16. The primary aims of the phased introduction commencing in October 2010 are to test the customer experience of the migration process and also to help validate assumptions, for example around the outcomes of the Work Capability Assessment (WCA).

17. As such the Department will be seeking feedback on communications, both content and the method of contact, and customers' reactions to the various elements of the process and collecting management information to inform planning. Valuable learning will therefore be possible as soon as activity commences. Relatively small numbers of customers will experience migration, in a couple of areas, and this should assist with rapid collection and dissemination of lessons. Planning is underway and it has not yet been decided yet which areas this phased introduction will cover. The feedback process will continue



even after national implementation has commenced. In addition to the phased introduction the Department is constantly reviewing experience from ESA live running and looking to build in appropriate improvements to migration plans.

**18.** As part of this continuous review, a number of process and policy issues have been identified, while others have been highlighted by external evaluation reports and through engagement with stakeholders and intermediaries. Activity to address the issues raised is ongoing in line with the Department's commitment to continuous improvement.

**19.** While the majority of the process in the phased introduction will be clerical as the IT will not yet be in operation, some elements will be supported by IT, namely the Atos Healthcare notifications to customers and the tracking of the cases by Atos. Jobcentre Plus is planning for a Business/Model Office test supported by IT prior to the start of national migration. This is to test the Process Procedures Guidance and Learning materials alongside supporting IT.

**20.** The aim is to run a comprehensive phased introduction without delaying the migration process. In the current economic climate the Government believes that it would be wrong to deny customers on incapacity benefits the support ESA will offer them to either return to work or move closer to the labour market, potentially leaving them behind as the job market strengthens.

#### ***Winners, losers and complexity***

**21.** The Committee has stated that these proposals are highly complex and its concerns about the apparently arbitrary outcomes of the application of the proposed regulations in a number of possible real-life scenarios led it to put together some illustrative examples. As it has noted, as the proposals stand there will be losers at the point of change (and some gainers, as well). The Committee found it both challenging and time consuming to work through the examples set out at Appendix 1 of their report, and even after detailed consideration of all the elements involved it cannot be certain that the calculations are accurate. Nonetheless, they demonstrate why the Committee has questioned the rationale for a transition that may leave some IB claimants significantly worse off simply because their claims date from before 1995.

**22.** The Government is grateful for the time the Committee has taken to fully examine these proposals and as stated above, the Government takes very seriously the Committee's concerns about those claimants who may have a reduced income due to a change in tax liability and is therefore considering this further. However, the Government does not accept that the outcome of the Regulations is arbitrary or unfair. The Regulations provide that customers will have their benefit position protected on migration to ESA. Given that the Regulations need to deal with the position of 1.5 million people, many of whom have widely differing circumstances, it is inevitable that there is a degree of complexity, but the underlying principle is simple – that benefit income at the point of change will be protected.

**23. The Committee also highlights that as part of migration some customers with existing child allowances and premiums will have these transferred to an award of Child Tax Credits. It notes that this will lead to some customers becoming worse off because of this change even though the transfer to ESA does not of itself lead to a loss of income. The Committee recommends that the Department examines how claims which involve this double migration will be managed, and in particular, looks at how the outcome of these arrangements will be communicated to claimants.**

**24. The Department acknowledges that when Child Dependency Allowances are moved to Child Tax Credits (CTC), some customers will lose their entitlement to income related benefit altogether as their income from other sources exceeds their adult allowances. If this leads to a customer losing entitlement to benefit altogether they will then become entitled to awards of National Insurance credits to protect their future pension rights and will be transferred to ESA after incapacity benefits customers with benefit in payment have been migrated. As the Committee points out, this is not as a result of migration to ESA but is part of the interaction of CTC and income related benefits and has been the position since April 2003.**

**25. The Department is aware of this issue, which also occurs when the youngest child of a lone parent reaches the age of 10 and IS ends. Jobcentre Plus and HMRC will build on the lessons learnt from the recent lone parent obligation changes and are currently examining how best to carry out this transfer, including how to ensure that communications meet the needs of this vulnerable group of customers.**

#### ***Loss of access to passported entitlements***

**26. The Committee was concerned that the regulations as drafted could lead to a customer who had an entitlement to ESA(IR) losing passported benefits. This situation arises when a customer has an entitlement to ESA(IR) but there is no actual award made due to it being less than 10p.**

**27. The Government thanks the Committee for bringing this to its attention and can reassure the Committee that the draft regulations have been amended accordingly. This means that customers with an entitlement of less than 10 pence a week will still be eligible for passported benefits even though no actual ESA will be paid.**

#### ***Jobcentre Plus – capacity issues***

**28. The Committee has been impressed with the way Jobcentre Plus has coped with the additional demands on its service over the past 12–18 months, however it has concerns about the capacity of Jobcentre Plus (and the medical service contractor's) both to migrate the anticipated volume of incapacity benefit clients to ESA in the proposed timetable and to provide an effective service to the client group. The Committee would like reassurance on the point made in the Explanatory Memorandum that steps are being taken to increase the medical capacity that is available to undertake the necessary medical assessments.**

**29.** The Government appreciates the Committee's recognition of the work of Jobcentre Plus at a time of unprecedented pressure caused by the economic downturn.

**30.** The Government recognises that migration represents a significant challenge to medical services capacity and the Department has been working with the provider, Atos Healthcare, to develop, pilot and implement a range of initiatives that will increase capacity sufficiently to deliver migration. These include: process changes to enhance efficiency; use of physiotherapists to carry out some forms of assessment and a series of measures taken by Atos Healthcare to enhance their recruitment and retention policies.

**31. The Committee questions whether a three year timetable for migration is feasible in the current economic climate and urges the Department to reconsider how best to apply limited resources. It would suggest that a more pragmatic use of the Department's resources may be called for and that a full IB migration on a short timescale may not be the most immediate priority in terms of what the required investment can be expected to achieve.**

**32.** The Government does not feel that it is appropriate to slow down the programme of welfare reform at a time when people need more help to find work. Incapacity benefits customers are among those most in need of this help, especially as many have been on benefit with no help to engage with the labour market for many years. ESA is designed specifically to provide this help to disabled people and those who have health conditions and the Government feels it would be unfair to deny them this help. For those customers who have severe disabilities or illness and could not reasonably be expected to work, ESA could mean that they are better off and it would again be unfair to delay their migration to ESA.

**33. The Committee would also suggest that if these proposals are to go ahead, they should be reviewed to see where the programme could be trimmed back. For example, by allowing those close to state pension age (but not yet reaching pension age during the migration period) to remain on their existing benefit.**

**34.** The Department already plans not to migrate people who reach State Pension Age within the migration period, in order to avoid potentially moving them to a new benefit for only a short period of time. However, as one of the Government's objectives for moving people to ESA is to help as many people as possible prepare for and find work, further excluding older people from the migration exercise would deny them the help and support that ESA provides and contradicts the Government's strategy to ensure that people up to State Pension Age have support to return to work. The Government recognises that people who are nearing State Pension Age may need more time and support to take steps towards work, however they should not be written off for this reason.

**35.** Another objective of migration is to ensure that people in similar situations are treated fairly and receive the same help and support. Not migrating certain customers would mean that this is not the case. The aim is also to simplify the

benefit system ensuring that there is one benefit for people whose ability to work is limited by a disability or health condition. To exclude certain customers who will not have reached State Pension Age by the end of migration would mean that there would still be two different benefit systems running, with two different sets of rules and forms and two different medical assessments, which goes against the principle of benefit simplification.

### ***Effective support for claimants***

**36. The Committee is not convinced that the required level of personalised, flexible support will be available for all migrated clients, particularly in areas with a high IB claimant count. Whilst it welcomes the Department's current review of the main support programme – Pathways to Work – it is concerned that the roll-out of ESA for stock claimants will be well advanced before a revised Pathways model is implemented nationally. It notes that the stock of incapacity benefits claimants contains significant numbers of the most vulnerable long-term benefit claimants. In addition to their health conditions and disabilities, they are likely to present complex and multiple problems and barriers to employment. Without an established, fully-functioning support in place and ready to address the needs of this group, there is a risk that there will be no suitable services to offer these claimants.**

37. The Government is aware that many of those who will be migrated from old style incapacity benefits will face complex barriers to employment. The Government recently published its spring Command Paper, *Building bridges to work: new approaches to tackling long term worklessness*, which sets out what support will be available for customers moving to the more work focused regime of ESA and to JSA. The command paper sets out plans to provide a more personalised conditionality regime coupled to a more flexible support package for ESA customers. It also sets out plans for people on ESA who reach two years on the benefit, and who want one, to be provided with a guaranteed Work Choice place. For JSA customers, the paper sets out the extra support that will be developed for people who are newly assessed as fit for work including additional adviser time, specialist jobseeking/motivational support and for the first time health related provision to help customers and advisers identify better the level and type of support an individual needs to manage their health to enable a return to work.

38. The Department will ensure that customers have access to support as they migrate from Incapacity Benefits to ESA from October 2010. The migration process will be starting in October 2010, and the Department will engage with each customer before their Work Capability Assessment, so that they have a clear understanding of what will be expected of them and crucially what support will be available to them to help them through this change. The Department expects to be able to implement the new programme for ESA customers from April 2011. Where existing contracts expire before this, it will discuss with providers how best to ensure that customers continue to have access to adviser support.

39. The Department expects to be able to implement the new programme of support for JSA customers from April 2011. Customers moving from Incapacity

Benefit and Employment and Support Allowance who claim JSA prior to April 2011 will be able to access the range of support that is already available on Jobseeker's Allowance. This offers a personalised service, tailored to individual needs and already provides support and flexibilities for customers with a health condition or a disability.

**40. The Committee is also concerned about the level of support that will be available for, what it anticipates, will be a significant majority of the client group who will move to a much more active benefit (JSA). It welcomes DWP's proposal, as part of the Pathways review, for making improvements to the support provided to JSA customers with a health condition or disability (particularly those customers who have been disallowed from ESA following the WCA), but does have concerns about the timing for implementation; many customers will have flowed from incapacity benefits onto JSA before the revised model is implemented.**

41. As mentioned above in paragraph 37, the Command Paper, *Building bridges to work: new approaches to tackling long term worklessness*, was recently published and it set out the support that will be available to those moving from incapacity benefits onto JSA. It looks at extra health related support for people who are found fit for work, with a particular focus on additional support for people who will be moving from incapacity benefits to Jobseekers Allowance. The Department will engage with each customer before their Work Capability Assessment, so that they have a clear understanding of what will be expected of them and crucially what support will be available to them to help them through this change.

42. While the Department develops this new health related provision for JSA customers from April 2011, prior to this we will ensure that where appropriate customers moving from incapacity benefits will be able to access support from the disability employment adviser network who can provide access to specialised disability services. In addition to this, Jobcentre Plus Work Psychologists also provide help to progress customers with health conditions and disabilities into work. This includes providing advisers with advice and support to help customers into work and undertaking specialist assessments with customers with more complex needs to identify appropriate work solutions.

#### ***Administrative issues***

**43. The Committee is concerned about the current administration of ESA, particularly with regard to the Work Capability Assessment and the appeals process. It uses as an example that more claimants than anticipated have been found fit for work and consequently the number of appeal cases has been higher than expected. It is also concerned that anecdotal evidence suggests that in some areas health assessments are not being completed within the 13 week assessment phase, which has implications for support, particularly for contracted provision.**

44. Since the introduction of ESA in October 2008 the Department has been continuously monitoring the performance of ESA and making improvements to the system where the need arises. Where delays occurred action has



been taken and it is a feature of the design of the ESA regime that benefit is backdated automatically where the WCA has been completed beyond the 13 week assessment phase.

**45.** In response to higher than expected numbers of customers being found fit for work the Work Focused Health Related Assessment (WFHRA) no longer takes place at the same time as the WCA and is only carried out for customers who are placed in the Work-Related Activity Group. Another step that has been taken is that no customer will be referred for a second Work Focused Interview (WFI) until they have been placed in the Work-Related Activity Group. Referral for first WFIs for new ESA customers will still go ahead even if the outcome of the WCA is not yet known as this interview is an opportunity to ensure that the customer is fully aware of what the ESA regime will mean for them and what is expected of them. Migrated customers will undergo the WCA before they are migrated to ESA and thus will not receive any WFIs until they have been placed in the Work-Related Activity Group.

**46.** The Department recognises the impact that higher numbers of customers being found fit for work is having on the appeals system across the whole end to end process. Joint work is underway across DWP and the Tribunals Service (TS) to mitigate the increased volumes by focusing on four areas:

- a. Streamlining processes within both DWP and TS – including an end to end review of the appeals process.
- b. Reducing the number of appeals – through looking at the messaging used to manage customers' expectations and in particular the language in the disallowance letter.
- c. Increasing capacity in the TS – through increasing administrative, judicial and medical resources, so that it can hear more appeals.
- d. Strengthening the working relationship between DWP and TS

This monitoring of the ESA regime is ongoing and is intended to address any issues that may arise before national migration commences in February 2011. It is also being used to ensure that the system is as simple and as smooth as possible for the potentially more vulnerable customers who will be going through it.

**47. The Committee does however, appreciate that the differences between new and stock claimants are likely to lead to lower proportions of stock claimants being assessed as fit for work. They understand that the Department estimates that this figure will be 23 per cent, but it believes that it is essential that the Department makes contingency plans in the event that the actual proportion rises significantly more than expected.**

**48.** Acknowledging the concerns the Committee and others have expressed, the Department conducted further analysis on the proportion likely to be assessed as fit for work. This has resulted in increasing the previous estimate from 15 per cent to around 23 per cent. The new assumption is being used for internal capacity planning. The Department will use evidence from the early migration phase to keep this important estimate under review and will also

carry out sensitivity analysis to understand the implications if the proportion assessed as fit for work is higher than estimated.

### ***Work Capability Assessment – outcomes and impacts on claimants***

**49. The Committee is concerned about the consequences of the imposition of the Work Capability Assessment (WCA) on incapacity benefits claimants, particularly in terms of what will happen to those who fail a test that is intended to be more rigorous than the Personal Capability Assessment for IB. Failing the WCA will have an impact both on individual claimants and on Jobcentre Plus/providers. It points out that the consequences of migration will be difficult for many customers, especially those moving to an active work focused regime and Jobseeker's Allowance (JSA) and the Committee encourages the Department to focus strongly on ensuring that the right support is in place before any migration is attempted.**

**50. The Government agrees with the Committee that it is important the right support is in place to support those customers moving to a more active regime. That is why the Department's Command Paper, *Building bridges to work: new approaches to tackling long term worklessness* published in March 2010, sets out what support will be available for these customers, including extra health related support for people who are found fit for work, with a particular focus on additional support for people who will be moving from incapacity benefits to Jobseekers Allowance.**

**51. The Committee also points out that it is a matter of major concern amongst the welfare community, and a main theme of the responses to their consultation, that the standard of assessment is not always good enough, especially for people with mental health and cognitive difficulties.**

**52. The WCA is carried out by specifically trained healthcare professionals who are able to provide independent advice to decision makers regarding a customer's functional capability. It is important to note that Atos Healthcare practitioners only act in an advisory capacity; decisions on benefit entitlement are made by DWP Decision Makers. Additionally, if a Decision Maker is not satisfied with the quality of medical advice in a report then they can return it to Atos to be redone.**

**53. Atos Healthcare professionals carrying out the assessments are trained in disability assessment medicine in order to assess the capability of an individual. They are given specific training including assessing individuals with Mental Health conditions, supported by a series of evidence based protocols. They also receive ongoing medical education in order to remain up to speed with developments in the field of disability medicine**

**54. Stringent quality checks are an integral part of all the medical advice provided by Atos. The contract between Atos Healthcare and DWP includes quality and accuracy targets and the work of all health care professionals is subjected to random quality audit. Any reports found to be deficient in the audit are corrected prior to them being returned to the Department's decision makers.**

**55.** A healthcare professional's work can also be subjected to audit if it is found that any work is reported to be deficient on an opportunistic basis, for instance if the healthcare professional is subject to significant levels of customer complaints or the Department's Business Unit returns medical reports which are considered deficient by the decision maker. Where there is any cause for concern, proactive management intervention ensures that remedial action is taken promptly.

**56.** The quality of Atos Healthcare's audit is validated by senior medical auditors from Atos Healthcare and doctors working for the Chief Medical Adviser to the Department.

**57. The Committee keenly awaits the findings and recommendations of the review of the WCA which is focusing particularly on whether the WCA is accurately identifying individuals for the most appropriate support and accounting for adaptation. It is however disappointed that the roll-out of migration to ESA will go ahead before any revisions to the WCA will have been implemented. The uncertainties around the future development of ESA do not make for the necessary stable platform for the migration of IB claimants.**

**58.** The Departmental review of the WCA has recently been concluded. Evaluation of the assessment by medical experts identified that the assessment was accurate. However, to further improve the WCA and better account for adaptation a list of recommendations has been agreed by the Secretary of State. The full report of the Departmental review is published with the spring Command Paper.

**59.** The Government is committed to implementing these changes to ensure that the WCA achieves the highest levels of accuracy in identifying individuals for benefit.

**60.** The independent (external) review, which is distinct from the Departmental review, is currently being commissioned and will report its first findings later in 2010.

**61.** Both these reviews are enabling the Department to continue to improve the WCA. The WCA was always intended to be dynamic in this way, irrespective of the need for migration.

**62.** And migration is needed – the Government is determined that existing customers should not continue to be left behind – or, in any sense, 'written off' – even if they have been on benefit for a number of years. Those who have been on benefit for a number of years are among those who need the most support – this is what the Employment and Support Allowance regime can provide. The Government's plan to migrate people from Incapacity Benefit and IS paid on incapacity grounds to Employment and Support Allowance will ensure that, over time, new and existing customers are treated equally and receive the same financial help and support to return to work. The WCA is a key tool in this process, which also helps to identify the more severely disabled customers for additional financial support. In addition, customers who are placed in the



Work-Related Activity Group will also receive a WFHRA which does not impact benefit entitlement but is an important addition to the assessment for those who are found to have limited capability for work. The WFHRA provides the opportunity for customers to discuss their aspirations, beliefs and perceptions about engaging in work with a health care professional, identifying the health-related challenges preventing an individual moving into work and interventions or types of work-place adaptation which might help to overcome these challenges.

**63. Impacts for claimants are likely to be felt on both health and financial fronts, and it is important that the Department communicates the proposed changes clearly to customers, particularly those who would be financially worse off following the proposed migration (those moving to JSA or off benefit). The Committee has observed that the Department's communications strategy for the introduction of ESA did not achieve the hoped for levels of public awareness and understanding (and respondents to the Committee's consultation have pointed to ESA continuing to be a poorly understood benefit). The proposed migration poses as great a communications challenge, and the Department and its partners and providers will need to find more effective ways of getting key messages across to a group that may not have access to, or be responsive to, mainstream information channels.**

**64.** The Department recognises the importance of a comprehensive communications strategy for customers, intermediaries and staff. Work to develop and test this strategy both for ESA and migration is ongoing. A comprehensive round of stakeholder engagement has been undertaken in recent months where one of the issues discussed has been communications. This, together with Departmental analysis following the introduction of ESA, means there is now a much clearer view of the way forward.

**65.** A Departmental Communications Assurance Group has been established which will provide strategic oversight as this work develops – ensuring that the strategy:

- supports the culture and associated behavioural change required for the effective delivery of ESA and migration; and
- that it is developed, deployed and delivered effectively.

**66.** There is also an ongoing commitment to actively involve external stakeholders and intermediaries as this work progresses.

**67.** The Department has also been working on segmenting the customer group in order to understand customers and improve the migration process in a number of ways. Working with PricewaterhouseCoopers the Department has been developing segments that aim to:

- inform migration planning and communications;
- inform wider policy making for this customer group;
- produce segments that are actionable, distinct, stable and recognisable to stakeholders.

**68.** This work is ongoing and involves detailed analysis of administrative data sources, followed by further analysis using the results of qualitative and quantitative research.

### ***Summary of Responses to the Consultation***

**69.** The Committee's consultation received a total of 18 responses and respondents addressed both transitional issues and the wisdom of the migration.

**70.** Respondents welcomed the transitional protection for claimants migrated to ESA (and the associated HB/CTB additions), particularly with regard to streamlining the migration process. A number of respondents also welcomed the gradual alignment of benefit rates. The treatment of Occupational and Private Pensions as detailed in the Regulations was also welcomed. Another respondent welcomed the HB additions, which ensure that changes to income will not affect transitional allowance, thus avoiding a work disincentive affect.

### ***Implementation and administration***

**71.** There were a number of concerns and recommendations around implementation and administration that mirrored the Committee's views. These were that, some customers' overall income would not be protected due to the change in the taxation rules, that JCP will not be able to offer the right level of support for incapacity benefits customers who find themselves on JSA, now is not the time to be undertaking migration due to the current ESA system having a number of administration problems and a concern that migration will be more about moving people off benefit rather than into work. Concerns were also expressed that there was no mention in the Explanatory Memorandum about funding for the independent advice services which have seen an increase in their caseloads with the introduction of ESA at a time when their funds are being reduced. They stress the importance of their services to vulnerable customers.

**72.** The Department will be providing a suite of products in consultation with advice services prior to migration. This will provide those supporting customers with the necessary information to advise and issue material to their customers directly, ensuring a greater focus and reach than is possible through Departmental communications alone.

**73.** A number of the contributions also made suggested amendments to the Regulations. These were that additional time should be allowed between the effective date and the termination of entitlement for those who will not be migrated to ESA, to allow time for alternative benefit claims to be processed. Claimants who will have their benefit increased by migration should not have this delayed until the effective date. Those appealing the ESA decision should remain on their existing benefit until their appeal is determined. It has also been suggested that IB/SDA customers who are exempt from the PCA can currently carry out permitted work for an unlimited period. It has therefore been suggested that

**transitional protection is extended to support such cases, at the very least to allow those currently in permitted work to retain eligibility for the first 52 weeks after migration.**

**74.** Each customer's entitlement to their incapacity benefit will terminate with effect from the effective date, as determined. This is designed to fall between a minimum of 15 days and a maximum of 27 days after the date of the notification. Giving the customer advance notification of this date within the outcome decision is intended to aid a seamless transition between awards (where appropriate). This approach delivers a straightforward, consistent approach for all, and avoids the complications which would flow from setting different effective dates depending on the outcome.

**75.** The Government does not consider there is any justification for keeping customers who do not qualify for conversion, and appeal, on their existing benefit (or in IS cases, on their existing rate of benefit) until their appeal is determined.

**76.** IB, SDA and IS customers who do not satisfy a further condition of entitlement to IS (i.e. entitlement other than on the grounds of disability/incapacity) who do not qualify for conversion and appeal will automatically be entitled to ESA at a rate equivalent to the assessment phase rate until the appeal is heard or otherwise disposed of. They will not need to make a claim. This follows the existing ESA provisions which are designed as a customer-friendly easement and are unique in the benefit system.

**77.** IS customers who do not qualify for conversion but who do satisfy a further condition of entitlement to IS will, even if they appeal, remain on IS – to minimise disruption for them – but will not receive the disability premium (where this was payable solely on account of their long-term incapacity, not where it is payable on any other grounds). If they have appealed, and the appeal is successful, they will be switched to ESA. If the appeal is unsuccessful, they will simply remain on IS.

**78.** IB, SDA and IS customers who do not satisfy a further condition of entitlement to IS who do not qualify for conversion and do not exercise their right of appeal may claim JSA. Jobcentre Plus will make additional calls to these customers to explain their options to them, those wishing to make a claim to JSA will be transferred to someone who is able to take this claim, ensuring that JSA is in place when entitlement to incapacity benefits ends.

**79.** ESA has permitted work rules which both apply for 52 weeks and which apply for an unlimited time. The Government will consider the position further of those whose permitted work becomes time limited on conversion to ESA when it was previously unlimited.

***Potential losers – tax, tax credits and passported benefits***

**80.** A number of respondents commented on the fact there will be potential losers as a direct result of migration, particularly those who have previously been exempt from taxation on that portion of their benefit

and those who may see a reduction in their tax credits allowance. It was recommended that ministers should give the same assurances for tax credits as for benefits – i.e. that loss of income should not result from migration to ESA. It was also felt that DWP and HMRC should fully explore the impact of the Regulations on tax credit claimants.

**81. The Law Centre (Northern Ireland) also highlighted a separate group of potential losers – claimants whose private income exceeds their child allowance. This group of claimants will lose entitlement to income-related benefits (except HB), which can lead to the loss of passported benefits, including school meals.**

**82. As stated in paragraph 6, taking into account the concerns of the Committee and other stakeholders the Government is going to consider further the taxation and tax credits position on migration to ESA.**

**83. The Department recognises that there will be a small number of people who have an entitlement to IS which is exceeded by the child allowances payable as part of that benefit. If a customer's applicable amount is exceeded due to moving support for children to Child Tax Credits it is the case that they may lose their passport to certain benefits. However, it is likely that they will be entitled to the same benefits through making a separate claim to them. For example, someone receiving Child Tax Credits will be eligible for free school meals if their income is at or below £16,040 a year. They can claim these by contacting the local authority.**

#### ***Disabled students***

**84. The Child Poverty Action Group (CPAG) raised the issue of potential losers as a result of migration. They are concerned about losses for disabled students on IS who do not receive DLA. Under the proposed Regulations such claimants will not be eligible for ESA(IR) and will therefore suffer a financial loss and loss of support as a result of the proposed Regulations.**

**85. The Department is grateful to the Committee and the CPAG for bringing this issue to its attention. The Department has modified the draft regulations to ensure that disabled students who, at the point of migration, satisfy the conditions for IS will be treated as satisfying the conditions for income-related ESA.**

#### ***Effective customer communications***

**86. A number of respondents highlighted the need for an effective communications strategy, not only for customers but also for key stakeholders such as HMRC, disability organisations, welfare rights organisations and Local Authorities. Respondents stressed that information materials need to meet the diverse communication needs of the client group that will be impacted by migration and for claimants who may see a reduction in their income, this needs to be communicated clearly to claimants well in advance of the impact and that appropriate advice and**

**support is provided by the Department. It was recommended that Draft communication material should be shared with stakeholders, to ensure that the key messages are clearly communicated, correct and complete.**

**87.** The Department is aware of people's concerns around the communications for ESA and are grateful for the feedback. The Government recognises the importance of a comprehensive communications strategy for customers, intermediaries and staff. Work to develop and test this strategy both for ESA and migration is ongoing. There is also an ongoing commitment to actively involve external stakeholders and intermediaries as this work progresses.

**88.** Significant work is in progress to support people through each stage of the customer journey. The Department has consulted widely with stakeholders on the migration process and discussed both the best methods and the content of key communications with them, taking into account the widely differing needs of this diverse and complex customer group.

**89.** The Department is also engaged in segmentation and customer insight work to further understand the interventions and communications that will be appropriate for an individual's specific circumstances.

**90.** It has been agreed that stakeholder and representative groups will be involved in focus groups to quality assure communications. A suite of products prior to migration will provide information not only for the customer, but also for the advocates and advisers who support them. This will provide those supporting customers with the necessary information to advise and issue material to their customers directly, ensuring a greater focus and reach than is possible through Departmental communications alone.

**91.** The generic letters to customers, produced by Jobcentre Plus's IT system, have been widely criticised by customers and stakeholders. A stand-alone IT system is therefore being used to deliver notifications which are precisely tailored to the individual.

### ***Support for claimants***

**92.** There was concern expressed for customers who will find themselves moved further away from the help and support they require if they are found not eligible for ESA, particularly for those who then find they are not eligible to JSA due to income and not meeting the contribution conditions for JSA(C) meaning they will receive no support. There was a feeling that the Explanatory Memorandum failed to recognise the practical, emotional, financial and health related adjustments that migration would mean for many customers and that the level of assistance required to support the most vulnerable customers through the claim process had been underestimated. The Action Group felt that vulnerable customers would encounter difficulties when confronted by the automated telephone service or the on-line application processes preferred by Jobcentre Plus. Concern was also expressed for customers with mental health and learning difficulties placed on JSA, that they may struggle with the regime and find themselves subject to sanctions.



**93.** The Government recognises that migration is going to be a challenging transition for some customers whichever benefit they move to. Taking on board the concerns of the Committee and others and lessons learnt from the current ESA process, Jobcentre Plus has designed the migration process to ensure that there is the help customers will need to be supported through the process. Extra phone calls to the customer have been built in to the customer journey to help ensure that they understand the migration process at every stage and what it will mean for them. The system has been designed to help enable Jobcentre Plus staff to identify vulnerable customers early on in order to provide them with appropriate support to comply with the process. There are also provisions for Atos Healthcare to make home visits to carry out assessments should customers be unable to attend the Medical Examination Centre. The Government aims to make the transition from the old incapacity benefits to ESA as smooth and simple as possible for these customers and migration has been designed with these principles in mind.

**94.** It is currently the case that if a customer has had a Period of Incapacity for Work (PIW) the Department can look back at that customer's contributions record from when the PIW commenced to see if they would have satisfied the contribution conditions for JSA at the time. If they would have, they will then be entitled to contribution based JSA. Even if a customer is not entitled to contributory JSA they may still be entitled to income-based JSA. Customers who do not qualify for either contributory or income-related JSA will still be able to claim National Insurance Credits, provided they fulfil the requirements of the JSA regime, and will be entitled to the employment support provided through JSA.

**95. The submission from Sheffield Hallam University/The University of Dundee drew attention to the body of evidence which illustrates that many long-term incapacity claimants are a significant distance from the labour market, requiring in-depth support. The majority of these claimants have no formal qualifications, have been out of work for at least 5 years and face multiple obstacles to work. The evidence illustrates the need for demand-side, as well as supply-side measures to support long-term incapacity benefit claimants into work.**

**96.** The Government agrees that many long-term incapacity benefits customers are a significant distance from the labour market and require greater support to move into work; this is why it is essential that these customers receive the support ESA can offer as soon as possible.

**97.** While labour demand has fallen, the labour market has continued to create vacancies throughout the recession (Jobcentre Plus still receives more than 10,000 vacancies every working day). This can be expected to pick up during 2010 in line with HM Treasury forecasts for positive economic growth in this year and next.

**98.** It appears that a turning point in the labour market has already been reached with both ILO and claimant unemployment starting to level off or even fall, and business surveys show an increasingly optimistic picture, particularly in terms of firms' recruitment and employment intentions.

**99.** The Government believes that it would be wrong to delay plans to migrate current incapacity benefits customers to ESA as the help and support they will receive on ESA will mean they are nearer to the labour market as the economy strengthens and therefore in a better position to find work. It would be wrong to leave them behind just at the time when the jobs market is opening up.

### ***Work Capability Assessment***

**100.** The majority of respondents raised serious concerns about the WCA. They were concerned both about the quality of the assessments and the ability of the WCA to accurately assess the impact of health conditions and disabilities on daily life and the ability to work. The WCA was seen to be a particular problem for those with mental health/learning disability and fluctuating health conditions and there is a concern that failing the WCA could lead to a decline in mental health. CAB called for a more personalised approach to the WCA process, taking account for example of age, education and skills.

**101.** As mentioned above, the WCA is subject to stringent quality control as well as a number of different reviews to ensure it is achieving its aims.

**102.** A range of representative groups are engaged in the Departmental review of the WCA, including CAB.

**103.** Mind drew attention to a number of flaws with the WCA and were concerned that the volume of claimants to be migrated would only exacerbate these existing problems. Case studies and evidence from key stakeholders revealed that assessments are sometimes carried out in open, noisy environments, by staff with little experience of mental health issues and sometimes at very short notice. Mind also highlighted the Work and Pensions Select Committee report on decision making and appeals in the benefit system, which reported similar concerns about the WCA and the appeals process.

**104.** A number of respondents suggested that the Department's estimate of only 15 per cent of migrated claimants being found fit for work was rather optimistic and were concerned about the likely impact on the appeals system.

**105.** The intention is that the assessment is conducted sensitively by an approved healthcare professional. In order to create a suitable environment, individuals are encouraged to bring a friend or relative with them to the assessment. Assessments are carried out in a private, purpose-built room within a medical examination centre.

**106.** Please see paragraph 52 for more information on the training of healthcare professionals to assess a wide range of conditions, including those which may affect mental, cognitive or intellectual function.

**107.** The Department has revised its estimates of the number of customers it expects to be found fit for work and as explained above is working with the

Tribunal Service on a range of measures to deal with the anticipated volumes of appeals.

**108. Several respondents were concerned that the issue of PCA-exempt claimants was not addressed in the Regulations and it was recommended that those currently exempt from the PCA should be automatically treated as meeting the conditions for the ESA Support Group. They also recommend that claimants should be considered under regulation 10 of the Social Security (Incapacity for Work) (General) Regulations 1995, which provides that people with severe conditions should be treated as incapable of work.**

**109.** Entitlement for ESA is based on how severely a condition affects an individual's ability to function. This is in order to correctly identify the most appropriate benefit and support. This is fairer than using criteria based on specific conditions or diagnoses, which affect different individuals in very different ways.

**110.** However, the Government does recognise that there are certain individuals for whom a return to work is unlikely, because of the severe level of functional limitation that they experience. All cases are looked at by an approved Healthcare Professional (HCP) at the outset, and where an HCP identifies individuals with the most severe limitations, they will contact the treating physician for further evidence. Advice can then be provided to place such individuals directly into the ESA Support Group without asking them to attend a face-to-face assessment. In the Support Group, individuals will receive the highest rate of benefit and will not be mandated to participate in work-related activity, although they can volunteer to do so if they wish. Unlike the existing Incapacity Benefit exempt group, the criteria for this group are not based on the nature of health conditions or disabilities, but on how severely these conditions impact on an individual's ability to function. As such, having a specific condition in itself is unlikely to make someone qualify for entry to the Support Group. The Department does not want to write anyone off and wants to look at everyone as an individual.

### ***Appeals***

**111. Respondents were concerned about the length of time it is taking for appeals to be heard and the financial (and associated emotional and health) impacts of this for claimants. During an appeal against a fit-for-work decision claimants will be paid the assessment phase rate of ESA, which can mean vulnerable customers facing financial hardship and potentially being on a reduced rate of benefit for some time. Respondents were also concerned about the lack of support for claimants during the appeals process.**

**112.** Steps being taken to improve the appeals process are addressed in paragraph 46.



### ***Treatment of Occupational and Private Pensions***

**113.** Respondents were concerned with the important principle that customers should not see a reduction in their overall benefit income solely because of the migration process. They therefore welcomed the ongoing protection for certain customers with regard to occupational and private pension disregards. However, they felt that the Regulations did not make it clear whether this protection would also be afforded to claimants who were currently protected under the linking rule (i.e. those who had claimed IB after 6 April 2001 but who could link to a claim before 6 April 2001). Respondents also felt that protection should be extended to recipients of the highest rate of the care component of DLA.

**114.** All customers who qualify for conversion to ESA and who are, at the point of conversion, benefiting from the preserved right to a full disregard of prescribed occupational and private pensions will continue to be able to benefit from that preserved right after conversion. This includes customers entitled to the highest rate of the care component of DLA in respect of whom section 30DD(1) of the Social Security Contributions and Benefits Act 1992 is currently dis-applied by virtue of Regulation 26 of the Social Security (Incapacity Benefit) Regulations 1994.

### ***Claimants living abroad***

**115.** One of the respondents highlighted the fact that the Regulations do not clarify the position for long-term claimants of incapacity benefits living abroad (permanently or otherwise). There are implications both for benefit entitlement and for entitlement to medical treatment (via the European Healthcare Certificate E121) for such claimants. Official statistics show that there are approximately 10,500 claimants of IB under the “living abroad or unknown” location code. This is likely to include claimants who are exempt from the PCA and those who are not. The Committee would like clarification from the Department of the proposed provisions for this group.

**116.** For the purposes of the migration exercise, the Government intends to treat those customers on Incapacity Benefit and Severe Disablement Allowance who are living abroad no differently from customers who are living in Great Britain. They will undergo migration in the normal way and within the planned timetable i.e. ending in March 2014. The Government is currently considering how best to achieve this.

### ***Housing Benefit/Council Tax Benefit***

**117.** Respondents welcomed the Regulations which provide for transitional protection to be extended to HB and CTB. However, one respondent (CIH) was disappointed that the proposed Regulations do not alleviate the ‘better off problem’ for couples – where a couple can be disadvantaged (by as much as £30 per week) because the ‘wrong’ member of the couple makes the claim for HB/CTB. CIH note that this problem was created by the introduction of ESA, and is unique to HB/CTB, but could be completely eliminated by further simple amendments to the Regulations.

**118.** The Government notes the disappointment that the proposed amendments do not alleviate the 'better off' problem for couples. This issue is not caused by these conversion proposals but arose from the introduction of ESA because the structure of Housing Benefit/Council Tax Benefit (HB/CTB) for ESA customers reflects that of ESA. ESA brings a new work-focus for people receiving it, with an emphasis on capability rather than incapacity. So it is important for the wider ambitions that HB/CTB is structured for this client group so the wider policy objectives are met.

**119.** Local authorities have been provided with comprehensive guidance on when couples may be better off if they swapped which one of them is the HB/CTB customer and the correct procedures to adopt to allow this to happen.

### ***The case for a targeted approach to migration***

**120.** Respondents were keen to recommend that those who were most able to work should be targeted for additional support, rather than disabled people who would find it difficult to work. Indeed, when considering the desire to return to work, evidence shows that the stock of incapacity claimants is highly differentiated – including by age, length of time on benefits and the degree of health limitation. This provides support for a segmentation approach, which would enable limited resources to be targeted most effectively.

**121.** The WCA is intended to identify more accurately what support is appropriate for each customer, if an individual experiences severe functional limitation as a result of their health condition or disability, they will be placed in the Support Group and not mandated to undertake work-related activity, although they can volunteer to do so if they wish. A customer who has limited capability for work but can reasonably be expected to undertake work related activity will be placed in the Work-Related Activity Group and supported to move closer to the labour market. This is why it is essential that all current incapacity benefits customers go through the migration process and undertake the WCA. The Review of the Pathways to Work programme will ensure that the support needed for customers in the Work-Related Activity Group is in place prior to migration.

### ***Evaluation***

**122.** A number of respondents were concerned about the lack of evidence to support the policy and did not believe that it would be sensible to implement the policy for existing incapacity benefit customers without the evidence base to show it will be able to fulfil its aims. Respondents were also keen that DWP commissions research to follow up claimants who fail the WCA, including those who are not eligible for JSA(IB) or JSA(C) (and therefore flow off benefit entirely).

**123.** The Government believes that ESA is the right benefit and that this is the right time for increasing the support to help these customers into work. ESA is meeting its aims of placing people on the right benefit with support to return to work and providing more support to the most severely disabled. In August 2009

there were 374,000 people in receipt of ESA. Of new claims from March to May 2009, 5 per cent of people have been assessed as suitable for the Support Group, 12 per cent assessed as suitable for the Work-Related Activity Group and 38 per cent have been assessed as fit for work.<sup>1</sup>

**124.** The Government understands the concerns of the Committee and others about the limited evidence from the implementation of the current ESA regime. It is true that it is still relatively early days and ESA has only just reached a steady state for some parts of its implementation. Consequently evaluation is in its early stages. However, to delay the migration of customers on other incapacity benefits would not be right. ESA is a very different regime that will provide help and support that some of these customers have been denied for many years. The Department has commissioned a programme of research to evaluate ESA and reports of this research will be published in due course.

**125.** The following questions will be addressed in the evaluation:

- Is ESA fulfilling its main objective of providing a gateway to work, for those who are able to do so?
- Is ESA being delivered effectively and efficiently, and what improvements might be made?
- What are customers' experiences of ESA and are claims being handled quickly and sensitively?
- Are staff being provided with the support and resources they need to deliver an effective service?

**126.** The evaluation covers all customers making a new claim for ESA, as well as the various types of staff dealing with ESA – Jobcentre Plus Contact Centre and Benefit Delivery Centre staff, Jobcentre Plus and Pathways Provider advisers, medical professionals who assess customers, and intermediaries such as welfare rights and adult social services workers. Plans are currently being developing to evaluate the migration of existing incapacity benefits to ESA from October 2010.

**127.** The first evaluation report, of qualitative research examining staff and customer views and experiences of early ESA implementation in May-July 2009, was published in the DWP research report series on 2 March 2010<sup>2</sup>. Fieldwork for a large-scale representative survey of people's experiences and views of claiming ESA was concluded in February 2010, with a report of this expected to be published in the DWP research report series in Summer 2010.

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<sup>1</sup> The remaining 45 per cent are split between those cases that were still in progress and those cases that withdrew the claim before reaching the WCA. Please refer to official statistics publications on the WCA: [http://research.dwp.gov.uk/asd/workingage/esa\\_wca/esa\\_wca\\_19012010.pdf](http://research.dwp.gov.uk/asd/workingage/esa_wca/esa_wca_19012010.pdf)

<sup>2</sup> DWP research report 631: Employment and Support Allowance: early implementation experiences of customers and staff available on the DWP website at <http://research.dwp.gov.uk/asd/asd5/rports2009-2010/rrep631.pdf>

**128.** The Department plans to re-survey respondents on their ongoing experiences of ESA, or their subsequent activities if they have left the benefit, later this year. This follow-up will include people who were found fit for work at the WCA, and the Department are currently considering how it might look at the outcomes of this group in more detail.

**129.** In addition, further qualitative research on customer and staff views of the WCA and WFHRA is currently underway, with publication expected before the start of migration in October 2010. An in-depth exploration of customer, staff and intermediary experiences of the whole ESA process is also planned, later in 2010.

**130.** These evaluations will be used to help inform the migration process and to improve the service given to ESA customers generally.

### ***The Committee's Conclusions***

**131.** The Committee welcomes the Government's continuing commitment to supporting incapacity benefits claimants into work and endorses the Government's aim of ensuring that the right people are on the right benefit with the right level of support and conditionality. It also welcomes proposed migration arrangements that are supported by transitional protection that seeks to minimise the immediate impacts of change.

**132.** However, the Committee believes that the migration arrangements that these proposed regulations would introduce cannot be implemented without the risk of operational stress and adverse impacts on significant numbers of vulnerable people. In its view, the Department should not embark upon the proposed migration until the well-documented problems with current ESA processes and procedures (including those with the WCA) have been resolved, any changes to the Pathways programme have been implemented and bedded-in, and improvements have been made to the support available for JSA claimants with a health condition or disability.

**133.** The Government recognises the Committee's concerns but believes for the reasons set out in this response, that it is addressing the specific issues raised and feels it would not be right to delay migration, denying customers the support they would receive on ESA to return to work.

**134.** It is of particular concern to the Committee that the Department is moving ahead with the migration of existing claimants of incapacity benefits without a solid evidence base for either the decision to migrate or the proposed migration arrangements. The Committee notes that the evaluation of ESA for new claimants is not planned to be completed until 2011, by which time the proposed migration arrangements will have commenced.

**135.** The Committee believes that the Department has underestimated the support required by this vulnerable group of claimants, in terms of both their participation in a more active benefit regime and the support required to move them closer to the labour market. With the Pathways model, as currently delivered and targeted, having been found to be

**largely ineffective, and no alternative yet proposed, the Committee is concerned that the migration will neither be informed by evidence of how ESA is working for new claimants, nor supported by the sorts of services and programmes that these claimants will need if they are to comply with more demanding benefits conditionality.**

**136.** While it is true that evaluation of ESA is in its early stages the Government believes that this is still the right time to begin the migration of customers on older incapacity benefits to the new ESA regime, especially as it would be unfair to leave these customers behind as the labour market strengthens. The Department is continuously learning lessons from current operation of ESA and is taking these into consideration in the development of the migration process. Customer segmentation work has been commissioned to enable us to address the specific needs of different customer groups and the Department is also consulting with external customer representative groups in order to take account of their views in the design of the customer journey. Recommendations from the Pathways review will be implemented in time for the first customers coming through the migration process.

**137. In respect of the proposed transitional arrangements, the Committee welcomes the number of protections that the Department has incorporated but it does not feel that these go far enough, particularly the transitional protection of tax liability and tax credits, and it strongly suggests that the Department seeks to make arrangements that will ensure that there are no cash losers at the point of change.**

**138.** As addressed in paragraph 6, the Government takes the Committee's concerns very seriously and are considering this matter further with the Committee's recommendations in mind.

### ***Recommendations***

**139. The Committee recommends that the migration to ESA does not proceed to the current timetable but waits until:**

- **a stronger evidence base on what works and whether ESA is achieving its aims is available**
- **the new regime for claimants with a health condition or disability (as an outcome of the Pathways review) has bedded down**
- **DWP's review of the WCA is complete, recommendations have been considered and any necessary changes have been made**
- **demand-side approaches to stimulating the labour market have begun to have a positive impact on local demand for labour, particularly in areas with a high concentration of IB claimants.**

**140. If the migration does proceed as planned the Committee recommends that all of the following conditions must be met:**



- (i) The trial of the conversion process (due to start in October 2010) should be extended to six months. This would allow for a fuller test of conversion and would also allow more time for improvements to be made to ESA processes and procedures before migration is rolled out nationally. The results of the trial should fully inform both the processes and timetable for national roll-out.**
- (ii) Tax liability and tax credit transitional protection for long-term incapacity benefits claimants (pre-April 1995) should be carried forward into the ESA regime.**
- (iii) Improvements must have been implemented to the ESA regime, including: improvements in the speed of processing appeals and in the support provided to claimants who are appealing; enhancing the quality of the WCA, particularly for claimants with mental health problems and cognitive and learning disabilities; and ensuring that enhanced employment support is in place for claimants with a health condition/disability at all stages of the claims process and across the benefit regimes.**
- (iv) A comprehensive customer information strategy must be in place, allowing complete and accurate information to be very clearly communicated to customers, intermediaries and Jobcentre Plus/HMRC staff. Lessons learned from failures in the communication strategy for ESA for new claims should be incorporated.**
- (v) Resources must be deployed more effectively by segmenting the customer group and targeting mandatory support on those closest to the labour market. Migration within the proposed timescale could also be managed more effectively by retaining claimants who are near to State Pension Age (SPA) (but not yet reaching SPA during the conversion phase) on incapacity benefits. Support for those not migrated could be offered on a voluntary basis.**
- (vi) Incapacity benefits claimants currently exempt from the PCA should be automatically treated as meeting the conditions for the ESA Support Group. Claimants who fall within Regulation 10 of the Social Security (Incapacity for Work) (General) regulations 1995 should also be placed within the support group.**
- (vii) A full programme of evaluation should be put in place, to include claimants who are found fit for work, and the details of the programme should be shared with SSAC before the evaluation commences.**

**141.** The Government has carefully considered the Committee's concerns in relation to the ESA transitional Regulations and their wider concerns about the migration programme. However, for the reasons outlined in this response it does not accept the Committee's recommendation that migration should not continue to the current timetable. The Government considers the migration of existing incapacity benefits customers to ESA to be a key element of welfare reform and one that will greatly benefit customers at a time when support to get back to

work is urgently needed. The Government does not believe it would be right or fair to delay this support for customers who have been without it for too long already.

**142.** The Government is grateful for the Committee's other recommendations and hopes that the proceeding response will reassure the Committee on a number of points. The Government agrees with the Committee that a comprehensive customer information strategy is essential and the Department is working closely with external stakeholders to ensure that this is in place. Significant customer segmentation work is ongoing that will facilitate this. Moreover the work it is undertaking to segment the caseload will provide valuable information which will be used to help the Department more successfully engage with customers, some of whom will have had very little contact for a number of years. The Department will be continuously monitoring the migration process and any emerging evidence elsewhere to see if further improvements can be introduced.

**143.** As mentioned above, the Government acknowledges the Committee's concerns about the proposed changes to the tax status of some customers in relation to both income tax liability and the effects on tax credits. As a result of these concerns, the Government is reviewing the position of these customers. The Government is putting in place a comprehensive evaluation of the ESA regime and is currently developing plans to evaluate the migration from existing incapacity benefits.

**144.** The Government recently published its spring command paper *Building bridges to work: new approaches to tackling long term worklessness* which sets out what support will be available for customers moving to the more work-focused regime of ESA and to JSA. The command paper sets out plans to provide a more personalised conditionality regime coupled to a more flexible support package for ESA customers. It also looks at extra health-related support for people who are found fit for work, with a particular focus on additional support for people who will be moving from incapacity benefits to JSA and it sets out plans for people on ESA who reach two years on the benefit, and who want one, to be provided with a guaranteed Work Choice place.

### **Conclusion**

**145.** The Government is grateful to the Committee and the interested parties who responded to the consultation exercise, for their consideration of the draft Regulations and for their comments on them. The Government has considered these carefully in reaching its decision to continue with the migration from previous incapacity benefits and will continue to engage with stakeholders as the migration proceeds.

**146.** The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010 are now laid before Parliament. This instrument amalgamates The Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 and The Housing Benefit and Council Tax Benefit) (Employment and Support Allowance) (Amendment) Regulations 2010, which were previously referred to the Social Security Advisory Committee as separate instruments.

From the Chairman  
The Rt Hon Yvette Cooper MP  
Secretary of State for Work and Pensions  
Caxton House  
London SW1H 9DA

15 March 2010

Dear Secretary of State,

**REPORT OF THE SOCIAL SECURITY ADVISORY COMMITTEE MADE UNDER SECTION 174(2) OF THE SOCIAL SECURITY ADMINISTRATION ACT 1992 ON THE EMPLOYMENT AND SUPPORT ALLOWANCE (TRANSITIONAL PROVISIONS) (EXISTING AWARDS) REGULATIONS 2010 AND THE HOUSING BENEFIT AND COUNCIL TAX BENEFIT (EMPLOYMENT AND SUPPORT ALLOWANCE) AMENDMENT REGULATIONS 2010**

**1. Background**

1.1 At the Committee's meeting on 6 January 2010, officials from the Department for Work and Pensions presented proposals for our consideration relating to the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 and the Housing Benefit and Council Tax Benefit (Employment and Support Allowance) Regulations 2010. A detailed Explanatory Memorandum (EM) of the Department's position accompanied these proposed draft regulations (Appendix 3).

1.2 Following discussions with officials, we decided to take these regulations on 'formal referral' for the preparation of this report. On 11 January we published a press release inviting comments on the proposals to reach us by 8 February 2010.

1.3 We received 18 responses. Details of the organisations and individuals who responded are at Appendix 2. We are grateful to those who responded and to officials of the Department for Work and Pensions for their assistance.

**2. The Proposals**

2.1 The Secretary of State for Work and Pensions proposes that from October 2010 the Department will begin the conversion of existing awards of incapacity benefits<sup>1</sup> (together with awards to customers of national insurance credits-only on the grounds of incapacity) to Employment and Support Allowance (ESA). The conversion process will be tested on a small number of cases, with national conversion planned to start with the referral of customers to Work Capability Assessments from February 2011 and to be completed by the end of March 2014. Almost 1.5 million customers are expected to go through the conversion process (around 10,000 cases weekly over 3 years).

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<sup>1</sup> All existing incapacity benefits (Incapacity Benefit, Income Support on the grounds of disability and Severe Disablement Allowance)



2.2 The Regulations detail the grounds upon which, and the circumstances in which:

- an existing incapacity benefits award will be converted to an award of ESA and the amount of any such award
- an additional allowance (a “transitional addition”) may be awarded to customers, in appropriate cases, to protect the rate of incapacity benefits paid to them at the point of conversion on a mark-time basis
- the value of such a transitional addition may be eroded, terminated, and resurrected, as appropriate.

The regulations also detail the decision-making required to effect conversion.

2.3 The Regulations are designed to facilitate as smooth a move as possible from incapacity benefits to ESA, and to protect a customer’s overall benefit income at the point of transfer by ensuring that no-one who qualifies for conversion to ESA sees a cash reduction in their benefit at the point of conversion.

2.4 The Regulations also propose consequential amendments to Housing Benefit and Council Tax Benefit provisions, to ensure that no one sees a cash reduction in their benefit.

### **3. Summary of the Department’s Position**

3.1 The Government’s aim is to see one million fewer people on incapacity benefits and ESA by 2015, and believes that it is right to ensure that, where appropriate, people are moved closer to the labour market, either through looking for work or preparing for a return to work.

3.2 At the same time, the Government wishes to ensure that the right people are on the right benefit with the right level of support and conditionality; and it wants to ensure that all disabled people and people with health conditions in similar situations are on the same benefit and are treated equally over time. The conversion of customers from existing incapacity benefits onto ESA, to which the Government committed itself in the White Paper ‘Raising Expectations and Increasing Support’ published in December 2008, is an integral part of achieving these objectives.

3.3 ESA is a more pro-active, work-focused benefit than the incapacity benefits it is replacing. It is designed to ensure that people receive the support they need to take up or prepare for work, where appropriate. This supports Departmental Strategic Objective 2, to “maximise employment opportunity for all”.

3.4 The Department’s position is summarised in more detail in the Explanatory Memorandum attached at Appendix 3.

## **4. The Committee's View**

### ***Introduction***

4.1 We considered the Department's proposals at our regular business meeting on 6 January 2010 and identified a number of overarching concerns with the proposals:

- Firstly, although we have been told that you are committed to maintaining cash benefit levels, we are concerned that the impact of the changes on tax liability and on tax credits may mean that some claimants are significantly worse off on ESA than on their previous benefit
- Secondly, given the breadth and depth of issues that claimants of long-term incapacity benefits will present to the migration process, we feel that the trial of the conversion process will be too limited, both in scope and time, to allow for robust evaluation – particularly given the complexity of the situation posed by migration
- Thirdly, we were concerned that, despite the transitional arrangements, some claimants may lose access to passported benefits when they transfer to ESA. We raised this issue with DWP officials and they have corrected the draft regulations accordingly
- We are concerned about the capacity of both Jobcentre Plus and the associated medical services to migrate the large number of claimants over a relatively short period of time, and about their ability to deliver an effective service to claimants
- Finally, we are concerned also about the stiffer test that the WCA poses and the outcome for those claimants who, having been found unfit for work under the incapacity benefits regime, are newly assessed as being 'fit-for-work'.

4.2 Given that ESA is now a key element of the welfare to work system, we understand the rationale for phasing out the alternative incapacity benefits regimes. We accept that this will reduce the complexity associated with having two different benefits and two different assessment regimes. However, we also note that transitional protection introduces additional complexities, including the provision of transitional protection for extant transitional protection (protection that, in our view, would have been better bought out).

4.3 In light of the large volume of customers to be migrated a transitional protection approach is the most sensible and we are pleased to see that officials have taken into consideration SSAC's published guidelines on the use of transitional protection (SSAC 12th Annual Report, May 1997 – March 1999). This protection needs to cushion the transition for those who are affected, break the linking period, and deal with the knock-on effects for other benefits. We believe that the proposed regulations go some way towards achieving this aim. For example, we welcome the continuing disregard of income from occupational and private pensions for certain claimants. However, we have substantial

concerns about potential losers in the system – customers for whom a reduction in income is driven solely by their migration from incapacity benefits.

4.4 Under the terms of our remit we may consider proposals in the form of draft regulations or otherwise. The Committee and many of our stakeholders are deeply concerned about the actual intention to migrate stock clients from incapacity benefits to ESA, regardless of the protections as detailed in the regulations. In this report we intend, therefore, to comment both on the regulations which are designed to achieve transition and on the wider implications of transition itself. Whilst we support the Department's welfare to work ambitions generally, we are not convinced that the proposed migration will achieve the Government's aims for claimants who are incapable of work long-term. We set out our concerns in more detail below.

### ***The impact of migration on tax liability and tax credits***

4.5 As stated in the Explanatory Memorandum (para 9.2), Ministers have committed on several occasions to ensuring that no existing claimants of incapacity benefits will see a cash reduction in their benefit on conversion to ESA. Nevertheless, the Committee is concerned that the impact of the proposed changes on tax liability and on tax credits may mean that some claimants are significantly worse off financially on ESA than on their previous benefit<sup>2</sup>. DWP officials estimate that approximately a quarter of a million claimants are currently on tax-free incapacity benefits, although not all of these will be migrated to ESA: those who reach State Pension Age during the migration period, for example, will be excluded.

4.6 The particular group we are concerned about are those who have claimed incapacity benefits since before April 1995 and who are likely to be some of the least able to cope with migration, having already moved from the previous incapacity regime (Invalidity Benefit or Sickness Benefit). These claimants were afforded tax protection on the element of their income from Invalidity Benefit/Sickness Benefit when they were migrated to IB and their payments have been free of tax throughout their claim. However, as stated in the Explanatory Memorandum (para 6.16), the Department's current plan is that this protection will be lost on migration to ESA. This point is quantified in the Explanatory Memorandum (EM):

*6.17 We estimate that up to 3% (or 50,000) customers could have an increased tax liability. Customers would not lose any benefit as a result, as on conversion benefit levels would be protected. However, they would have to pay on average an estimated £1,000 a year in income tax. These will be customers with the highest incomes, the vast majority of whom are already liable for tax and have other sources of income that take them over the £6,475 income tax threshold.*

4.7 We are concerned that a full analysis of income levels was not included in the EM and that assumptions may be being made about a significant minority

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<sup>2</sup> Although we also note that HB and CTB entitlement may increase, and therefore mitigate some of the loss in income associated with changes in tax liability and tax credits.

of claimants. Anecdotal evidence suggests that some people in this claimant group have severe disabilities and would struggle to cope with a reduction of this level in their income.

4.8 We have already raised the issue of taxation and tax credits with DWP officials. Officials have made clear that the proposed regulations do not provide specifically for taxation; the effect of these regulations is that unless changes are made by HMRC, customers will become subject to the normal ESA rules (which include tax liability on benefit). In correspondence, officials have pointed out that taxation of benefit is a matter for the Chancellor of the Exchequer and they understand that no decision has yet been taken in relation to claimants who will be migrated to ESA, but that DWP's recommendation is that these customers become liable to taxation of benefit.

4.9 The group referred to above also have their income from IB exempt for tax credit purposes. Transferring these claimants to contributory Employment and Support Allowance (ESA(C)) will convert the amounts received from benefit into income for tax credits purposes. Adding say a further £5,000 to household income for Working Tax Credit (WTC)/Child Tax Credit (CTC) may make a very significant difference to tax credit payments, regardless of the income tax position. We would like to know what analysis DWP has carried out with regard to the effects of these changes for tax credit purposes.

4.10 We will also be seeking information on how the Department proposes to prepare those affected for these potential losses, should the proposals be implemented as they stand. Any communication strategy will have to be geared to reflect the needs of the different segments of the customer base, who must be provided with different messages in relation to taxation.

4.11 We are concerned about the operational implications with regard to tax and tax credits, and the inequities that will arise, in connection with a phased migration. Claimants who are converted early in the process (particularly those in the pilot phase) will potentially face reductions in income several years before other claimants. Some claimants will be penalised financially, therefore, by inclusion in the trial.

### ***Trial of the conversion process***

4.12 We very much welcome a trial of the conversion process, as we anticipate that the migration of existing incapacity benefits claimants will raise broader and deeper issues than the introduction of ESA for new claimants. However, we are not convinced that the trial, as current planned, will allow for robust evaluation. It is essential that the opportunity for learning is maximised prior to national roll-out, in order to minimise any negative impacts on claimants, intermediaries and Jobcentre Plus. We feel that the trial period should be extended to at least six months, allowing more time before national roll-out. This would allow more time both for a fuller evaluation and for existing problems with ESA to be addressed. We are concerned that the clerical nature of the test will not provide a true test of the migration process and we would welcome more detail about the scope of the trial, including locations and the numbers of

claimants. We also recommend that the trial should consider what level of support local authorities need to administer the changes and what the impacts of reduced funding (across local authorities and Jobcentre Plus) could be for timescales and the quality of implementation.

### ***Winners, losers and complexity***

4.13 By any measure, these proposals are highly complex and our concerns about the apparently arbitrary outcomes of the application of the proposed regulations in a number of possible real-life scenarios led us to put together some illustrative examples. As we have noted above, as the proposals stand there will be losers at the point of change (and some gainers, as well). We found it both challenging and time consuming to work through the examples set out at Appendix 1, and even after detailed consideration of all the elements involved we cannot be certain that the calculations are accurate. Nonetheless, they demonstrate why we have questioned the rationale for a transition that may leave some IB claimants significantly worse off simply because their claims date from before 1995.

4.14 The migration from incapacity benefits to ESA is also likely to entail many claimants with existing child allowances and premiums being transferred to an award of Child Tax Credit (CTC) at the same time. This will lead to some claimants becoming worse off because of this change, even though the transfer to ESA does not of itself lead to a loss of income. It will be particularly difficult for claimants to understand that they have been awarded transitional protection for ESA yet are also worse off than on their previous benefits. An illustration of this effect is included in Appendix 1 as example 4. We recommend that the Department examine how claims which involve this double migration will be managed, and in particular, look at how the outcome of these arrangements will be communicated to claimants.

### ***Loss of access to passported entitlements***

4.15 The draft regulations, as presented to us on 6 January, led to further concerns that, despite the transitional arrangements, some claimants may lose access to passported entitlements when they transfer to ESA. In particular, this appeared to affect IS claimants whose entitlement to ESA(IR) would be nil on income grounds (i.e. where their income is lower than the IS applicable amount but higher than the ESA applicable amount), and who would not qualify for a transitional allowance (TA) payment (as the applicable amount is less than 10p).

4.16 We raised this issue in correspondence with DWP officials, following their initial presentation of proposals. Having reflected on our comments, the Department accepted that the draft regulations did not deliver the policy intent. The intention is that whilst there should be a minimum amount of ESA/TA payable, this does not preclude entitlement below this amount. The Department has therefore amended the regulations to achieve the policy intent, ensuring that the claimants referred to above will still be classed as being in receipt of ESA(IR) for the purposes of passported benefits (e.g. Housing Benefit, free prescriptions) and with regard to eligibility for wider Jobcentre Plus support



(e.g. budgeting loans – where the relevant conditions are met). We welcome this amendment.

### ***Jobcentre Plus – capacity issues***

4.17 We have been impressed with the way that Jobcentre Plus has coped with the additional demands on its services over the past 12-18 months, arising both as a direct result of the recession and with the raft of major policy changes that have been implemented within the current economic climate (including ESA for new claimants). However, we do have concerns about the capacity of Jobcentre Plus and the medical service contractor to migrate the anticipated volume of claimants of incapacity benefits to ESA in the proposed timetable and provide an effective service to the client group (discussed in more detail in sections 4.19 and 4.20, below).

4.18 The Explanatory Memorandum (para 27.1) states that steps are being taken to increase the medical capacity that is available to undertake the necessary medical assessments. We would very much welcome further information about these and reassurance on this point.

4.19 We question whether a three year timetable for migration is feasible in the current economic climate and urge the Department to reconsider how best to apply limited resources. We have observed on a number of occasions recently the demands made of Jobcentre Plus, both in relation to its response to the recession, and also more generally in responding to an ongoing programme of major policy and ambitious operational change and development. We are concerned that Jobcentre Plus resources will be stretched for some considerable time to come. Therefore, we would suggest that a more pragmatic use of its resources may be called for and that a full migration from incapacity benefits on a short timescale may not be the most immediate priority in terms of what the required investment can be expected to achieve.

4.20 As we note in our conclusions (see section 6) we would suggest that if these proposals are to go ahead, they should be reviewed to see where the programme could be trimmed back, for example, by allowing those close to state pension age (but not yet reaching pension age during the migration period) to remain on their existing benefit.

### ***Effective support for claimants***

4.21 There is a wealth of evidence that illustrates that many long-term claimants of incapacity benefits have multiple barriers to active participation in the labour market and will therefore require intensive support (e.g. Beatty et al, 2010). We are not convinced that the required level of personalised, flexible support will be available for all migrated clients, particularly in areas with a high IB claimant count. Whilst we welcome the Department's current review of the main support programme – Pathways to Work – we are concerned that the roll-out of ESA for existing claimants will be well advanced before a revised Pathways model is implemented nationally. As our respondents have suggested, and we have observed in the course of our visits to Pathways offices and programmes, the stock of incapacity benefits claimants contains significant numbers of the most

vulnerable long-term benefit claimants. As we note above, in addition to their health conditions and disabilities, they are likely to present complex and multiple problems and barriers to employment. Without an established, fully-functioning support programme in place and ready to address the needs of this group, there is a risk that there will be no suitable services to offer these claimants.

4.22 We are also concerned about the level of support that will be available for, what we anticipate, will be a significant minority of the client group who will move to a much more active benefit (JSA). We welcome DWP's proposal, as part of the Pathways review, for making improvements to the support provided to JSA customers with a health condition or disability (particularly those customers who have been disqualified from entitlement to ESA following the WCA), but we have concerns about the timing for implementation; many customers will have moved from incapacity benefits onto JSA before the revised model is implemented.

### ***Administrative issues***

4.23 Evidence and anecdote both highlight valid concerns about the current administration of ESA, particularly with regard to the Work Capability Assessment (WCA) and the appeals process (for example, recent evidence from both Macmillan and CAB highlighted the administrative difficulties faced by certain groups of claimants)<sup>3</sup>. Whilst we appreciate that lessons have been learned from the implementation of ESA for new claimants, existing claimants are a very different segment of the customer base and will likely present different and deeper challenges.

4.24 In this context, we have noted a number of worrying trends emerging from the administration of the current ESA regime that signal where problems may arise. For example, more claimants than anticipated have been found fit for work and, consequently, the number of appeal cases has been higher than expected. Anecdotal evidence also suggests that in some areas health assessments are not being completed within the 13 week assessment phase, which has implications for the provision of support services, particularly where these have been contracted out of Jobcentre Plus. Official statistics illustrate that when completed WCA assessments are considered, 68 per cent of claimants were found fit for work and that 34,500 fit for work decisions had been appealed by December 2008 (although only 26 per cent of these appeals had been heard by the end of November 2009)<sup>4</sup>. We do however appreciate that the differences between new and existing claimants are likely to lead to lower proportions of existing claimants being assessed as fit for work. We understand that the Department estimates that this figure will be 23 per cent, but we believe that it is essential that the Department makes contingency plans in the event that the actual proportion is significantly more than expected, which we think is a very possible scenario.

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<sup>3</sup> Macmillan Cancer Support and Citizens Advice (2009) Failed by the system: why the Employment and Support Allowance isn't working for people living with cancer Pearlman, V. and Royston, S. (2009) CAB Briefing Paper – Limited Capability: CAB evidence on the first year of employment and support allowance administration

<sup>4</sup> [http://research.dwp.gov.uk/asd/workingage/esa\\_wca/esa\\_wca\\_19012010.pdf](http://research.dwp.gov.uk/asd/workingage/esa_wca/esa_wca_19012010.pdf)

## ***Work Capability Assessment – outcomes and impacts on claimants***

4.25 We are concerned about the consequences of the imposition of the Work Capability Assessment (WCA) on IB claimants, and in particular what will happen to those who fail a test that is intended to be more rigorous than the Personal Capability Assessment for IB. Failing the WCA will have an impact both on individual claimants and on Jobcentre Plus/providers. It is a matter of major concern amongst the welfare community, and a main theme of the responses to our consultation considered at section 5 below, that the standard of assessment is not always good enough, especially for people with mental health and cognitive difficulties. A recent report published by DWP indicates that this concern is also shared by Jobcentre Plus staff. In particular, advisers expressed concern at “the perceived stringency of the WCA”, and the “unexpectedly severe health problems” of many customers in the activity group.<sup>5</sup>

4.26 The consequences of migration will be difficult for many customers, especially those moving to an active work focused regime and onto Jobseeker’s Allowance (JSA) and, as discussed above, we encourage the Department to focus strongly on ensuring that the right support is in place before any migration is attempted. Claimants are likely to feel impacts on their health and financially. It is therefore important that the Department communicates the proposed changes clearly to customers, particularly those who would be financially worse off following the proposed migration (those moving to JSA or off benefit). We have observed that the Department’s communications strategy for the introduction of ESA did not achieve the hoped for levels of public awareness and understanding (and our respondents have pointed to ESA continuing to be poorly understood). The proposed migration poses as great a communications challenge, and the Department and its partners and providers will need to find more effective ways of getting key messages across to a group that may not have access to, or be responsive to, mainstream information channels.

4.27 We understand that the Work Capability Assessment is currently under review, focusing particularly on whether the WCA is accurately identifying individuals for the most appropriate support and accounting for adaptation. We keenly await the findings and recommendations from the review, which we understand are expected later this year. We are disappointed, however, that the roll-out of migration to ESA will go ahead before any revisions to the WCA will have been implemented. As we have noted above, the uncertainties around the future development of ESA do not make for the necessary stable platform for the migration of claimants from existing incapacity benefits.

## **5. Summary of Responses to the Consultation**

5.1 In response to our consultation respondents focused upon a number of key areas of the proposed regulations. As we have done, respondents identified transitional issues and questioned the wisdom of the migration per se.

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<sup>5</sup> Barnes, H. et al (2010) Employment and Support Allowance: Early implementation experiences of customers and staff. DWP RR631



5.2 Respondents welcomed the transitional protection for claimants migrated to ESA (and the associated HB/CTB additions), particularly with regard to streamlining the migration process. A number of respondents also welcomed the gradual alignment of benefit rates. The treatment of Occupational and Private Pensions as detailed in the regulations was also welcomed. One respondent welcomed the HB additions, which ensure that changes to income will not affect transitional protection, thus avoiding a work disincentive affect.

5.3 However, many respondents are greatly concerned about the minority of claimants who will not have their overall income protected. Respondents are also concerned that many vulnerable claimants (particularly those with mental, cognitive and learning difficulties) will fail the WCA and be forced onto a JSA regime that is unable to support them. Another respondent highlighted the negative impact that uncertainty and upheaval can have on the most vulnerable customers. This deep concern about the emotional and health impacts of migrating long-term recipients of incapacity benefits onto a more active benefit (and potentially onto Jobseeker's Allowance or off benefits altogether), informed a majority of the responses.

### ***Implementation and administration***

5.4 A substantial majority of respondents to the consultation questioned the wisdom of extending ESA to existing claimants of incapacity benefits at a time when problems with the current ESA regime have yet to be ironed out. In particular, respondents pointed to evidence regarding administrative problems (including the backlog of appeals), specific problems with the WCA, and the lack of substantial evidence on the implementation and impact of ESA (including evidence commissioned by DWP). Respondents felt that there is a risk that the policy will serve mostly to move vulnerable claimants off benefits, rather than to help support them into work. Citizens Advice reported that both evidence and informal feedback from bureaux staff and clients indicates widespread concern about the way ESA is currently operating. Mind (Croydon) highlighted that ESA has been particularly problematic with regard to the treatment of claimants with mental health issues.

5.5 A number of respondents share the Committee's concerns about the proposed timescale for implementation, fearing that it is unrealistic and will have negative impacts on claimants, intermediaries and Jobcentre Plus. Mind highlighted that they are keen to receive further details about the trial, particularly who will be included in the trial and how and when they will be informed about the change.

5.6 Responses from the welfare rights community, including the Action Group and Durham County Council's Welfare Rights Team, highlighted the importance of advice agencies in supporting vulnerable claimants. Respondents are concerned that the Explanatory Memorandum did not address funding for the independent advice sector, which is already dealing with a rise in caseload with regard to ESA for new claimants at a time when its funding is being reduced. Respondents are concerned about the caseload implications of the proposed new regulations, the timetable for conversion and the associated funding implications for the advice sector.

5.7 Respondents suggested a number of refinements to the regulations. For example, some (including CPAG and the Action Group), welcomed the fact that conversion decisions will not take effect immediately. However, they suggested that additional time should be allowed between the effective date and the termination of entitlement for cases that will not be migrated to ESA (to allow time for alternative benefit claims to be processed). In addition, respondents suggested that claimants being *uprated* by ESA migration should not have their benefit uprating delayed by the effective date. Respondents also felt that it would be sensible for those appealing to remain on their existing benefit until their appeal has been determined. RNIB raised concerns about the permitted work rules in ESA. IB/SDA clients who are currently exempt from the PCA can carry out permitted work for an unlimited period. However, when these clients are migrated to ESA, permitted work for those not in the support group will be restricted to 52 weeks. The RNIB suggest that transitional protection is extended to support such cases, at the very least to allow those currently in permitted work to retain eligibility for the first 52 weeks after migration to ESA.

#### ***Potential losers – tax, tax credits and passported benefits***

5.8 A large number of respondents, including the Low Incomes Tax Reform Group (LITRG), raised great concern about the lack of income protection for certain claimants of long-term incapacity benefits with regard to tax liability, tax credits and passported benefits. We set out our own views on this issue in some detail (see paragraphs 4.5-4.11, above). The LITRG were disappointed that transitional tax protection had been removed and advised that HMRC and DWP should fully explore the impact of the regulations on tax credit claimants. They also recommended that ministers should give the same assurances for tax credits as for benefits – i.e. that loss of income should not result from migration to ESA. LITRG calculate that claimants of non-taxable IB migrating to ESA(C) could lose 20% of their benefit through taxation and 39% through withdrawal of tax credits, as well as the potential loss of passported benefits.

5.9 The Law Centre (Northern Ireland) highlighted a separate group of potential losers – claimants whose private income exceeds their child allowance. This group of claimants will lose entitlement to income-related benefits (except Housing Benefit and Council Tax Benefit), which can lead to the loss of passported benefits, including free school meals.

#### ***Potential losers – disabled students***

5.10 The Child Poverty Action Group (CPAG) also raised the issue of potential losers as a result of migration. They are concerned about losses for disabled students on IS who do not receive DLA. Under the proposed regulations such claimants will not be able to claim ESA(IR) and will therefore suffer a financial loss and loss of support as a result of the proposed regulations.

#### ***Effective customer communications***

5.11 A number of respondents highlighted the need for effective communication, not only with customers, but also with a wide range of stakeholders, including HMRC, disability organisations, welfare rights organisations, and Local Authorities,

etc. For example, the LITRG raised concerns about how HMRC will deal with change of tax status and associated impacts on tax credits, e.g. with regard to the erosion of transitional allowances over time. Draft communication materials should be shared with stakeholders, to ensure that the key messages are clearly communicated, correct and complete, and the information materials need to meet the diverse communication needs of the client group that will be impacted.

5.12 There is widespread concern that despite ministerial assurances, there will be a substantial minority of claimants for whom there will be a drop in income as a result of the proposed migration. Respondents concluded that, should the regulations be implemented as currently proposed, it is essential that any financial impacts are communicated clearly to claimants well in advance of the impact and that appropriate advice and support is provided by the Department.

### ***Support for claimants***

5.13 In line with our own observations, respondents raised concerns generally about the support available for claimants who have health conditions and disabilities and also, more specifically, for claimants who are not entitled to ESA following the WCA. Citizens Advice and Mind, for example, are very concerned that large numbers of people with serious illnesses and disabilities are being found fit for work and moved further away from the help and support needed to move into sustainable work.

5.14 The RNIB raised particular concerns about IB claimants who were found fit for work but who would not be entitled to claim JSA. This would apply to claimants whose income (for example from savings or a partner's income) exceeded the applicable amounts for JSA(IB). It is unlikely that this group of claimants would be entitled to JSA(C), by virtue of the contribution conditions. They would therefore be denied the support available through the JSA regime, whilst also suffering a financial impact as a result of migration. RNIB suggests that additional transitional protection should be introduced, enabling the contributions that entitled an individual to claim IB to be treated as entitlement to JSA(C).

5.15 Whilst respondents broadly support government aspirations with regard to moving claimants who have been incapable of work back into work, they are of the view that the proposals fail to acknowledge the significant adjustments (practical, emotional, financial and health related) that migration will entail for many of the client group affected. The RNIB felt that the Explanatory Memorandum failed to recognise the severe impact that the loss of IB would have on claimants and are concerned about the advice and support that will be available.

5.16 Respondents are concerned about a number of practical considerations. For example, the Action Group felt that the level of assistance required to support the most vulnerable customers through the claim process had been underestimated. Vulnerable customers need practical and face-to-face support and often encounter difficulties when confronted by the automated telephone service or the on-line application processes preferred by Jobcentre Plus.

5.17 A number of respondents also highlighted the support needs of customers with mental health and learning difficulties placed on JSA. For example, Citizens Advice noted the experience of clients who are not able to cope with the practicalities of signing on. The Law Centre (NI) raised an associated risk of non-compliance leading to sanctions being applied to the most vulnerable customers. Advice agencies, including Citizens Advice and the Action Group, also highlight anecdotal evidence of 'cycling' between ESA and JSA; claimants who are disallowed ESA are being advised by Jobcentre Plus that they are too ill to work and that they should reapply for ESA, rather than claim JSA. This 'cycling' potentially leads to financial hardship.

5.18 The submission from Sheffield Hallam University/The University of Dundee drew attention to the body of evidence which illustrates that many long-term claimants of incapacity benefits are a significant distance from the labour market, requiring in-depth support. The majority of these claimants have no formal qualifications, have been out of work for at least 5 years and face multiple obstacles to work. The evidence illustrates the need for demand-side, as well as supply-side measures to support long-term claimants of incapacity benefits into work.

### ***Work Capacity Assessment***

5.19 The majority of respondents raised serious concerns about the WCA. They were concerned both about the quality of the assessments and the ability of the WCA to accurately assess the impact of health conditions and disabilities on daily life and the ability to work. The WCA is regarded as particularly problematic for those with mental health/learning disability and fluctuating health conditions. The Action Group, who provide a specialist resource for people with learning disabilities, have witnessed first hand the difficulties in navigating the benefits system faced by vulnerable claimants, particularly those who have failed the WCA. A decline in mental health as a consequence of failing the WCA was also flagged as a risk by a number of respondents.

5.20 A number of respondents, including Mind (Croydon), suggested that the Department's original estimate of only 15% of migrated claimants being found fit for work is rather optimistic and they are concerned about the likely impact on the appeals system. Respondents are also concerned about what the higher than anticipated numbers found fit for work under the current ESA regime might mean for the migration of existing claimants.

5.21 Citizens Advice have called for a more personalised approach to the WCA process, taking account for example of age, education and skills. These factors can have a fundamental impact on an individual's capacity for work and hence on the level of support they require.

5.22 Mind drew attention to a number of flaws with the WCA and were concerned that the volume of claimants to be migrated would only exacerbate these existing problems. Case studies and evidence from key stakeholders revealed that assessments are sometimes carried out in open, noisy environments, by staff with little experience of mental health issues and, sometimes, at very short

notice. Mind also highlighted the Work and Pensions Select Committee report on decision-making and appeals in the benefit system<sup>6</sup>, which reported similar concerns about the WCA and the appeals process.

5.23 Several respondents are concerned that the issue of PCA-exempt claimants was not addressed in the regulations. CPAG call for those currently exempt from the PCA to be automatically treated as meeting the conditions for the ESA Support Group. They also recommend that the ESA regulations should provide that anyone who falls within Regulation 10 of the Social Security (Incapacity for Work) (General) regulations 1995 (which provides that people with severe conditions should be treated as incapable of work) should be placed within the support group.

### ***Appeals***

5.24 Respondents are concerned about the length of time it is taking for appeals to be heard and about the financial and associated emotional and health impacts of this for claimants. During an appeal against a 'fit-for-work' decision claimants will be paid the assessment phase rate of ESA, which can mean vulnerable customers facing financial hardship. The Action Group in particular were concerned that the delay in hearing appeals will mean that some claimants may spend a considerable amount of time on a reduced rate of benefit. Although arrears of benefit are backdated after successful appeals, appeals can take some time (the Action Group reported a minimum of 6 months in Edinburgh at the time of the consultation response).

5.25 Respondents are also concerned about the lack of support for claimants during the appeals process. Durham County Council's Welfare Rights Team provides a comprehensive appeals representation service, which has had a positive impact of claimants' success rates at appeal (58% in favour of the claimant in cases advised on and 69% in favour of the claimants where there is active presentation). These figures are much higher than the national figures.

### ***Treatment of Occupational and Private Pensions***

5.26 Respondents are concerned with the important principle that customers should not see a reduction in their overall benefit income solely because of the migration process. They therefore welcome the ongoing protection for certain customers with regard to occupational and private pension disregards. However, they feel that the regulations do not make it clear whether this protection will also be afforded to claimants who are currently protected under the linking rule (i.e. those who had claimed IB after 6 April 2001 but who could link to a claim before 6 April 2001). Respondents also felt that protection should be extended to recipients of the highest rate of the care component of DLA.

### ***Claimants living abroad***

5.27 One of the respondents pointed out that the regulations do not clarify the position for long-term claimants of incapacity benefits living abroad (permanently

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<sup>6</sup> <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmworpen/313/313.pdf>



or otherwise). There are implications both for benefit entitlement and for entitlement to medical treatment (via the European Healthcare Certificate E121) for such claimants. Official statistics show that there are approximately 10,500 claimants of IB under the “living abroad or unknown” location code. This is likely to include claimants who are exempt from the PCA and those who are not. We are seeking clarification from the Department of the proposed provisions for this group.

### ***Housing Benefit/Council Tax Benefit***

5.28 Respondents welcome the regulations which provide for transitional protection to be extended to HB and CTB. However, one of the respondents (the Chartered Institute of Housing (CIH)) was disappointed that the proposed regulations do not alleviate the ‘better off problem’ for couples – where a couple can be disadvantaged (by as much as £30 per week) because the ‘wrong’ member of the couple makes the claim for HB/CTB. CIH note that this problem was created by the introduction of ESA, and is unique to HB/CTB, but could be completely eliminated by further simple amendments to the regulations.

### ***The case for a targeted approach to migration***

5.29 Respondents are keen to recommend that those who are most able to work should be targeted for additional support, and not claimants whose disabilities would make migration difficult. Indeed, when considering the desire to return to work, evidence shows that existing claimants of incapacity benefits are highly differentiated – including by age, length of time on benefits and the degree of health limitation. This provides support for a segmentation approach, which would enable limited resources to be targeted most effectively.

### ***Evaluation***

5.30 A number of respondents are concerned about the lack of evidence to support the policy and do not believe that it is sensible to implement the policy for existing claimants of incapacity benefits without the evidence base to show it will be able to fulfil its aims. Respondents are also keen that DWP commissions research to follow up claimants who fail the WCA, including those who are not eligible for JSA(IB) or JSA(C), and who therefore leave benefit entirely.

## **6. The Committee’s Conclusions**

6.1 We welcome the Government’s continuing commitment to supporting incapacity benefits claimants into work and endorse the Government’s aim of ensuring that the right people are on the right benefit with the right level of support and conditionality. We also welcome proposed migration arrangements that are supported by transitional protection that seeks to minimise the immediate impacts of change.

6.2 However, we believe that the migration arrangements that these proposed regulations would introduce cannot be implemented without the risk of operational stress and adverse impacts on significant numbers of vulnerable people. In our view, the Department should not embark upon the proposed



migration until the well-documented problems with current ESA processes and procedures (including those with the WCA) have been resolved, any changes to the Pathways programme have been implemented and bedded-in, and improvements have been made to the support available for JSA claimants with a health condition or disability.

6.3 It is of particular concern to us that the Department is moving ahead with the migration of existing claimants of incapacity benefits without a solid evidence base for either the decision to migrate or the proposed migration arrangements. We note that the evaluation of ESA for new claimants is not planned to be completed until 2011, by which time the proposed migration arrangements will have commenced.

6.4 We believe that the Department has underestimated the support required by this vulnerable group of claimants, in terms of both their participation in a more active benefit regime and the support required to move them closer to the labour market. With the Pathways model, as currently delivered and targeted, having been found to be largely ineffective, and no alternative yet proposed, we are concerned that the migration will neither be informed by evidence of how ESA is working for new claimants, nor supported by the sorts of services and programmes that these claimants will need if they are to comply with more demanding benefits conditionality.

6.5 In respect of the proposed transitional arrangements, we welcome the number of protections that the Department has incorporated but we do not feel that these go far enough, particularly the transitional protection of tax liability and tax credits, and we strongly suggest that the Department seeks to make arrangements that will ensure that there are no cash losers at the point of change.

## **7. Recommendations**

7.1 We recommend that the migration to ESA does not proceed to the current timetable but waits until:

- a stronger evidence base on what works and whether ESA is achieving its aims is available
- the new regime for claimants with a health condition or disability (as an outcome of the Pathways review) has bedded down
- DWP's review of the WCA is complete, recommendations have been considered and any necessary changes have been made
- demand-side approaches to stimulating the labour market have begun to have a positive impact on local demand for labour, particularly in areas with a high concentration of IB claimants.

7.2 If the migration does proceed as planned we recommend that all of the following conditions must be met:

- (i) The trial of the conversion process (due to start in October 2010) should be extended to six months. This would allow for a fuller test of conversion and would also allow more time for improvements to be made to ESA processes and procedures before migration is rolled out nationally. The results of the trial should fully inform both the processes and timetable for national roll-out.
- (ii) Tax liability and tax credit transitional protection for long-term incapacity benefits claimants (pre-April 1995) should be carried forward into the ESA regime.
- (iii) Improvements must have been implemented to the ESA regime, including: improvements in the speed of processing appeals and in the support provided to claimants who are appealing; enhancing the quality of the WCA, particularly for claimants with mental health problems and cognitive and learning disabilities; and ensuring that enhanced employment support is in place for claimants with a health condition disability at all stages of the claims process and across the benefit regimes.
- (iv) A comprehensive customer information strategy must be in place, allowing complete and accurate information to be very clearly communicated to customers, intermediaries and Jobcentre Plus/HMRC staff. Lessons learned from failures in the communication strategy for ESA for new claims should be incorporated.
- (v) Resources must be deployed more effectively by segmenting the customer group and targeting mandatory support on those closest to the labour market. Migration within the proposed timescale could also be managed more effectively by retaining claimants who are near to State Pension Age (but not yet reaching SPA during the conversion phase) on incapacity benefits. Support for those not migrated could be offered on a voluntary basis.
- (vi) Incapacity benefits claimants currently exempt from the PCA should be automatically treated as meeting the conditions for the ESA Support Group. Claimants who fall within Regulation 10 of the Social Security (Incapacity for Work) (General) regulations 1995 should also be placed in the support group.
- (vii) A full programme of evaluation should be put in place, to include claimants who are found fit for work, and the details of the programme should be shared with SSAC before the evaluation commences.

Richard Tux

## APPENDIX 1

### CASE STUDIES

(1) **Lennie and Angela** have been married for 25 years. Lennie, who is now 61, has been on long term IB with DLA higher rate mobility since January 1995, following a severe accident at work.

Angela works for 30 hours per week for which she is currently paid £13,000 per year.

#### Lennie and Angela's current weekly position

Incapacity Benefit	£91.40	
DLA HRM	£49.85	
Earnings	£209.49	Net of tax and national insurance
Working tax credit	£39.12	
Total	£389.86	

#### Lennie and Angela's position after transfer to ESA(C) in a full year

CBESA	£96.85	
DLA HRM	£49.85	
Earnings	£209.49	Net of tax and national insurance
WTC	£1.45	
Total	£357.64	

**Total loss of weekly income    £32.22**

Assumptions are that:

- Angela's income was higher in the prior tax year when she was full-time so that the tax credits award is based on a current year basis
- Lennie was getting transitional long-term IB which was not taxable. Lennie has no other income so that the change from IB to CBESA does not change his tax position
- Lennie's IB is ignored in working out WTC. However, ESA is taken into account in working out WTC.

#### Lennie and Angela's current weekly position – including housing

Incapacity Benefit	£99.40
DLA HRM	£49.85
Earnings	£209.49
Working tax credit	£39.00
HB	£18.44
CTB	Nil
Total	£416.18

Lennie and Angela's position after transfer to CBESA in a full year – including housing

CBESA	£99.40	This includes a transitional amount of £2.55
DLA HRM	£49.85	
Earnings	£209.49	
WTC	Nil	
HB	£43.79	
CTB	£7.71	
Total	£410.24	
<b>Total loss of weekly income</b>	<b>£5.94</b>	

HB and CTB assumptions –rent of £100/week and council tax of £25/week.

HB/CTB applicable amount is £202.40

Income disregard is £20

Income pre ESA:  $£327.89 - 202.40 = £125.49 \times 65\% = £81.56$   
HB =  $£18.44 \times 20\% = £25.09$   
CTB = Nil

Income post ESA:  $£288.89 - 202.40 = £86.49 \times 65\% = £56.21$   
HB =  $£43.79 \times 20\% = £17.29$   
CTB = £7.71

(2) **Abdullah** has been claiming Incapacity Benefit for five years for chronic low back pain, at the weekly rate of £91.40 (2010/2011 rates). His wife is in full time work. Following migration to ESA he is found not to have limited capability for work under the Work Capability Assessment and that decision is upheld on appeal. He cannot claim either version of Jobseeker's Allowance, as he does not have the right contribution record and his wife is in full-time work. He is **£91.40 a week worse off following migration** and unless he wishes to maintain his contribution record has no incentive to engage with Jobcentre Plus.

(3) **Brenda** has been claiming Incapacity Benefit (on conversion from Invalidity Benefit) since before April 1995 for brain damage from an accident, at the weekly rate of £106.40 including transitional Invalidity Allowance. Following migration to ESA she is placed in the support group and would receive only £96.85, but her benefit is further transitionally-protected by being frozen at £106.40 until ESA catches up. She cannot claim a top-up from ESA(IB) as she owns a piece of land worth more than £16,000 which was left to her.

She is doing supported exempt work for 15 hours a week, for which she earns £90. Her new benefit is taxable, which the previous one was not. Her new taxable income for 2010-11 is £10,212.80 on which she will pay £747.56 a year tax. She is thus **£14.37 a week worse off following migration** (any Disability Living Allowance is not affected by the change.)

**Based on 2010/2011 benefit rates the position on IB is as follows:**

Incapacity benefit	£106.40	Includes a higher rate age addition
Earnings	£90.00	
Income support	Nil	She has too much capital
Annual taxable income	£4,680.00	
Minus tax	Nil	
Total income	£196.40	

**Based on 2010/2011 benefit rates, the position on conversion will be as follows:**

Contributory ESA	£96.85	Includes a support component
Earnings	£90.00	
Income-related ESA	Nil	She has too much capital
Transitional amount	<u>£9.55</u>	
Annual taxable income	£10,212.80	
Minus tax	£14.37	
Total income	£182.03	

**She is worse off by £14.37 a week.**

Calculating the transitional addition (IS to income-related ESA)

Regulation 10

Calculate amount A:  
£106.40

Calculate amount B:  
£65.45 + £31.40 = £96.85

Transitional addition is  $A - B = 106.40 - 96.85 = £9.55$

Calculate tax:

PA = £6,475

20% tax on first £37,000.

$£10,212.80 - 6,475.00 = 3737.80 \times 20\% = £747.56$  divided by 52 = £14.37

(4) **Jim** is claiming incapacity benefit (IB) topped up by income support (IS). He and his partner June have two school-aged children. He has been claiming IS since 2003 so qualifies for allowances and premiums for the children. June gets child benefit. She is in part-time work (less than 24 hours a week) and takes home £175 a week. They are in owner-occupied accommodation and pay council tax of £25 a week.

**Based on 2010/2011 benefit rates the position on IB prior to removal of child additions is as follows:**

Incapacity benefit	£106.40	Includes a higher rate age addition
Child benefit	£33.70	
Earnings	£175.00	
Income support	£95.04	
Council tax benefit	£25.00	They get maximum CTB
<b>Total income</b>	<b>£435.14</b>	

**IS**

IS applicable amount	£102.75	Couple
	£39.85	Disability premium
	£115.14	Child allowance X 2
	£17.40	Family premium
	<u>£115.00</u>	Housing costs
	£390.14	
Minus income	<u>-£295.10</u>	£20 earnings is disregarded
	<b>£95.04</b>	IS payable

**Position on IB after removal of child additions is as follows**

Incapacity benefit	£106.40	Includes a higher rate age addition
Child benefit	£33.70	
Earnings	£175.00	
Income support	Nil	
Child tax credit	£98.67	This is max CTC
Council tax benefit	<u>£8.04</u>	
<b>Total income</b>	<b>£421.81</b>	

**IS**

IS applicable amount	£102.75	Couple
	£39.85	Disability premium
	<u>£115.00</u>	Housing costs
	£257.60	
Minus income	<u>-£295.10</u>	£20 earnings is disregarded
	<b>Nil</b>	IS payable



**CTB**

CTB applicable amount	£102.75	Couple
	£39.85	Disability premium
	£115.14	Child allowance X 2
	£17.40	Family premium
	£275.29	
Income	£360.07	
	<u>- £275.29</u>	
	£84.78 x 20% = £16.96	
CTB	£25.00 - £16.96 = £8.04	

**Based on 2010/2011 benefit rates, the position on conversion will be as follows:**

Contributory ESA	£91.40	Includes a work-related activity component
Transitional amount	£15.00	
Child benefit	£33.70	
Earnings	£175.00	
Child tax credit	£98.67	This is max CTC
Income-related ESA	Nil	
CTB	£8.04	
Total income	<b>£421.81</b>	

**Income-related ESA**

Applicable amount	£102.75	Couple
	£25.95	Work-related activity component
	<u>£115.00</u>	Housing costs
	£243.70	
Minus income	<u>-£155.00</u>	
	£88.70	Income-related ESA

Contributory ESA = £106.40

Income related ESA applicable amount exceeds income by £88.70 (or being generous by £88.70 + 13.90 if there is a transitional addition)

£102.60 - £106.40 = Nil. Therefore not entitled to income-related ESA

**CTB**

CTB applicable amount	£102.75	Couple
	£39.85	WRAC plus TA
	£115.14	Child allowance X 2
	<u>£17.40</u>	Family premium
	£275.29	

Income	£360.07
	– <u>£275.29</u>
	£85.78 x 20% = £16.96
CTB	£25.00 – £16.96 = £8.04

### **Calculating the transitional addition (IB to ESA)**

#### **Regulation 11**

Calculate amount A:  
£106.40

Calculate amount B:  
£ 91.40

Transitional addition is A – B = £15.00

The assumption is that Jim will retain free school meals for his school age children, but will have to apply for health benefits on low income grounds, instead of being automatically passported to these benefits. Moreover, Jim and family will lose access to Social Fund support.

## APPENDIX 2

### LIST OF RESPONDENTS TO THE CONSULTATION EXERCISE (in order of date received)

<b>Organisations</b>	
1.	Sheffield Hallam University/University of Dundee
2.	Citizens Advice
3.	Law Centre NI
4.	Cardiff and Vale Coalition of Disabled People
5.	Citizens Advice Bureaux East Dunbartonshire
6.	Action Group
7.	Low Incomes Tax Reform Group
8.	Durham County Council
9.	Chartered Institute of Housing
10.	Royal National Institute of Blind People
11.	Residential Landlords Association
12.	Child Poverty Action Group
13.	Mind, Croydon
14.	Mind
<b>Individuals</b>	
1.	Keven Hearn
2.	Linda Mercury
3.	Dr Firoze Kerawala
4.	Sandra La Espuelita

## **APPENDIX 3**

### **EXPLANATORY MEMORANDUM**

Gill Saunders  
Secretary  
Social Security Advisory Committee  
The Adelphi  
1-11 John Adam Street  
London.  
WC2N 6HT

18 December 2009

Dear Gill,

#### **THE EMPLOYMENT AND SUPPORT ALLOWANCE (TRANSITIONAL PROVISIONS) (EXISTING AWARDS) REGULATIONS 2010**

In accordance with section 170 of the Social Security Administration Act 1992, I am formally referring the above regulations to the Committee for its consideration.

As you will be aware, the Department introduced Employment and Support Allowance (ESA) for new customers with a health condition or disability from 27 October 2008. At that time there were not resources available to migrate existing customers to ESA.

In the Green Paper 'No one written off: reforming welfare to reward responsibility', published in July 2008 (Cm 7363), the Government set out plans to freeze the benefit of people on Incapacity Benefit with age additions as part of plans to align the rates of benefit with ESA. Following consultation, the Government explained in the White Paper 'Raising expectations and increasing support' (Cm 7506), published in December last year, that it intended to align the rates more slowly and continue to provide increases equivalent to half the normal uprating. This was explained in more detail in Trevor Pendergast's letter to the Committee of 16 January 2009, which concerned the Employment and Support Allowance (Up-rating Modification) (Transitional) Regulations 2008. The modification for these customers came into effect from April 2009.

In the White Paper it was also announced that the Government intended to migrate people on existing incapacity benefits (Incapacity Benefit (IB), Severe Disablement Allowance (SDA) and Income Support on disability grounds) and transfer them to ESA from 2010-2013. It has now been decided that migration will start gradually from October 2010, with full national implementation from February 2011, with a planned completion date by the end of March 2014.

It is intended to convert customers to ESA in the following order:

- Small trial to test that the migration process works from October 2010.
- IB and IS customers from February 2011 onwards.

- SDA customers (once IB and IS claims have been completed).

Customers who receive National Insurance credits only (people who receive neither IB nor IS but are incapable of work) will be transferred to ESA “credits only” after the end of the planned conversion period. Conversion for these customers may impact on the rates of HB and CTB they receive but they are not required to engage with support to help them return to work.

We are taking a number of steps which I believe will make it easier for people to move to ESA and for Jobcentre Plus to administer the scheme. These include:

- No claims will be required for migration to ESA. The process will be triggered by a notice to the customer.
- The date of a customer’s re-assessment will be based on the review date of their Personal Capability Assessment. The Regulations provide that a Work Capability Assessment will be completed once a notice has been issued, to determine eligibility for ESA.
- People who reach State Pension Age during the migration period 2010-2013/14 will not be migrated to avoid having to change benefits twice in a short period.
- Where possible, we will use existing data held for IB/IS to determine entitlement to ESA.
- Claimants who are eligible for ESA will, on conversion, be able to benefit from, and become subject to, ESA rules (e.g. permitted work rules, sanctions).
- We will bring forward IB rules on occupational/personal pensions into ESA on conversion to protect the income of those who otherwise would see a fall in their benefit.
- Decisions on ESA entitlement will take effect from a “safe date” (referred to in the Regulations as the “effective date”) which will fall between two and four weeks after the date of determination, rather than from the day of determination itself, so that claimants can adapt to their new circumstances and continuity of payment can be maintained.
- Existing incapacity benefits will continue to be paid to the day before the effective date.
- Where people who are eligible for ESA receive more on existing incapacity benefits than the appropriate ESA rate, their existing rate of benefit will be frozen (transitionally protected) at the point of conversion and eroded by annual uprating. The regulations also provide details of how transitional additions will end on a change of circumstance.
- Transitional protection will not extend beyond April 2020.

- Where people who are eligible for ESA receive less on incapacity benefits than the appropriate ESA rate, their benefit will immediately be increased to the ESA rate on conversion.
- We will transfer income-related child allowances paid with IS to Child Tax Credit before customers are migrated to ESA. We will use a similar process to that used for lone parents.
- All claims to incapacity benefits after 31 January 2011 will be treated as new ESA claims. There will be no link to earlier claims for incapacity benefits.
- Change to housing costs, for example mortgage interest, will not affect the transitional addition payable with ESA.
- Appeals may be brought against the decision not to award ESA as a result of failure to meet WCA threshold.
- ESA will be paid at the same rate as for new ESA claims where a person is appealing against a decision that they are not entitled because of not meeting the WCA threshold.
- Claimants who are eligible for ESA will, on conversion, be taxed in the same way as existing claimants on ESA.
- We are also taking steps to amend HB/CTB to ensure that no one sees a reduction in their overall benefit income solely because of the migration process.
- We are doing all we can to ensure that Jobcentre Plus will provide local authorities with the necessary information to enable them to adjust HB/CTB as seamlessly as possible.

In order to underpin the introduction of ESA and make sure that back to work help was available to everyone receiving ESA and incapacity benefits, Pathways to Work was rolled out nationwide last year. Customers who are migrated to the ESA work-related activity group will be given support to start preparing for a return to work. In return, customers are expected to engage with the system, and to plan their journey back to work, working with a Personal Adviser. With the publication on 13th October 2009 of the first statistics on the operation of the new medical assessment for Employment and Support Allowance, the Secretary of State announced a review of how Pathways was working. The roll out of the new assessment, and the fact that research published in October 2009 showed no employment impact when Pathways was extended to further Jobcentre Plus areas in 2006, means that we believe it is time to look at ways to improve and adapt the Pathways programme to ensure that incapacity benefits and ESA claimants get more effective help to get into work and manage their condition.

The underpinning principles of our future reforms of the Pathways to Work programme are included in the White Paper "Building Britain's Recovery:



Achieving Full Employment” which was published on 15 December. These principles put an emphasis on clarity of process and customer journey; flexibility and tailoring of support to the needs of the individual; the importance of placing rights and responsibilities at the heart of the relationship between customer and personal adviser; and, value for money. We have already taken some practical steps to improve performance and use resources better. For example, in many places, Jobcentre Plus advisers now conduct the first work focused interviews (WFIs) on providers’ premises and group sessions are preceding individual WFIs. Ministers are considering a range of further proposals including some procedural changes around for example flexibility and timing of work-focused interviews. We will be working over the coming months with interested stakeholders to develop more of the detail and will publish full proposals in the spring. Officials working on the Pathways review would be pleased to meet with Committee members to explain progress and thinking and to hear members’ views. This could either be attendance at full Committee if your future work programme allows, or at a specially convened event for those who would be interested in participating.

At Appendix 1, I attach an Explanatory Memorandum which explains the purpose and effects of the Regulations, which I hope the Committee will find helpful. This also includes an impact assessment at Annex A. I have included a copy of the draft regulations for ESA at Appendix 2, the draft regulations for HB/CTB at Appendix 3, at Appendix 4 is an explanation of the ESA Regulations and at Appendix 5 an explanation of the HB/CTB Regulations.

Whilst the ESA and HB/CTB amendments are presented as separate draft statutory instruments, we intend to combine them for the final package.

I hope this will aid Committee members in their consideration of this change.

Yours sincerely,

**Cath Hamp**  
**Head of Employment and Support Division**

## **APPENDIX 1**

### **EXPLANATORY MEMORANDUM TO THE SOCIAL SECURITY ADVISORY COMMITTEE**

#### **The Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010**

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### **Annexes**

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Annex D – The Housing Benefit Regulations 2006 (SI 2006/213) – Keeling version

## **PART 1 – CHANGES TO EMPLOYMENT AND SUPPORT ALLOWANCE**

### **1. Overview**

The Employment and Support Allowance (Transitional Provisions) Regulations 2008 (SI 2008/795), made under the authority of Schedule 4 to the Welfare Reform Act 2007, provided that, after Employment and Support Allowance (ESA) was introduced, every *new* claim, (apart from claims that linked back to previous claims), for an incapacity benefit<sup>7</sup> in respect of a period which began on or after 27 October 2008 should be treated as a claim for ESA.

These draft Regulations provide for the conversion of existing awards of incapacity benefits (together with customers being awarded national insurance credits only) to ESA.

These Regulations would also be made under the powers contained in Schedule 4 to the Welfare Reform Act 2007 and would provide – the grounds upon which, and the circumstances in which, an existing incapacity benefit recipient's award will be converted to an award of Employment and Support Allowance and the amount of any such award; and would provide, in particular,

- the grounds upon which, and the circumstances in which, an additional allowance (a “transitional addition”) may be awarded to customers, in appropriate cases, to protect the rate of incapacity benefit in payment to them at the point of conversion on a mark-time basis;
- the grounds upon which, and the circumstances in which, the value of such a transitional addition may be eroded; terminated, and resurrected, as appropriate; and
- the decision-making required to effect conversion.

The Regulations are designed to facilitate as smooth a move from incapacity benefits to ESA as possible, and to protect a customer's overall benefit income at the point of transfer by ensuring that no-one who qualifies for conversion to ESA sees a cash reduction in their benefit at the point of conversion.

The draft Regulations would also make consequential amendments to Housing Benefit and Council Tax Benefit provisions also to ensure that no one sees a cash reduction in their benefit – these are set out in Part 2 of this Memorandum.

### **2. Rationale for proposed Regulations**

The Government's aim is to see one million fewer people on incapacity benefits and ESA by 2015, and believes that it is right to ensure that, where appropriate, people are moved closer to the labour market either through looking for work or preparing for a return to work.

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<sup>7</sup> We refer to incapacity benefits here and more generally throughout this memo to mean the following: Incapacity Benefit (IB), Income Support (IS) paid on the grounds of incapacity or disability and Severe Disablement Allowance (SDA).

At the same time, the Government wishes to ensure that the right people are on the right benefit with the right level of support and conditionality; and it wants to ensure that all disabled people and people with health conditions in similar situations are on the same benefit and are treated equally over time.

The conversion of customers from existing incapacity benefits onto ESA, to which the Government committed itself in the White Paper 'Raising Expectations and Increasing Support', published in December 2008, is an integral part of achieving these objectives.

ESA is a more pro-active, work-focused benefit than the older, inactive incapacity benefits it is replacing. It is designed to ensure that people receive the support they need to take up or prepare for work, where appropriate. This supports Departmental Strategic Objective 2, to "maximise employment opportunity for all".

As part of conversion to ESA, customers will undergo the personalised, robust and work-focused Work Capability Assessment (WCA). This will help inform what an individual may be capable of doing now or in the future in order to return to work.

### **3. Background**

ESA was introduced on 27 October 2008 for customers with limited capability for work because of illness or disability. It is intended to replace all existing incapacity benefits (Incapacity Benefit (IB), Income Support (IS) on the grounds of disability and Severe Disablement Allowance (SDA)) as part of a broader set of reforms introduced to make the welfare system more active and work-focused.

The policy intent is for all customers on incapacity benefits or in receipt of national insurance credits-only on the grounds of incapacity to go through the conversion process for ESA, and for the other incapacity benefit schemes (other than for customers over State Pension age in receipt of SDA, **see section 5**) to be wholly wound down following conversion.

This is not the first time that the Government has moved customers from one benefit to another, examples being Supplementary Benefit to IS (1988), Sickness Benefit and Invalidity Benefit to IB (1995) and IS to Jobseeker's Allowance (JSA) (1996). We have taken into consideration the Social Security Advisory Committee's previously stated views about transitional protection as set out in the SSAC 12th Annual Report (May 1997 – March 1999).

With all the previous exercises, however, awards were either converted from a single, common date, or, where awards were merged over an extended period, the old benefits were treated as awards of the new benefit pending application of the new conditions of entitlement. This is not the approach that is proposed on this occasion. Instead, because customers need to first undergo the WCA in order to establish their entitlement for ESA, the Government plans to convert customers on a rolling basis over the period of a pre-determined conversion timetable.

#### **4. Timing**

These regulations provide for conversion to begin from October 2010. The intention is to have a phased start from October 2010 designed to test the conversion process. A small number of cases will be put through a wholly clerical conversion process (i.e. prior to the start of national conversion) to not only provide a limited test of the process but to obtain intelligence on customers reactions and behaviour, and enable any 're-tuning' of the final process.

Thereafter, national conversion is planned to start with the referral of customers to WCAs from February 2011 and is planned to complete by the end of March 2014.

Given the number of customers currently receiving incapacity benefits, conversion on this scale is a very significant undertaking. Almost 1.5 million customers will go through the conversion process, or around 10,000 cases weekly over 3 years.

#### **5. Order**

The order in which cases are converted is not specified in the Regulations. However, it is intended that, under the national conversion exercise, the first customers to undergo the conversion process will be those on IB and IS, followed by customers on SDA, (see Annex B for more detail about SDA). This is because ESA was designed to replace IB and IS. SDA closed to new claims in 2001 and has greater differences with ESA. Conversion for these customers, some of whom will have severe conditions, is therefore likely to be more complex. In order to best ensure a smooth transition for these more complex cases, the Government believes it is better to transfer SDA customers once conversion has been running for some time.

Some SDA customers are already over State Pension age and so it will not be possible to convert them to ESA which is a working-age benefit. Customers who reach State Pension age during the period of the conversion exercise will not be converted to ESA. This avoids requiring them to move benefits twice over a short space of time. They will remain on their existing incapacity benefit until they move to pension age benefits.

Customers who are awarded National Insurance credits on incapacity grounds but do not receive an award of benefit, will be transferred to ESA after the end of the planned conversion period. This is because conversion for these customers is unlikely to impact on the benefit they are awarded and these customers are not required to engage with support to help them return to work. The Government believes that it would not be right to prioritise conversion of a group customers who are not receiving benefit at the expense of those who are.

#### **6. The Conversion Phase**

The necessary preparatory work will take place before conversion begins to ensure that customers are aware of how the system will be changing. We are providing for Jobcentre Plus to be able to engage with customers before they are converted to ESA and while they are still on another incapacity benefit.



As allowances for children do not form part of ESA, people claiming IS who are still receiving increases in respect of their dependent children in the form of Child Dependency Allowances will need to have this support moved to the Child Tax Credit (CTC) system before conversion begins. The regulations specifically provide that all elements of a Child Dependency Allowance will not form part of the calculation of an ESA award following conversion. This will build on the transfer of support to CTC that has been developed for lone parents moving to JSA or ESA as part of the recent lone parent obligations changes, which reduced the age of the youngest child at which lone parents can remain on IS. The transfer to CTC reflects the Government policy since 2003 to transfer all support for children to CTC.

Customers who have private income that exceeds their child allowance may lose their entitlement to income related benefits, other than HB/CTB, all together<sup>8</sup>, although they will continue to receive the same total amount of support as before through the Child Tax Credit system .

In this circumstance a customer will also lose their automatic passport to Housing and Council Tax Benefit, but should remain eligible for the same amount of support.

In some circumstances it may be the case that a partner is already receiving CTC for the same child as the IS customer who is receiving the Child Dependency Allowance. Only one of them will be entitled to CTC and therefore a customer may see a reduction in their income. This is because the couple were being paid twice for the same child which is against government policy as it duplicates provision.

People who receive Child Dependency Increases (CDI) as part of their IB will have these protected as part of their transitional addition. This is because some IB customers are already receiving CTC which cannot be increased further to compensate for the loss of the CDI.

The conversion phase for each customer will begin when they are notified both that they are going to go through the conversion process and that their existing award of incapacity benefit will cease once the conversion phase is over. They will also be informed that they will need to complete an ESA50 questionnaire and potentially undertake a face to face assessment with a health care professional to determine their eligibility for ESA.

The Regulations provide that the Secretary of State will initiate the conversion process for each individual case at any time. In practice, the timing in each case will be determined by the review date for the Personal Capability Assessment that the customer currently has to undergo in connection with their claim for incapacity benefits. This date is set according to the Health Care Professional's prognosis of when a condition may have changed. It may be necessary to adjust the dates to ensure that these are spread evenly over the conversion period.

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<sup>8</sup> If a customer's support for their children is moved from IS to the Child Tax Credits system their applicable amount of IS will reduce. If they have personal income that exceeds the new applicable amount of IS they will therefore cease to have an entitlement to IS.

For the purposes of the conversion exercise, no claim to ESA will be required – an award of another incapacity benefit or credits will be sufficient to trigger the process. Whether any individual award qualifies for conversion will thereafter depend on satisfaction of the basic conditions for entitlement to ESA – in particular, that the customer has limited capability for work.

After the WCA has been carried out, the decision as to whether an award qualifies for conversion to ESA will be made by the Jobcentre Plus decision-maker acting on behalf of the Secretary of State. The decision will be effective from a future date – referred to in the regulations as the “effective date” – which is linked to the actual date of the decision. The effective date will be no less than two weeks but no more than four weeks after the date of the decision.

A customer will remain on their current incapacity benefit(s) until the effective date, at which point their incapacity benefit will end and, if their awards qualify for conversion, they will move to ESA. If their awards do not qualify for conversion, because they have been found not to have limited capability for work, the customer is entitled to claim another benefit. Setting the effective date in the future in each case is intended to smooth the transition from incapacity benefits and help ensure there is no break in payment for any customer.

If the decision-maker decides that the customer does not qualify for conversion to ESA (because they have been found not to have limited capability for work), the customer will have the right of appeal (**see section 12**) to an independent appeal tribunal.

There will be a number of customers who are in receipt of IS on the grounds of incapacity but who concurrently have another ground of entitlement to IS e.g. carers or lone parents. If these customers are found fit for work they will then have the right to remain on IS on these other grounds.

Customers who qualify for conversion to ESA will not have to serve any part of the normal thirteen week assessment phase of ESA that new ESA customers go through before their WCA. They will immediately be placed in either the Work Related Activity Group (WRAG) or in the Support Group (SG), receiving the relevant personal allowance and component from the effective date.

For customers who were previously in receipt of IB or SDA, their benefit will be converted to contributory ESA; if they were previously in receipt of IS, they will be converted to income-related ESA. In the same way as with normal ESA claims, contributory ESA can be paid with an income-related top up.

Subject to HMT agreement, on conversion to contributory ESA from IB, it is planned customers will be liable to income tax on their ESA in the same way as new contributory ESA customers. This will include those customers who have previously received IB with no tax liability, such as former Invalidity Benefit and Sickness Benefit customers.

We estimate that up to 3% (or 50,000) customers could have an increased tax liability. Customers would not lose any benefit as a result, as on conversion benefit levels would be protected. However, they would have to pay on

average an estimated £1000 a year in income tax. These will be customers with the highest incomes, the vast majority of whom are already liable for tax and have other sources of income that take them over the £6,475 income tax threshold.

## **7. Back to Work Support**

Those customers who are found to have limited capability for work and placed in the WRAG will be required to attend Work-Focused Interviews (WFIs). The Government intends that those converted to ESA receive personalised support to help them prepare for a return to work

Customers who are placed in the support group will not have any requirements placed on them but are free to take up the help available to the work-related activity group on a voluntary basis.

## **8. Treatment of Occupational and Private Pensions**

Currently customers who claimed IB or SDA before April 2001 or are entitled to the highest care component of Disability Living Allowance do not have their benefit reduced if they have occupational pension or private income. In contrast ESA customers have half of any occupational or private pension over £85 per week deducted from their benefit. For example a person with a pension of £100 a week, would have their ESA reduced by £7.50 a week. Anyone who currently benefits from the existing provision that disregards any occupational or private pension in their award of IB or SDA will *continue* to have this ignored when they transfer to ESA.

## **9. Transitional additions**

The structure of ESA and its rate of allowances vary significantly from each of the incapacity benefits it is replacing – IB recipients, in particular, if they receive additions for dependants, can currently receive higher rates than ESA customers.

Ministers have committed on several occasions that no existing incapacity benefit customer will see a cash reduction in their benefit on conversion to ESA.

In moving both to protect the amount of benefit paid to existing customers at the point of conversion, and to deliver the same amount of financial support to all over time, our strategy is based around two general principles:

- where, at the point of conversion, people receive *more* by way of incapacity benefit than they will by way of ESA, their existing benefit awards will be frozen and they will be awarded additional allowances on a transitional basis – “transitional additions” – (equivalent to the shortfall between the two rates) until the rate of ESA payable catches up; and
- where they receive *less* by way of incapacity benefits than they will by way of ESA, their benefit will immediately be increased to the ESA rate payable.

The rules relating to the administration of the transitional additions are designed to be as simple, straightforward and as accessible as possible, for customers and staff alike, minimising the need for complex IT solutions and clerical interventions.

After conversion, the Government will continue to apply the normal ESA rules for taking income (including part-time earnings) and changes in income into account within the ESA assessment, but changes in income will not affect the transitional addition itself. This will help to avoid penalising people for a temporary change in their income, or discouraging partners from working part-time. Not taking into account changes in income in the transitional addition will also avoid complex recalculations of the transitional protection figure if income fluctuates frequently; and it significantly simplifies the specifications required to develop the supporting IT systems.

## **10. Erosion of the transitional addition**

The intention is to ensure that all disabled people and people with health conditions in similar situations are on the same benefit and are treated equally over time. The Regulations therefore provide for the erosion of the transitional addition in specified circumstances, with a view to aligning the rates of benefits payable to new and converted ESA customers over time.

For customers on income-related ESA, the transitional addition will be eroded by an amount equivalent to any increase in the customer's applicable amounts. This might apply most commonly at the annual uprating, for example, or where a partner joins the household. Similarly, for customers on contributory ESA, the transitional addition will be eroded by any increase in their applicable amounts (e.g. at uprating). Eroding a customer's transitional addition by any increase in their ESA applicable amounts means that the customer may see no change in their benefit income as a result of uprating, until the value of the transitional addition has been reduced to nil. Other changes of circumstance will affect their ESA awards in the normal way.

Similarly, for customers on contributory ESA, the transitional addition will be eroded by any increase in their ESA rate (e.g. at uprating). Additionally to avoid carrying on paying customers on contributory ESA amounts of benefit to which they would not have remained entitled had they remained on incapacity benefits, the transitional addition will also be eroded in the circumstances where, prior to conversion, the customer was in receipt of an increase of benefit for an adult or child, and, subsequent to conversion, the adult dependant dies or separates from the customer, or the customer ceases to be entitled to child benefit for the child.

In these circumstances, the customer will see a drop in their income: their transitional addition will be reduced by an amount equivalent to the amount of the Adult Dependency Increase (ADI) or Child Dependency Increase (CDI) in payment at the point of conversion.

To prevent a duplicate award from public funds, the transitional addition payable in contributory ESA cases will also be eroded when the customer's partner becomes entitled in their own right to a social security benefit at a rate

equivalent to, or more than, the amount of the ADI in payment at the point of conversion. Again, in these circumstances, the customer will see a drop in their income.

When a customer no longer satisfies the basic conditions of entitlement to ESA, including for those on income-related ESA where their partner commences full-time work, their transitional addition will end. The ESA linking rules will apply in this circumstance (**see 11.2**).

The transitional addition will no longer be paid in the circumstances where it erodes to nil. Finally no transitional additions will be paid from 6 April 2020. This is intended to strike a balance between smoothing the transition to ESA and removing the need to administer transitional additions for a long period after conversion. By this time we only expect around 5,000 customers to still be entitled to a transitional addition, most of whom will have been in receipt of an ADI. Removing transitional additions from this date aligns with the removal of ADIs from State Pensions, Carer's Allowance and Maternity Allowance.

## **11. Suspension of transitional addition: linking Rules**

It is important to remove financial disincentives that deter or prevent customers and their partners from entering work, whether part-time or full-time. We are therefore providing a safeguard against the potentially adverse effects of trying work.

Where a customer's partner takes up full-time work and as a result the customer's ESA ends, any transitional addition in payment at the time will be treated as suspended. If the partner's circumstances change and the customer becomes entitled to ESA again within 12 weeks of the end of the previous award, the transitional addition will be restored at the same rate as it would have been payable at, had they not left ESA.

Where a customer ceases to have limited capability for work and then re-claims ESA within 12 weeks, or within 104 weeks where they were engaged in work or training in the interim, their transitional addition will be restored at the same rate it would have been payable if they had not left ESA.

## **12. Appeals**

There will be a single appeal right covering the outcome of the whole conversion process, both the termination of the incapacity benefit award and the decision on ESA entitlement.

If a customer does not satisfy the criteria of the WCA and appeals, they may be awarded the equivalent of the ESA assessment phase rate until the appeal is heard. This is the same as for current ESA customers who appeal against the decision that they do not have limited capability for work. There are no reliable estimates at this stage for the numbers likely to appeal because the ESA appeal rates have not yet reached a steady state.

An appeal could take some time and while, if a customer is successful at appeal they will have their applicable amount of ESA backdated, they may be on the lower assessment phase amount for some time during the appeal.

It is possible for a customer to elect to claim JSA or IS on other grounds during their appeal. In this case they will not be awarded the ESA assessment phase rate as they cannot receive two benefits at the same time.

If the customer were previously on IS and continues to satisfy another condition of entitlement to IS, they will be entitled to remain on IS, subject to the withdrawal of the disability premium, where appropriate.

In the event of a successful appeal, ESA will, of course, be awarded: the customer's entitlement to a transitional addition (if any) will be calculated and backdated to the effective date. If their appeal is unsuccessful their award of ESA will be terminated from the date of the tribunal's decision and just like existing ESA customers they will need to consider what other benefits they may wish to claim.

The Government recognises that although people have been found fit for work they may still have health issues and intend to make the transition to JSA as smooth as possible. The refreshed Jobseeker's Allowance regime and Flexible New Deal are designed to offer personalised, tailored support to customers. This includes the needs of customers with a health condition or disability who will get more intensive support as they progress through their claim to help overcome related barriers to work. They may restrict their availability for work provided those restrictions are "reasonable" given their condition, be fast-tracked to the point in the customer journey where additional support becomes available and receive specialist disability services from the Disability Employment Adviser network.

### **13. Compliance with the conversion process**

In order to achieve conversion from incapacity benefits to ESA there are certain things that the customer will be required to do. Specifically, they will need to complete the ESA50 and, where necessary, attend a face-to-face interview with a health care professional. If a customer fails to do these things without good cause, subject to the existing safeguards in the Employment and Support Allowance Regulations 2008, a decision that they are treated as not having limited capability for work will be issued and their existing incapacity benefit(s) will cease from the effective date (**see section 16**).

A further safeguard to this is that if, subsequent to a decision that the customer has failed without good cause to engage with the conversion process, they satisfy Jobcentre Plus that they did, after all, have good cause, their benefit will be restored in full and the conversion process will resume.



## **PART 2 – CHANGES TO HOUSING BENEFIT AND COUNCIL TAX BENEFIT**

### **14. Regulations that would be amended**

The draft regulations would also amend the:

- Housing Benefit Regulations 2006 (SI 2006/213);
- Council Tax Benefit Regulations 2006 (SI 2006/215); and
- Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (SI 2001/1002).

The amendments would ensure that the income of customers will not reduce, for example, if HB/CTB entitlement would reduce because it interacts differently with ESA than with the other incapacity benefits. Examples showing how the amendments work are included at **Annex C**. A Keeling version of the relevant provisions showing the effect of the proposed amendments is at **Annex D**.

### **15. Background – structure of ESA and interaction with HB/CTB**

The HB/CTB applicable amount is formed of a personal allowance for the customer, (and partner and children, where appropriate) and any appropriate premiums. It is used in the income test which determines how much HB/CTB can be paid. The higher it is the more help that can be given towards rent and council tax. If a customer's income is the same as or less than their applicable amount they are entitled to full eligible HB/CTB.

For pre-existing incapacity benefits customers, if they are in receipt of HB/CTB, a Disability Premium is a part of the applicable amount which is used in assessing how much HB/CTB can be paid. The premium is currently worth £27.50 (single customer) and £39.15 (couples) a week.

Existing HB/CTB customers may also receive an Enhanced Disability Premium (EDP) where they are entitled to the highest rate of the care component of Disability Living Allowance (DLA).

Income-related ESA (ESA(IR)) and contributory ESA (ESA(C)) are normally payable in two stages, an initial assessment phase for which a basic amount is awarded, and a main phase when an additional amount is awarded. This additional amount is either the work-related activity component or the support component, worth £25.50 and £30.85 a week respectively. The EDP will also be awarded in ESA(IR) where the customer is entitled to the support component.

On the introduction of ESA, the structure of HB/CTB for ESA customers was amended so that it reflects that of ESA(IR) The relevant component forms part of the HB/CTB applicable amount and the Disability Premium does not. Also, customers entitled to the support component are entitled to the EDP, if it has not already been included in the HB/CTB applicable amount via the DLA route.

As the Disability Premium rates (£27.50, single/£39.85 couple) are higher than the ESA work-related activity component (£25.50), customers entitled to that component following conversion would have a lower applicable amount than they had prior to conversion, and their total benefit income could reduce, if legislation is not amended to restore the level of the applicable amount.

## 16. The effects of conversion on HB/CTB

Existing HB/CTB customers who previously were receiving IS, and receive ESA(IR) following conversion **will continue to get full eligible (passported) HB/CTB**. Customers who were receiving IB/SDA without an IS top-up who become entitled to ESA(IR) will also be entitled to passported HB/CTB.

For HB/CTB customers entitled to standard HB/CTB, existing HB/CTB legislation means that once customers convert to ESA, the Disability Premium can no longer be included in the applicable amount, but a component must be. The effect on HB/CTB entitlement depends on which ESA component is awarded. For example:

- (i) where customers get ESA(C) only their HB/CTB applicable amount, and hence their HB/CTB, would **reduce** if they get the work-related activity component as it is lower in value than the Disability Premium;
- (ii) HB/CTB would also **reduce** if customers were placed in the ESA assessment phase pending outcome of an appeal against a decision that they are not entitled to ESA, as their applicable amount would no longer include a Disability Premium, and a component could not be added to the applicable amount;
- (iii) if the support component were awarded, customers' HB/CTB applicable amount would increase and so HB/CTB would often **increase**. This is because the support component has a higher value than the Disability Premium for a single customer, and it also brings with it entitlement to the EDP. The amounts in combination are higher than the Disability Premium, single or couple rate;
- (iv) if the support component were included in the applicable amount but the customer previously qualified for the EDP via DLA, HB/CTB would be likely to **reduce**, although overall the customer would be better off because the increase in their ESA compared with their IB will be greater than the reduction in HB/CTB – see paragraph 25.1.

There are seven illustrative examples in **Annex C** showing when customers could be better or worse off and the effects of protecting the HB/CTB applicable amount.

## 17. Proposed HB/CTB amendments

### ***HB/CTB customers entitled to ESA(IR)***

As mentioned in para 16.1 above, where customers are converted to ESA(IR), they would be entitled to full eligible HB/CTB.

### ***HB/CTB customers not entitled to ESA(IR)***

For all other converted cases, local authorities would recalculate the HB/CTB applicable amount, thereby adjusting HB/CTB to reflect the interaction with ESA structure. They would then compare the pre and post-conversion applicable amounts. Where the post-conversion applicable amount would be higher than the pre-conversion level they would apply the higher amount immediately. However, to prevent a reduction in overall benefit income, where the post-conversion applicable amount would be lower than the pre-conversion level, they would add a transitional addition to the post-conversion applicable amount to make up the shortfall.

The comparison of pre and post-conversion applicable amounts enables the local authority to make a straightforward adjustment in all cases even where there are other changes, for example in rent levels.

Whilst this would not prevent a reduction in HB/CTB where ESA is higher than IB, it would ensure no one's overall benefit income would reduce.

### **18. The amount of the transitional addition**

Using 2009/10 rates, the transitional addition would in the majority of cases be £2.00 a week for single customers (the difference between the Disability Premium (£27.50) and the work-related activity component (£25.50)) and £13.65 a week for couples (the difference between the couple rate Disability Premium (£39.15) and the work-related activity component (£25.50)).

#### ***Amount of the transitional addition for customers who appeal against a decision that they are not entitled to ESA***

The transitional addition would also be at a higher level where a customer appeals a decision not to convert an existing benefit to ESA. In such circumstances, the customer would be treated for ESA purposes as if the appeal were against a decision made on an ESA claim that the customer did not have limited capability for work. This would provide the customer with the basic amount but no transitional addition. However, the HB/CTB applicable amount would be protected to align the provisions with existing provisions for customers whose IB ceases because they do not satisfy the Personal Capability Assessment.

On resolution of the appeal the HB/CTB would be reviewed in line with that decision. If the customer wins the appeal and ESA(IR) is awarded from the effective date of conversion, full eligible passported HB/CTB would also be awarded from the same date.

If the customer wins the appeal, and main phase ESA(C) is awarded from the effective date of conversion, they will also be awarded, where appropriate, any transitional addition to protect the rate of incapacity benefit in payment immediately prior to conversion. Local authorities would mirror this procedure for HB/CTB. From the same date they would recalculate the applicable amount, awarding the main phase personal allowance, the relevant component and any relevant premium and a transitional addition where this revised applicable amount is less than the pre-conversion applicable amount.

Winning the appeal may mean that HB/CTB has been overpaid for the period pending the appeal hearing. However, the equivalent situation can currently occur where a customer is in receipt of IB and fails their Personal Capability Assessment. Where this happens they generally claim IS and get full eligible HB/CTB. If they win the appeal they are entitled to arrears of IB which could extinguish entitlement to IS. The local authority would attribute the award of IB over the past period meaning an overpayment had occurred which would be recoverable from the customer.

#### **19. The effective date of the conversion change**

Except for cases converting during the up-rating period (see paragraph 21.1 below) ESA conversion would take effect in HB/CTB from the day the decision to convert to ESA takes effect.

If there are other changes of circumstances occurring in the same benefit week but not effective on that same day, these would take effect as they usually would in accordance with normal change of circumstance provisions. They would not affect the calculation of the transitional addition in HB/CTB. This would ensure transitional addition would be neither inflated nor deflated as a result of changes of circumstance which would have nothing to do with ESA conversion, and is consistent with the approach being adopted in ESA itself.

#### **20. Other changes of circumstances effective on the same day as conversion**

Where other change(s) of circumstances that would affect the applicable amount are effective from the same date as conversion, the pre-conversion applicable amount would be based on the amount that would apply to the customer on the day of conversion, had the claim not been converted to ESA. The post-conversion applicable amount would also take into account the change that had happened on the day of conversion.

**Example** – single customer, partner joins the household and the effective date of the change is 6 June 2011. Customer converted to ESA with effect from 6 June 2011. The pre and post-conversion applicable amount would include the partner.

This would ensure that other changes would not inflate/deflate any transitional addition. We have attempted to provide for a means of protecting overall benefit income that is as simple, straightforward and understandable for customers and staff, minimising the need for complex IT solutions.

#### **21. Conversion coincides with the annual uprating of social security benefits**

Under existing provisions, local authorities uprate HB applicable amounts on the first Monday in April, if the rent is payable on a weekly basis, or on 1 April if rent is paid at any other interval. The CTB applicable amounts are uprated on 1 April. Uprated amounts of social security benefits are taken into account as income from the same date, provided the altered rate takes effect in the

period 1-14 April. This means that LAs can combine rent/council tax/ applicable amount/income increases from the same date, thereby removing the need for multiple decisions and amendments to rent/council tax bills.

The same provision would apply where conversion to ESA is effective during the two week uprating period. When comparing pre and post-conversion applicable amounts the local authority would use the uprated amounts in both cases. This would prevent uprating affecting any transitional addition and would reflect the ESA provisions.

## **22. Erosion of the transitional addition**

The transitional addition would be eroded using the same principles and process to be applied to ESA(IR) cases. That is the level would be reduced at a subsequent annual uprating or when a change of circumstances would increase the applicable amount, for example the customer becoming entitled to the support component rather than the work-related activity component.

## **23. Termination of transitional addition**

The HB/CTB transitional addition would end where:

- applying the erosion principles set out in paragraph 22.1 above the transitional addition is reduced to nil;
- whilst remaining entitled to ESA(C), a change of circumstances means the customer is no longer entitled to HB/CTB. For example because their capital increases to more than £16,000 or they no longer have a liability to pay rent or council tax
- the customer moves off ESA onto another benefit, for example contributory Jobseeker's Allowance (JSA(C)) including those who are awarded provisional ESA pending the outcome of an appeal which they subsequently lose. Such customers would no longer have their claim processed on the basis of being an ESA customer.

This would align the procedures with existing HB/CTB rules where, if a customer moves from IB only to JSA(C) and the only reason the Disability Premium was included in their applicable amount was because they had IB, they would lose the Disability Premium in HB/CTB.

- The customer moves off ESA but does not claim any other benefit. This would then be a "standard" HB/CTB claim and the calculation of the applicable amount would be on a non-ESA basis – this would include cases where provisional ESA was awarded pending the outcome of an appeal and the customer loses the appeal.

The customer is in receipt of HB/CTB and still has a transitional addition on 5 April 2020. This provision has been inserted to maintain consistency with the ESA provisions.

## **24. Protection of the transitional addition**

The ESA transitional addition proposals would provide that where the customer leaves ESA for whatever reason and reclaims within 12 weeks, or within 104 weeks where they were engaged in work or training in the interim (“work or training beneficiaries” within the meaning of the ESA Regulations, regulation 148), the transitional addition payable on the earlier claim would be reinstated in the new claim, subject to any reductions in that amount which would have occurred under the erosion rules. The same protection would apply in HB/CTB.

## **25. Cases where no transitional addition is required**

There is a small group of customers who would have a higher applicable amount following conversion but would nonetheless see a reduction in their HB/CTB. These are customers whose applicable amount increases, but the increase in the amount of ESA(C) over their IB is higher than the increase in the applicable amount. There is no provision to protect them as their overall benefit income would be higher on conversion (see example 3 in **Annex C**).



## **PART 3 – IMPACT**

### **26. Impact on Simplification**

The introduction of a Transitional Addition to ESA will add some complexity to the benefit system on a short term basis. However this is necessary to fulfil the Ministerial commitment to safeguard the benefit awards of all customers whose awards qualify for conversion to ESA. Moreover, the conversion of customers from incapacity benefits will over time be a simplification, providing customers with equal financial support and help in returning to work. It will also simplify the administrative process for staff and customers as it will no longer be necessary to maintain dual systems.

Awarding a transitional addition would also initially introduce complexity to HB/CTB for customers converted to ESA. However the proposals would be fair and would mean the appropriate support would be provided to customers at the point of conversion. The calculation of the HB/CTB transitional addition and any erosion would be consistent with ESA thereby reducing complication for customers and for local authority and DWP staff.

### **27. Impact on Operations**

In order to achieve the conversion of incapacity benefits to ESA, some 1.5 million cases will need to be transferred over the period 2010 to 2013/14, around 10,000 cases per week. This is a considerable undertaking for Jobcentre Plus and its contractors. In order to lessen the impact, as much of the work as possible will be automated, particularly around the assessment and payment of benefit awards. For example, systems will re-use existing customer data as far as possible thereby negating the need for re-keying, calculate the appointed 'safe' date when payments will cease for one benefit and start with another, and make comparisons of pre- and post awards of benefit to calculate any transitional additions. Steps are also being taken to increase the medical capacity that is available to undertake the necessary medical assessments.

At the start of the conversion exercise it is estimated that approximately 4,800 full time equivalent Department of Work and Pensions staff will be delivering incapacity benefits. To deliver conversion to ESA between 2010 and 2013/14 approximately a further 700-900 full time equivalent staff will be required. The assumption is that many of the staff recruited during the downturn will be redeployed to support the conversion exercise.

### **28. Support for Local Authorities**

For local authorities to effectively administer the changes and for there to be a seamless transition for customers it will be very important that local authorities are provided with relevant information by Jobcentre Plus. This will include where a customer is to be converted, the date that will happen and the element of ESA to be awarded

- where a customer is not to be converted the date IB/SDA will end and whether any other benefit will be awarded, for example JSA.

We are currently working with Jobcentre Plus colleagues to ensure that the necessary information will be provided by computer systems thereby making the transition as smooth as possible

We are also discussing the allocation of additional funding.

## **29. Impact on Customers**

It is intended that the conversion to ESA will be as seamless as possible for customers. Customer data will be re-used as much as possible, reducing the need for additional customer actions. Safeguards will be in place for those more vulnerable customers who may fail to understand the process or what is happening. Customers should at the end of the process have been converted to ESA without any interruption of payment. Incapacity benefits customers who convert to ESA will gain from a new, simpler, more active benefit as well as a conditionality regime which offers positive intervention and an enhanced level of support. Those who are not eligible for ESA will no longer be entitled to any incapacity benefit from the effective date and will have to claim JSA. Customer enquiries are expected as a result of both a reaction to publicity and from queries regarding their entitlement. Customer enquiries are most likely to be regarding conversion of individual cases, change of circumstances, conditionality, appeals and complaints. The outcomes from the pilot (para 4.1) will influence our understanding on this issue.

## **30. Impact on Customers with regard to HB/CTB**

We expect that of the 1.5 million claims to be converted to ESA during the three year period, around 400,000 would be entitled to ESA(IR) and to passported HB/CTB and around 200,000 would be entitled to ESA(C) and standard HB/CTB. It would be these standard cases that must be reassessed and of these we estimate around 150,000 would require a transitional addition in HB/CTB. As set out earlier in this memorandum, the order of conversion will be based on case type and next PCA review date, meaning the pace of rollout will be even and will not be geographical. Therefore, individual local authorities should not be faced with peaks of work.

## **31. Impact on Communications**

Work is currently ongoing to develop a communication strategy for the ESA regime, including incapacity benefits conversion. Effective communication to staff, customers and stakeholders will play a fundamental role in supporting successful conversion from incapacity benefits to ESA, ensuring that all affected by this policy change have a clear understanding of the processes and actions necessary to support conversion. Our objectives for communication include:

- For customers – to ensure that customers and their representatives and advocates understand what the new ESA programme means for them, how it works, what is going to change for them and when and how they will be affected.

- For stakeholders – to provide wider understanding and assurance that ESA is a safety net, supporting people who cannot work and focusing help on those who can prepare for a return to work.
- For staff – to ensure that DWP and provider staff understand the policy and processes in relation to incapacity benefits conversion and are able to effectively communicate to customers and support them through the conversion process;
- There are a numbers of lessons we've taken from the roll out of ESA that we will apply to this conversion process. Specifically we will not under estimate the amount of customer interaction and support needed to explain the process and to help them navigate through each step of the customer journey. We are also aware of the culture change that is needed to engender the change for both our customers and staff – supporting our customers with messaging around what they can do and work readiness notwithstanding the nature of their incapacity.

### **32. Impact on Legislation**

These draft Regulations would apply the Employment and Support Allowance Regulations 2008 and other legislation with modifications. They also amend the ESA Employment and Support Allowance (Transitional Provisions) Regulations 2008 so as to provide for conversion from incapacity benefits to ESA and the Housing Benefit and Council Tax Benefit Regulations to protect customers' overall benefit income at the point of conversion.

### **33. Diversity and Equality Impact**

See Impact assessment at Annex A

### **34. Child Poverty Impact**

See Impact Assessment at Annex A

### **35. Rural**

See Impact Assessment at Annex A

### **36. Consultation**

The Government originally set out its strategy for helping those with a health condition or disability in its Green Paper '*A new deal for welfare: Empowering people to work*' (Cm 6730) published in January 2006. This made it clear that Employment and Support Allowance would in the first instance, only be for new customers and would not affect those customers who were already in receipt of Incapacity Benefit or Income Support on disability grounds.

In the Green Paper 'No one written off: reforming welfare to reward responsibility' (Cm 7363)<sup>9</sup>, published in July 2008, it was announced that

<sup>9</sup> <http://www.official-documents.gov.uk/document/cm73/7363/7363.pdf>

current incapacity benefits customers would be subject to the new ESA regime. In the consultation paper, 'The Green Paper Consultation: No one written off – reforming welfare to reward responsibility',<sup>10</sup> December 2008, it was noted that most people welcomed welfare reform and recognised that changes needed to be made. The responses to the specific proposal to convert current incapacity benefits customers to ESA centred largely on the proposal that, as part of plans to smooth the transition to ESA IB customers with an age addition would have their benefit frozen until they were converted to ESA. Following consultation, the Government published its response in the White Paper 'Raising expectations and increasing support' (Cm 7506)<sup>11</sup> on 10 December 2008. As a result of the consultation the Government decided to align the rates more slowly by continuing to increase IB by half of the normal uprating from April 2009. The additions will therefore be phased out more gradually than previously planned. The Department wrote to the Committee on 16 January 2009 explaining how it intended to do this as part of the Uprating Order 2009.

Since the White Paper was published consultation has continued with a range of voluntary organisations on request to listen to their concerns in relation to the detailed policy and to consider if, and how, those concerns can be overcome. The main points which have emerged have been concerns about the timing of the WCA following the introduction of the Regulations; use of existing medical information to limit the need for vulnerable people to undertake WCAs and the need to ensure ensuring continuity of payment. There have also been concerns about the impact the WCA will have on eligibility for ESA given the disallowance rate for new ESA customers.

Jobcentre Plus has ongoing consultation with representative organisations through a series of events, including workshops and presentations at existing forums and local meetings. Jobcentre Plus will continue to keep representative organisations informed as operational plans develop.

We are proactively engaging with key stakeholder groups on the detail of these regulations, including meeting with the Disability Benefits Consortium in January 2010, and engaging with stakeholders through regular events such as:

- the DWP Scottish Annual Stakeholder Forum held on 25th November
- the JCP Customer Representative Group Forum held on 9th December
- the DWP Policy Strategy Forum to be held on 17th December
- the Welsh Annual Forum scheduled for January 2010

We have arranged follow up meetings with some of these forums; for example we will meet with stakeholders in Scotland and the Jobcentre Plus Customer Representative Forum again in early 2010. We will also continue to engage with stakeholders on a one to one basis.

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<sup>10</sup> <http://www.dwp.gov.uk/docs/consultationreport.pdf>

<sup>11</sup> <http://www.official-documents.gov.uk/document/cm75/7506/7506.pdf>

The Local Authority Associations are being consulted on the proposals in respect of HB/CTB. This is in addition to the consultation activities in relation to conversion to ESA, more generally.

### **37. Evaluation**

The evaluation of the Employment and Support Allowance is underway and comprises a number of quantitative and qualitative elements. These are designed to provide a comprehensive picture of how the benefit is working and whether it is meeting its objectives. Research is taking place with customers, Jobcentre Plus and Pathways to Work provider staff, and ATOS Origin healthcare professionals delivering the WCA and the work- focused health-related assessments (WFHRA).

The first report of this evaluation, looking at the early implementation of ESA, is due for publication in early 2010. Reports of research into experiences and views of the WCA and WHFRA, a longitudinal survey of ESA applicants, and overall staff and customer experiences are also planned, with completion of the evaluation expected in 2011. We are also considering how to evaluate the conversion of current incapacity benefit claimants to ESA.

## Annex A – Impact Assessment

### Summary: Intervention & Options

<b>Department /Agency:</b> Department for Work and Pensions	<b>Title:</b> Impact Assessment of migration of incapacity benefits customers on to Employment and Support Allowance	
<b>Stage:</b> Implementation	<b>Version:</b> Draft	<b>Date:</b> December 2009
<b>Related Publications:</b>		

Available to view or download at:

<http://www>.

Contact for enquiries:

Telephone:

#### What is the problem under consideration? Why is government intervention necessary?

There are 2.3 million people on incapacity benefits in Great Britain. Many have had little support to get back to work and effectively been written off. This is not only bad for the individual but for the economy as a whole. Without intervention from the government, there is a risk that people who could return to work will remain on benefit and not return to work. The 2008 Welfare Reform White Paper announced an intention to migrate existing incapacity benefits customers to Employment and Support Allowance (ESA) which provides customers with a more active benefit including employment support.

#### What are the policy objectives and the intended effects?

The overarching policy objective is to ensure that people with health conditions are supported and enabled by the benefit system rather than 'written off'. Migration will move people to a more modern, more active benefit with all customers treated equally over time and most financial help for the most severely disabled people. Part of the process of assessing entitlement to Employment and Support Allowance is the Work Capability Assessment (WCA) which is a new and more robust medical assessment that provides an accurate assessment of what an individual is capable of doing.

#### What policy options have been considered? Please justify any preferred option.

1. Do nothing
2. Migrate people from existing incapacity benefits to ESA

This policy objective is to ensure that people with health conditions are supported and enabled by the benefit system to return to work where they can rather than 'written off'. Migration also links into the WCA process which will secure savings. Neither of these would be realised under the "do nothing" option.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? We will evaluate the early phase to inform national migration and we will continually assess using a combination of Management Information and commissioned research.

#### Ministerial Sign-off For Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.***

Signed by the responsible Minister:

.....

Date:



## Summary: Analysis & Evidence

<b>Policy Option:</b> Migration to ESA	<b>Description:</b> Impact assessment of migration of incapacity benefits customers on to Employment and Support Allowance
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		<b>Description and scale of key monetised costs by 'main affected groups':</b> Costs of paying extra benefit to the poorest and most severely disabled people when they migrate. Cost of implementing migration and ongoing costs of administering ESA claims. Costs of paying benefits to those found fit for work moving on to other benefits.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ 288 million	5	
	<b>Average Annual Cost</b> (excluding one-off)		
	£ 254 million		
			<b>Total Cost (PV)</b> <b>£ 1,268 million</b>
Other <b>key non-monetised costs</b> by 'main affected groups'			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		<b>Description and scale of key monetised costs by 'main affected groups':</b> Benefit savings from those who are found fit for work when they are assessed using the WCA and from alignment of benefit rates. Reduced administration costs from a simplified benefit system.
	<b>One-off</b>	<b>Yrs</b>	
	£ -	5	
	<b>Average Annual Benefit</b> (excluding one-off)		
	£ 417 million		
			<b>Total Benefit (PV)</b> <b>£ 2,087 million</b>
Other <b>key non-monetised benefits</b> by 'main affected groups': There will be a positive employment impact as a result of this policy. There is the benefit of higher economic output from additional employment.			

Key Assumptions/Sensitivities/Risks The number of customers to be migrated and assumptions on the impact of the WCA.

Price Base Year 2009	Time Period Years 5	<b>Net Benefit Range</b> (NPV) £	<b>NET BENEFIT</b> (NPV Best estimate) <b>£ 818 million</b>
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What is the geographic coverage of the policy/option?			Great Britain		
On what date will the policy be implemented?			October 2010		
Which organisation(s) will enforce the policy?			N/A		
What is the total annual cost of enforcement for these organisations?			£ N/A		
Does enforcement comply with Hampton principles?			Yes/No		
Will implementation go beyond minimum EU requirements?			Yes/No		
What is the value of the proposed offsetting measure per year?			£ N/A		
What is the value of changes in greenhouse gas emissions?			£ N/A		
Will the proposal have a significant impact on competition?			Yes/No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?				N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase – Decrease)	
Increase of    £	Decrease of    £	<b>Net Impact</b>	£	

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value
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## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### **PROPOSED POLICY CHANGE**

1. To migrate existing incapacity benefits customers to Employment and Support Allowance (ESA) from October 2010.
2. Employment and Support Allowance was introduced for new customers on 27th October 2008. ESA is intended to be a combined benefit, bringing together the rules from Incapacity Benefit (IB) and Income Support (IS). Currently existing incapacity benefits customers can be on Incapacity Benefit (including former Invalidity Benefit customers), Severe Disablement Allowance and/or Income Support on the grounds of incapacity. By migrating these customers to ESA there will be a single benefit for those out of work due to illness or disability.

### **What is the change in policy?**

3. The Welfare Reform White Paper, "Raising expectations and increasing support: reforming welfare for the future", published in December 2008, set out the intention to transfer all existing incapacity benefits customers to Employment and Support Allowance, using the robust and objective Work Capability Assessment (WCA) as a key assessment tool.
4. Those who are eligible for ESA will automatically have their existing awards migrated to awards of ESA. There will be a higher rate of benefit for some people placed in the Support Group; transitional protection to ensure that no one sees a cash reduction in their benefit while ensuring alignment to ESA rates over time; and personalised support to help those in the Work Related Activity Group move into work.

### **Reason for the change in policy**

5. Many incapacity benefits customers have been on benefits for a long time. Table One shows that 62% of existing incapacity benefits customers have durations of five years or more. These customers have had little support to get back towards work and they have effectively been written off in the past.
6. The government wants to work with people to get them back into jobs and help them stay there which is beneficial for individuals, society and the economy<sup>12</sup>. Many people on incapacity benefits believe that they are unemployable, with no life choices or long-term prospects because they

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<sup>12</sup> The Welfare Reform White Paper, "Raising expectations and increasing support: reforming welfare for the future", published in December 2008

do not think their illness or disability can be catered for in the workplace<sup>13</sup>. However, this is not the case – many people with such conditions are able to take up work, if the right support is in place.

**Table One: Duration of current claims for those on incapacity benefits**

<b>Duration of current claim (days)</b>	<b>Number on incapacity benefits</b>	<b>Share of incapacity benefits caseload</b>
<b>Up to 3 months</b>	12,160	1%
<b>3 months up to 6 months</b>	11,780	1%
<b>6 months up to 1 year</b>	139,110	6%
<b>1 year and up to 2 years</b>	238,030	10%
<b>2 years and up to 5 years</b>	487,980	21%
<b>5 years and over</b>	1,444,430	62%
<b>Total</b>	<b>2,333,490</b>	<b>100%</b>

*Source: Department of Work and Pensions Longitudinal Study May 2009*

7. The Work Capability Assessment (WCA) will ensure people receive the correct benefit. The WCA is a positive assessment that focuses on what a person remains capable of and identifies the help they need to overcome their problems and make a return to work. This will ensure existing incapacity benefit customers will receive the appropriate benefit and support to help them return to work.
8. Also moving to just one benefit for those out of work due to illness or disability will be a major simplification to the benefit system and over time ensure people with the same circumstances are treated equally.

### **Costs and Benefits**

9. The costs and benefits are outlined below;

#### **Costs**

- Administrative costs of migration (for example computer system, staff costs, training) to ensure the policy is delivered successfully;
- Recurring administrative costs to maintain claims on ESA;
- Costs of paying extra benefit to the poorest and most severely disabled people when they migrate including Housing Benefit and Council Tax Benefit;

<sup>13</sup> Katharine N, Davidson J, Sainsbury R 'Provider led Pathways: Experiences and views of early implementation' Department of Work and Pensions Research Report No. 595

## Benefits

- Net benefit savings from those who are found fit for work when they are assessed using the WCA;
- Simplified benefit rates (including benefit savings from rate alignment for incapacity benefits);
- Increased financial support for the poorest and the most severely disabled people;
- Wider benefits of a simplified benefit system, with a single set of rates and rules reducing complexity;
- Increased numbers of people moving towards work and the wider fiscal benefits of people going into work;
- Reduced administration costs from operating just one system of support rather than two.

Economic Costs	Economic Benefits	Fiscal Costs and Benefits <sup>16</sup>	Wider Benefits
One off costs arising from migrating existing customers to ESA (including computer system costs) <b>£288 million</b>	Reduced administration costs from operating just one system of support rather than two of <b>£70 million</b>	Costs of paying extra benefit to the poorest and most severely disabled people when they migrate <b>£160 million</b>	With more disabled people returning to work as a result of this policy there will be individual health benefits
Recurrent administrative costs from migrating existing customers to ESA of <b>£34 million</b>	There will be a positive employment impact as a result of this policy. There is the benefit of higher economic output from additional employment <sup>17</sup>	Net benefit savings from those who are found fit for work when they are assessed using the WCA of <b>£566 million</b>	

<sup>14</sup> Note that reductions in fiscal costs could, in theory, be included both as an economic benefit (to the exchequer) and an economic cost (to the individual who no longer receives out-of-work benefits). The same applies in reverse for policies that involve increases in tax credits/benefits. These would cancel out exactly unless distributional weights were applied, and are not included in the tables to avoid confusion.

<sup>15</sup> A positive employment impact is expected as a result of applying personalised support to those in the Work Related Activity group, but these will be assessed separately. It is also anticipated that there will be a positive employment impact from those being found fit for work when they are assessed through the WCA – either directly or via Jobseekers Allowance. This effect is uncertain and has not been quantified.

Economic Costs	Economic Benefits	Fiscal Costs and Benefits <sup>16</sup>	Wider Benefits
		<p>Net benefit savings from an alignment of benefit rates (including HB/CTB) – net benefit of <b>£369 million</b></p> <p>Net savings from aligning with ESA rules (including permitted work and linking rules) of <b>£7 million</b></p> <p>Furthermore there will be gains from direct and indirect tax from those entering work</p>	

10. All costs and benefits are presented as Net Present Values in 2009/10 prices, and include costs and benefits occurring between 2009/10 and 2013/14.
11. The Economic Impact of the Policy (Net Present Value) is **£818 million** (excluding one-off costs). Positive number represents benefits.

#### Numbers of people affected

12. Table Two shows the breakdown of incapacity benefit customers by benefit type. The majority of customers are on either Incapacity Benefit or Incapacity Benefit and Income support.

**Table Two: The incapacity benefits caseload by benefit type**

Rate of Benefit	No of Customers
IB only	835,000
IB and IS only	894,000
Invalidity Benefit	294,000
SDA only	44,000
SDA and IS	151,000
IB and Pension Credit	116,000
<b>Total</b>	<b>2,333,000</b>

Source: Department of Work and Pensions Longitudinal Study May 2009

13. It is estimated that around 1.5 million customers will be directly affected by migration. This is because since the introduction of ESA in October 2008 there are no new claims to incapacity benefits apart from linked claims. As a result of expected off flows by October 2010, when migration starts there will be around 2 million customers still on incapacity benefits.
14. Anybody who reaches State Pension age (65 for men, 60 rising to 62 for women) during the migration period will not be migrated to avoid potentially having to move benefit twice in a short period of time. This reduces the number to 1.8 million people who will need to be migrated.
15. Finally some people will naturally move off incapacity benefits before they go through migration which means that in total by the end of the process 1.5 million will have been migrated.

### **Work Capability Assessment**

16. The Work Capability Assessment will assign people to the right benefit, with the right support to move towards work. The Work Capability Assessment is a more positive assessment that focuses on what a person remains capable of and identifies the help they need to overcome their problems and make a return to work.
17. There will be three possible outcomes from the Work Capability Assessment;
  - i. Support Group in ESA
  - ii. Work related activity group in ESA
  - iii. Fit for work (not eligible for ESA)
18. Although published statistics<sup>16</sup> on how the WCA is performing for new ESA customers show that 36 per cent of customers have been found fit for work, we estimate the proportion found fit for work will be lower for existing customers going through migration. This is because these customers will have been on benefit for at least two years and many will have already satisfied the Personality Capability Assessment (PCA) so are likely to have a more severe condition relative to new customers.
19. Of the estimated 1.5 million people who will be assessed using the WCA, it is estimated that around 15% will be found fit for work, 65% will be in the work related activity group and 20% of customers will be in the support group. This is based on evidence from those assessed using the PCA and applying WCA descriptors to PCA data to determine the likely numbers in each group.

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<sup>16</sup> Employment and Support Allowance: Work Capability Assessment Statistical Release February 2009



### ***Customers assessed to be in the Support Group***

20. Customers who are placed in the Support Group on migration will be offered personalised support on a voluntary basis. In terms of ESA payable, they will immediately receive the support component; and those on a low income will automatically be entitled to the Enhanced Disability Premium. It is estimated that 65% of those entering the Support Group will gain financially on migration. For the remaining 35% where their current benefit is paid at a higher rate than their ESA entitlement, the amount of their current award will be protected on a transitional basis.
21. Customers who were previously entitled to Income Support and who become entitled to income related ESA will continue to be entitled to maximum eligible Housing Benefit (HB) and Council Tax Benefit (CTB). Customers receiving “standard”<sup>17</sup> HB/CTB who become entitled to income-related ESA will become entitled to maximum eligible HB/CTB. Those who continue to receive “standard” HB/CTB will see an increase in their overall benefit income.

### ***Customers assessed to be in the Work Related Activity Group***

22. Customers who are placed in the Work-Related Activity Group on migration will receive personalised support to help them move towards work. In terms of the ESA payable, they will immediately receive the work-related activity component. As with customers placed in the Support Group, if their current benefit is paid at a higher rate than their ESA entitlement, the amount of their current award will be protected on a transitional basis.
23. Customers who are not receiving income-related ESA (and hence maximum eligible HB/CTB) and as a consequence continue to receive “standard” HB/CTB will have their HB/CTB protected so that they do not see a reduction in overall benefit income.

### ***Customers found fit for work by the WCA***

24. Customers who are found fit for work will have their entitlement to incapacity benefits ended and will be able to claim another benefit or appeal. Based on the outcomes of customers who do not satisfy the Personal Capability Assessment it is estimated that customers who are found fit for work will have the following destinations<sup>18</sup>:
  - 50% move onto Jobseekers Allowance.
  - 20% move on to another benefit (e.g. Income Support, Carers Allowance or re-claim ESA)

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<sup>17</sup> Standard HB/CTB is calculated on the grounds that no other income-related benefit has been awarded because the customer’s income is too high. In such circumstances the amount of HB/CTB will be based on the customer’s family make up, their income and the amount of their rent and/or council tax liability and will usually be less than the maximum.

<sup>18</sup> Based on analysis of destinations observed for those leaving Incapacity Benefit after a Personal Capability Assessment

- 30% move off benefit.
25. The government expects that some customers that are found fit for work will go back into work either directly or via JSA where they will receive intensive support to help them return to work.
  26. Customers who move to income-based Job Seekers Allowance or Income Support will be entitled to maximum eligible Housing Benefit / Council Tax Benefit. Those who are not entitled to any of the other income-related benefits, including those who move into work may continue to be entitled to “standard”<sup>19</sup> Housing Benefit / Council Tax Benefit.

### **Rate alignment**

27. The process to align IB and ESA benefit rates has already begun by uprating IB customers with age additions by a lower amount than the ESA uprating. The cash increase in their overall benefit was in April 2009 half of the Rossi index. As explained in the White Paper “Raising expectations and increasing support: reforming welfare for the future”, this has begun the process of achieving alignment with ESA but more gradually than previously planned. This mitigates any risk of existing claimants being disadvantaged whilst promoting an age neutral regime for the future.
28. Those assessed to move to ESA by the WCA will be either in the Support Group or Work Related Activity Group. Of those moving on to ESA, some customers will have a benefit rate below the appropriate ESA rate. For these cases their benefit rate will be increased on migration to the level of the ESA rate. The government will ensure that no customer whose benefit rate is higher than the ESA rate will experience a cash reduction in their benefit on migration to ESA, by transitionally protecting their existing level of benefit. After that, it will be frozen until the ESA benefit rate catches up so that over time all customers on ESA are treated equally.

### ***Benefit rate increase***

29. Where, at the point of migration, a customer’s current level of benefit is lower than their ESA rate, their benefit will immediately be increased to the ESA rate.

### ***Summary of customers that will see an increase in their benefit rate***

30. Some customers that are assessed to be in the Support group will receive an increase in their benefits. This includes contributory Incapacity Benefit claimants who do not receive additions and many of the poorest customers who receive Income Support. These customers have been assessed to have the most severe conditions.

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<sup>19</sup> Standard HB/CTB is calculated on the grounds that no other income-related benefit has been awarded because the customer’s income is too high. In such circumstances the amount of HB/CTB will be based on the customer’s family make up, their income and the amount of their rent and/or council tax liability and will usually be less than the maximum.

31. Severe Disability Allowance (SDA) customers, who do not receive an income-related top-up to their benefit, receive lower rates of benefit and will gain on moving to ESA.

### ***Transitional protection***

32. Transitional protection will remain in place for those whose current benefit rate is higher than their ESA rate until 2020.

### ***Summary of customers that will have their benefits transitionally protected***

33. In ESA there are no age, adult or child dependency additions. Incapacity Benefit age or adult dependency additions can be up to £70 a week. These dependency allowances will be transitionally protected and these customers will see no cash reduction in the value of their benefit.
34. Those receiving Income Support also receive the disability premium. This is not replicated in ESA. Those moving into the Work Related Activity Group will have a higher existing award than their ESA rate and will be transitionally protected.
35. Couples on Income Support receive a higher benefit rate than under ESA due to the couple rate of the Disability Premium. This is not replicated in ESA. These claimants will be transitionally protected and see no cash reduction in their benefit.
36. The majority of SDA claimants receive an Income Support top up and so are unlikely to see gains on migration to ESA unless placed in the support group. These customers will be transitionally protected.

### ***No change in benefit rates***

37. Contributory Incapacity Benefit customers that do not have additions will see neither any gains or have their benefit rate protected if they are assessed to be in the Work Related Activity Group.
38. In addition some contributory Incapacity Benefit customers receiving lower age additions will also see neither any gains or have their benefit rate protected if they are assessed to be in the Support Group as their benefit rates will already have aligned before migration begins.

### **ESA Rules**

39. Customers, who are eligible for ESA, will, upon migration, immediately become subject to, and able to benefit from, ESA rules when they migrate to ESA.
40. Permitted work allows customers to try work up to a certain level of earnings before they lose their benefits. As part of aligning benefit rules and rates we intend to apply the permitted work rules in ESA to all customers successfully migrating from existing incapacity benefits. For contributory customers the permitted work rules are the same, but people previously

on Income Support paid on the grounds of incapacity will be able to keep £93 per week of their permitted work earnings compared to £20 per week currently. This is in keeping with the work-focussed ethos of ESA and will allow customers to try out work as a stepping-stone to returning to work. We expect there to be a positive employment effect from this measure.

41. Contributory ESA customers and Incapacity Benefit customers who claimed after 2001 have half the amount of any income from occupational pension over £85 per week deducted from their contributory benefit. However Incapacity Benefit and Severe Disablement Allowance customers who claimed benefit prior to 2001 or are entitled to higher rate care component of DLA have any occupational pension fully disregarded. If on migration to ESA we apply ESA rules to these customers, those with occupational pensions over £85 per week could see a significant reduction in their benefit. Therefore to ensure that customers do not see a reduction in their benefit on migration the occupational pensions disregard will be carried forward into ESA for customers who currently have any occupational pension disregarded. This will mean that there will be different rules for the treatment of occupational pension in ESA until there are no customers with an occupational pension disregard remaining on ESA. This will protect the level of benefit for up to 30,000 people.
42. People who were claiming Invalidity Benefit (IVB) and Severe Disablement Allowance (SDA) are not currently liable to income tax on that portion of their income. Following migration to contributory ESA all customers, including those previously receiving tax-exempt Incapacity Benefits, will be liable to income tax on their ESA in the same way as new ESA customers. By the end of the migration period an estimated 50,000 customers will have an increased taxation liability. People migrated to income-related ESA should be exempt from income tax on this portion of their income in the same way as new income-related ESA customers.

### **Support to return to work**

43. Those customers that are in the Work Related activity group will receive support to help them return to work. The requirements to engage with back to work support help will be covered by separate regulations and the costs and benefits will be assessed in a separate impact assessment.

## **EQUALITY IMPACT ASSESSMENT**

### ***Gender***

44. Currently there are 1.35 million men claiming existing incapacity benefits and just under 1 million women. This means that men make up around 58 per cent of the caseload. However this varies by type of incapacity benefit received as shown in Table Three. For example, 62% of contributory Incapacity Benefit customers are men, compared to 50% of SDA customers.

**Table Three: Incapacity Benefits customers by Gender**

<b>Benefit</b>	<b>Men</b>	<b>Women</b>	<b>% Men</b>	<b>% Women</b>
<b>Incapacity Benefit</b>	767,000	468,000	62%	38%
<b>Income Support</b>	482,000	412,000	54%	46%
<b>SDA</b>	101,000	102,000	50%	50%
<b>Total</b>	1,350,000	982,000	58%	42%

*Source: Department of Work and Pensions Longitudinal Study May 2009*

45. As men make up the majority of people on contributory Incapacity Benefit they are more likely to be in receipt of an age addition and adult dependency increase than women. Indeed a higher proportion of all men on IB receive more than £150 per week compared to women.

**Table Four: Incapacity Benefit customers by benefit amount and gender**

<b>IB rate</b>	<b>Women</b>	<b>Men</b>	<b>Women %</b>	<b>Men %</b>
<b>Under £20.00</b>	200	500	0%	0%
<b>£20.00 to under £40.00</b>	200	500	0%	0%
<b>£40.00 to under £60.00</b>	100	300	0%	0%
<b>£60.00 to under £80.00</b>	1,000	2,000	0%	0%
<b>£80.00 to under £100.00</b>	276,000	444,000	59%	58%
<b>£100.00 to under £150.00</b>	189,000	292,000	40%	38%
<b>£150.00 and over</b>	1,000	27,000	0%	4%
<b>Total</b>	469,000	767,000	100%	100%

*Source: Department of Work and Pensions Longitudinal Study May 2009*

46. This represents a risk that rate alignment proposals could disproportionately affect men. However the provision of transitional protection will help mitigate this risk. As men and women represent an equal share of SDA customers, they are equally likely to benefit from the higher benefit rates in ESA for those not receiving an income-related top up.
47. The differing proportions can in part be explained by the unequal state pension ages as, other than SDA, incapacity benefits are working age benefits. However state pension ages are being aligned between 2010 and 2020, and this may help to address the gender imbalance.

## *Work Capability Assessment*

48. Administration of the Work Capability Assessment does entail some risk that customers may be treated differently because of their gender. Individuals may feel vulnerable if required to participate in an assessment carried out by a healthcare professional of the opposite gender, or that their gender makes them exposed to discrimination. In mitigation of the risk healthcare professionals are contractually required to meet all requests for medical assessments to be carried out by healthcare professionals of the same sex on cultural or religious grounds. They must also adhere to all requests for the presence of a third party during assessments. Random samples of customers are provided with feedback forms in which they are able to comment on their assessment and raise any issue of concern. The complaints procedure also provides a mechanism to identify and monitor discrimination. Whilst in general we anticipate no discrimination in the WCA process, all healthcare professionals will receive training on the Gender Equality Duty, which offers an opportunity to raise awareness about gender issues amongst those administering the WCA.

## *Housing Benefit and Council Tax Benefit*

49. Housing Benefit and Council Tax Benefit are available to all the equality groups, regardless of gender.<sup>20</sup> The calculation of the amount of Housing Benefit and Council Tax Benefit is based on a means test and an assessment of eligible rent / council tax. Gender is not considered in the calculation. Approximately 60% of both Housing Benefit and Council Tax Benefit working age recipients are women<sup>21</sup>.
50. Anyone receiving Housing Benefit and Council Tax Benefit at the point of migration will not see a reduction in overall benefit income as a result of migration due to transitional protection in Housing Benefit and Council Tax Benefit. This mitigates the risk that any group will be disproportionately negatively affected. Customers who are entitled to Income Support and who become entitled to income-related ESA will continue to be entitled to maximum eligible Housing Benefit and Council Tax Benefit. We do not expect that the different outcomes will be disproportionately spread across men or women in receipt of Housing Benefit and Council Tax Benefit.

## ***Disability***

51. The reforms to incapacity benefits are designed to help disabled people and people with health conditions move into work, with improved financial support for those for whom preparation to return to work would be unreasonable. As such the policy aims to promote equality of opportunity.

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<sup>20</sup> This is in contrast to certain other benefits which are targeted to those unable to work or those of a certain age group.

<sup>21</sup> Based on three years of Family Resources Survey data (2005/6 to 2007/8). Gender refers to the head of the benefit unit. Working age is defined as the head of the benefit unit being under 60 years old



52. Most incapacity benefits customers are likely to be covered by the Disability Discrimination Act (DDA) and so these reforms have considerable significance for disabled people. The table below shows the distribution of incapacity benefits customers by medical condition, with mental and behavioural conditions being the most common.

**Table Five: Incapacity Benefits customers by medical condition**

<b>Medical Condition</b>	<b>Share of the incapacity benefits caseload</b>
<b>Mental and Behavioural Disorders</b>	43%
<b>Diseases of the Nervous System</b>	7%
<b>Diseases of the Circulatory or Respiratory System</b>	7%
<b>Diseases of the Musculoskeletal system and Connective Tissue</b>	17%
<b>Injury, Poisoning and certain other consequences of external causes</b>	5%
<b>Other</b>	21%
<b>Total</b>	100%

*Source: Department of Work and Pensions Longitudinal Study February 2009*

53. The rates of benefit paid to people on ESA do not vary because of disability. It is the effect of disability that matters. In ESA the most severely disabled people are assisted through higher benefit rates in the support group.

#### *Work Capability Assessment*

54. By using the WCA to assess eligibility to ESA for existing customers, all disabled people and those with health conditions who are out of work will be treated equally. The medical assessment is based on the severity of functional limitation caused by a condition; not on the basis of the condition itself, because different people may be affected in different ways by the same condition. However previous consultation has highlighted concern that those with fluctuating conditions of mental health problems may face undue barriers in receiving their entitlement, representing a potential risk. To mitigate these risks, the WCA has been designed to take account of fluctuating conditions, assessing a customer's capability over time. Unless an individual is capable of an activity that is carried out reliably and repeatedly over a sustained period of time, they are considered unable to carry it out at all. The healthcare professionals carrying out of the assessments also receive specific training on assessing those with mental health conditions. As with all customers, the legal right of appeal remains if an individual feels that they have been unfairly assessed. To mitigate any risk that sanctions may have a disproportionate effect, especially on those with mental health conditions and learning difficulties, there are facilities which allow good cause to be applied by the personal advisor in cases of failure to attend a Work Capability Assessment.

### *Jobseeker's Allowance and Health conditions*

55. The refreshed Jobseeker's Allowance regime and Flexible New Deal are designed to offer personalised, tailored support to customers. This includes the needs of customers with a health condition or disability who will get more intensive support as they progress through their claim to help overcome related barriers to work.
56. Customers on Jobseeker's Allowance with a health condition may restrict their availability for work provided those restrictions are "reasonable" given their condition, be fast tracked to the point in the customer journey where additional support becomes available and receive specialist disability services from the Disability Employment Adviser network.

### Housing Benefit and Council Tax Benefit

57. Housing Benefit and Council Tax Benefit are available to all the equality groups, regardless of disability. The calculation of the amount of Housing Benefit and Council Tax Benefit is based on a means test and an assessment of eligible rent/council tax. The increased income premium and allowances used in the Housing Benefit and Council Tax Benefit assessment are more generous for disabled people, to reflect the additional costs incurred in their day-to-day living expenses.
58. Anyone receiving Housing Benefit and Council Tax Benefit at the point of migration will not see a reduction in overall benefit income as a result of migration due to transitional protection in Housing Benefit and Council Tax Benefit. This mitigates the risk that any group will be disproportionately negatively affected. Customers who are entitled to Income Support and who become entitled to income-related ESA will continue to be entitled to maximum eligible Housing Benefit and Council Tax Benefit. Some of those with the most severe health conditions who are assigned to be in the support group will see an increase in their Housing Benefit and Council Tax Benefit award.

### ***Ethnicity***

59. The rate of benefit paid to people on incapacity benefits or ESA does not vary because of race or culture. There is a low risk that ethnic minorities could be disproportionately affected by the rate alignment measures, as survey evidence indicates that there is a lower proportion of ethnic minorities on incapacity benefits (6%) relative to the working age ethnic minority population as a whole (12%).

**Table Six: Proportion of incapacity benefits customers by ethnicity**

<b>Ethnicity</b>	<b>Incapacity benefits</b>	<b>Working Age Population</b>
White	94%	88%
Ethnic minority	6%	12%

*Source: Based on the Family Resources survey 2007/08*

### *Work Capability Assessment*

60. The Work Capability Assessment (WCA) will not apply differently to people of different races or cultures. The Healthcare professionals carrying out the assessment will neither be provided with, nor ask the customers their ethnicity, thus facilitating uniformity in the application of the assessment to all applicants for ESA irrespective of their ethnicity. However there is a potential risk of racial discrimination on a case by case basis in the course of the assessment itself. The presence of a language barrier may also make it difficult for applicants to convey their health problems and challenges to entering work. In order to mitigate these risks, healthcare professionals will ensure that an interpreter is always available if requested when the appointment is made. Those involved in all stages of the process will receive training on the Race Equality Duty, while a specific training course on multi-cultural awareness is also provided for all new and existing Healthcare professionals undertaking work for the Department for Work and Pensions.

### *Housing Benefit and Council Tax Benefit*

61. Housing Benefit and Council Tax Benefit are available to all the equality groups, regardless of ethnicity. The rules do not distinguish between the ethnicity of the customer. The calculation of the amount of Housing Benefit and Council Tax Benefit is based on a means test and an assessment of eligible rent / council tax. Ethnicity is not considered for the purpose of this calculation but as Housing Benefit and Council Tax Benefit are income-related benefits, we may observe a different pattern for ethnic groups reflecting differences in income levels and benefits take-up.
62. Anyone receiving Housing Benefit and Council Tax Benefit at the point of migration will not see a reduction in overall benefit income as a result of migration due to transitional protection in Housing Benefit and Council Tax Benefit. This mitigates the risk that any group will be disproportionately negatively affected. Customers who are entitled to Income Support and who become entitled to income-related ESA will continue to be entitled to maximum eligible Housing Benefit and Council Tax Benefit. We do not expect that the different outcomes will be disproportionately spread across the different ethnic groups in receipt of Housing Benefit and Council Tax Benefit.

63. For the Housing Benefit and Council Tax Benefit populations as a whole, Table seven presents a breakdown of the working age Housing Benefit and Council Tax Benefit populations by ethnicity. The proportion of people from an ethnic minority on Housing Benefit is similar to the proportion of all renters from an ethnic minority. The proportion of people on Council Tax Benefit from an ethnic minority is slightly higher than the proportion of people with a Council Tax liability from an ethnic minority.

**Table Seven: Proportion of Housing Benefit and Council Tax Benefit customers by ethnicity**

<b>Ethnicity</b>	<b>All working age on HB</b>	<b>All working age renters</b>	<b>All working age on CTB</b>	<b>All working age Council Tax liable</b>
White	86%	85%	84%	89%
Ethnic minority	14%	15%	16%	11%

*Notes: Based on three years of Family Resources Survey data (2005/6 to 2007/8). Ethnicity refers to ethnicity of the head of the benefit unit. Working age is defined as the head of the benefit unit being under 60 years old.*

### **Age**

64. Nearly half of customers claiming incapacity benefits are over the age of 50. This is because older people are more likely to have a disability or health condition and may also reflect labour market factors such as the decline of traditional manufacturing industry. However, this does not mean that they do not want or are unable to work. The government is committed to promoting employment prospects for older people, indeed for people of all ages, with and without health conditions. The proposed measures to increase support to help customers back to work will contribute to this and will work towards meeting the Government's aim of getting one million people off incapacity benefits.

**Table Eight: Incapacity Benefits Customers by Age**

<b>Age</b>	<b>Percentage of incapacity benefit customers</b>
<b>16-17</b>	0%
<b>18-24</b>	5%
<b>25-34</b>	12%
<b>35-44</b>	22%
<b>45-49</b>	14%
<b>50-54</b>	15%
<b>55-59</b>	19%
<b>60-64</b>	12%
<b>Total</b>	100%

*Source Department of Work and Pensions Longitudinal Study May 2009*

65. The amount of incapacity benefits received for existing customers can vary by age as age additions are payable. Under IB age additions are payable after a year of incapacity. There are two rates; £17.10 for those whose incapacity began before the age of 35 and £8.55 for those whose incapacity began between 35 and 45. These additions were originally intended to compensate those whose incapacity began at an early stage in life (for example, the young man very badly injured in a workplace accident), for the potentially high loss of possible future earnings, due to the assumption that they were unlikely to return to work. ESA does not carry forward the additions. After the assessment phase ESA is age neutral. However those receiving age additions within their existing benefit will have the cash level of their benefit protected.

**Table Nine: IB caseload by benefit amount and age**

<b>IB rate</b>	<b>Aged Under 50</b>	<b>Aged 50+</b>	<b>Total</b>
Under £60.00	0%	0%	0%
£60.00 to under £80.00	1%	0%	0%
£80.00 to under £100.00	38%	74%	58%
£100.00 to under £150.00	60%	23%	39%
£150.00 and over	1%	3%	2%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

*Source Department of Work and Pensions Longitudinal Study May 2009*

66. Table Nine shows that customers aged 50 or over are more likely to have a rate of benefit below £100 per week than those aged under 50. There is a risk then that customers aged under 50 may be disproportionately affected by rate alignment. In contrast customers aged 50 or over are slightly more likely to have a benefit rate of £150 per week or more so these customers may be more affected by rate alignment. However transitional protection will ensure those moving to ESA will not see a cash reduction in their benefit income. This will mitigate the risks of different groups being disproportionately affected.

#### *Work Capability Assessment*

67. The Work Capability Assessment will be applied uniformly to individuals from all age groups and we do not envisage any discrimination on these grounds. Any potential risk stems from the possibility of discrimination on a case by case basis in the course of the assessment itself. To mitigate this risk, robust complaints and quality-assurance procedures enable healthcare professionals to be monitored to ensure that age discrimination is not taking place. Decisions on entitlement to benefit are taken by separate decision makers and customers have a right of appeal to an independent appeal tribunal if they do not agree with the decision.

### *Housing Benefit and Council Tax Benefit*

68. Housing Benefit and Council Tax Benefit are available to all the equality groups, regardless of age.
69. For working age customers, anyone receiving Housing Benefit and Council Tax Benefit at the point of migration will not see a reduction in overall benefit income as a result of migration due to transitional protection in Housing Benefit and Council Tax Benefit. This mitigates the risk that any group will be disproportionately negatively affected. Customers who are entitled to Income Support and who become entitled to income-related ESA will continue to be entitled to maximum eligible Housing Benefit and Council Tax Benefit. The different outcomes will be disproportionately spread across the different working age groups in receipt of Housing Benefit and Council Tax Benefit.
70. Cases assessed under the Housing Benefit and Council Tax Benefit provisions for people who have reached the qualifying age for Pension Credit do not receive amounts in respect of disability or ESA components. Therefore no protection is needed for them in Housing Benefit and Council Tax Benefit. Even if their ESA entitlement is higher than their Incapacity Benefit, current rules mean their overall benefit income will not reduce.
71. Table Ten shows the breakdown of working age Housing Benefit and Council Tax Benefit customers by age. This shows that the percentage of people aged 45 or over on Housing Benefit and Council Tax Benefit is higher than the percentage of all renters of this age group.

**Table Ten: Housing Benefit and Council Tax Benefit recipients by age**

	<b>All working age on HB</b>	<b>All working age renters</b>	<b>All working age on CTB</b>	<b>All working age CT liable</b>
Age under 25	13%	21%	11%	19%
Age 25 to 34	21%	28%	19%	21%
Age 35 to 44	26%	23%	25%	23%
Age 45 to 54	20%	16%	21%	20%
Age 55 to 59	9%	7%	11%	10%
Age 60 to 64	10%	6%	13%	8%
Total (aged less than 65)	100%	100%	100%	100%

*Notes: Based on three years of Family Resources Survey data (2005/6 to 2007/8). Working age refers to the head of the benefit unit being aged under 65 years old. In the final column, all households include only those liable to pay council tax.*



### *State Pension age during migration*

72. The government will not migrate people who will reach State Pension age during the migration period (before April 2014). This will ensure that they do not have to change benefits twice in potentially a short period of time. An estimated 160,000 incapacity benefits customers reach State Pension age across the period (11%).

### **Sexual orientation**

73. There is no evidence of and the government does not envisage any unequal treatment on these grounds

### **Religious beliefs**

74. There is no evidence of and the government does not envisage any unequal treatment on these grounds

### **Human rights**

75. There is no evidence of and the government does not envisage any unequal treatment on these grounds.

### **Child poverty impact assessment**

76. Migrating incapacity benefits customers to ESA is intended to reduce poverty by supporting people into work and providing greater support to the most severely disabled. Providing transitional protection will ensure that customers do not see a cash reduction in their benefit, mitigating the risk of rate alignment having an adverse impact on poverty. About one in six of those claiming incapacity benefits have dependent children. The proposals will have a negligible affect on the relative child poverty measure due to the relatively small number of existing claimants with children.

### **Rural impact assessment**

77. No adverse effect is expected on incapacity benefits customers living in rural areas. It is estimated that in England less than 20% of incapacity benefits customers live in rural areas which is less than the proportion for the population as a whole. Customers that have to travel large distances for their Work Capability Assessment will be reimbursed for their travel costs and any additional information required to migrate customers to ESA will be obtained over the phone and by post, mitigating disruption for customers in rural areas.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	Yes	No

## **Annex B – Severe Disablement Allowance**

Severe Disablement Allowance is a non-contributory, non-income-related benefit payable to people aged 16-65 who are incapable of work who did not qualify for Incapacity Benefit. It is paid at a rate of £57.45 per week compared to £89.80 for Incapacity Benefit. This means in many cases that Severe Disablement Allowance has to be topped up by Income Support.

Severe Disablement Allowance was payable to people until April 2001, when it was replaced by the new more generous Incapacity Benefit youth provisions. The new provisions mean that young people aged under 20 (up to 25 for certain young people in education or training) could qualify for contributory Incapacity Benefit, without having to meet the normal National Insurance contribution conditions. Severe Disablement Allowance remained in payment, although it was closed to brand new claims.

There are 244,000 Severe Disablement Allowance recipients of which 203,000 are of working age. It is now planned to migrate these customers to contributory Employment and Support Allowance. However, it will not be possible to do so for those customers who are over state pension age as Employment and Support Allowance is only payable to working age people. Severe Disablement Allowance will therefore continue for people over pension age.

## **Annex C – Conversion from IB to ESA(C)**

There are seven examples that show when customers could be better or worse off when converted to ESA and the effects of protecting the HB/CTB applicable amount.

**Example 1** – single customer where IB is more than ESA(C)

**Example 2** – single customer where IB is less than ESA(C), customer has a pension meaning ESA(IR) is not payable

**Example 3** – Single customer IB less than ESA(C), customer has the highest rate of Disability Living Allowance (DLA) meaning they are entitled to the Enhanced Disability Premium (EDP). Customer also has a pension meaning ESA(IR) not payable

**Example 4** – single customer IB less than ESA(C) customer has pension and Disability Living Allowance

**Example 5** – couple, IB more than ESA

**Example 6** – Couple ESA more than IB, partner has earnings meaning ESA(IR) is not payable

**Example 7** – Couple enhanced disability premium (EDP) already awarded because the customer has highest rate care component of Disability Living Allowance (DLA). The partner is working and is registered as blind (this brings entitlement to the couple rate disability premium)

### Example 1 – Single customer IB more than ESA(C)

<i>Income</i>		<i>HB/CTB</i>	
Long term IB	£89.80	Personal Allowance	£64.30
Age addition	£6.55	Disability Premium	£27.50
<b>Total</b>	<b>£96.35</b>	<b>Total</b>	<b>£91.80</b>
		Less income	£96.35
		<b>Excess</b>	<b>£4.55</b>

HB would be reduced by  $£4.55 \times 65\% = £2.96$

CTB would be reduced by  $£4.55 \times 20\% = £0.91$

### Claim converted work related activity component (WRAC) awarded

<i>Income</i>		<i>HB/CTB</i>	
ESA(C) basic	£64.30	Personal Allowance	£64.30
WRAC	£25.50	WRAC	£25.50
Transitional Addition	£6.55		
<b>Total</b>	<b>£96.35</b>	<b>Total</b>	<b>£89.80</b>
		Less income	£96.35
		<b>Excess</b>	<b>£6.55</b>

Income remains the same but:

- HB would be reduced by  $£6.55 \times 65\% = £4.26$
- CTB would be reduced by  $£6.55 \times 20\% = £1.31$

HB falls by £1.30

CTB falls by £0.40 **total reduction £1.70.**

Adding a transitional addition to the applicable amount of £2.00 (the difference between the Disability Premium and the WRAC) would restore the level of HB/CTB

### Claim converted support component (SC) awarded

<i>Income</i>		<i>HB/CTB</i>	
ESA(C) basic	£64.30	Personal Allowance	£64.30
SC	£30.85	SC	£30.85
Transitional Addition	£1.20	EDP	£13.40
<b>Total</b>	<b>£96.35</b>	<b>Total</b>	<b>£108.55</b>
		Less income	£96.35
		<b>No excess</b>	<b>full HB/CTB</b>

Because the customer is entitled to the support component he/she will also be entitled to the enhanced disability premium (EDP) meaning he/she will be better off and no transitional addition would be required.

**Example 2 – Single customer IB less than ESA(C) customer has a pension meaning ESA(IR) not payable**

<i>Income</i>		<i>HB/CTB</i>	
Long term IB	£89.80	Personal Allowance	£64.30
Pension	£40.00	Disability Premium	£27.50
<b>Total</b>	<b>£129.80</b>	<b>Total</b>	<b>£91.80</b>
		Less income	£129.80
		<b>Excess</b>	<b>£38.00</b>

HB reduced by £38 x 65% = £24.70

CTB reduced by £38 x 20% = 7.60

**Claim converted support component (SC) awarded (it must be the SC because the total of basic ESA(C) and the work-related activity component would not exceed the rate of IB)**

<i>Income</i>		<i>HB/CTB</i>	
ESA(C) basic	£64.30	Personal Allowance	£64.30
SC	£30.85	SC	£30.85
Pension	£40.00	EDP	£13.40
<b>Total</b>	<b>£135.15</b>	<b>Total</b>	<b>£108.55</b>
		Less income	£135.85
		<b>Excess</b>	<b>£27.30</b>

HB reduced by £27.30 x 65% = £17.74

CTB reduced by £27.30 x 20% = £5.46

Customer £9.10 a week better off. This is because the value of the support component and the enhanced disability premium (EDP) is higher than the disability premium. No transitional addition would be required.



**Example 3 – Single customer IB less than ESA(C), customer has the highest rate of Disability Living Allowance (DLA) meaning they are entitled to the Enhanced Disability Premium (EDP). Customer also has a pension meaning ESA(IR) not payable**

<i>Income</i>		<i>HB/CTB</i>	
Long term IB	£89.80	Personal Allowance	£64.30
Pension	£40.00	Disability Premium	£27.50
		DLA (fully disregarded)	
		EDP	£13.40
<b>Total</b>	<b>£129.80</b>	<b>Total</b>	<b>£105.20</b>
		Less income	£129.80
		<b>Excess</b>	<b>£24.60</b>

HB reduced by  $£24.60 \times 65\% = £15.99$

CTB reduced by  $£24.60 \times 20\% = £4.92$

**Claim converted support component (SC) awarded (it must be the SC because the total of basic ESA(C) and the work-related activity component would not exceed the rate of IB)**

<i>Income</i>		<i>HB/CTB</i>	
ESA(C) basic	£64.30	Personal Allowance	£64.30
SC	£30.85	SC	£30.85
Pension	£40.00	EDP	£13.40
		DLA(fully disregarded)	
<b>Total</b>	<b>£135.15</b>	<b>Total</b>	<b>£108.55</b>
		Less income	£135.85
		<b>Excess</b>	<b>£27.30</b>

HB reduced by  $£27.30 \times 65\% = £17.74$

CTB reduced by  $£27.30 \times 20\% = £5.46$

The customer's weekly HB would fall by £1.75 and the CTB would fall by £0.54 – total £2.29. This is because, whilst the applicable amount has increased by £3.35, the weekly income has increased by £5.35. Overall the customer is £3.06 ( $£5.35 - £2.29$ ) a week better off and would not need a transitional addition to protect their level of HB/CTB.

**Example 4 – single customer IB less than ESA(C) customer has pension and Disability Living Allowance**

<i>Income</i>		<i>HB/CTB</i>	
Short term IB	£80.15	Personal Allowance	£64.30
Pension	£40.00	Disability Premium	£27.50
<b>Total</b>	<b>£120.15</b>	<b>Total</b>	<b>£91.80</b>
		Less income	£120.15
		<b>Excess</b>	<b>£28.35</b>

HB reduced by  $£28.35 \times 65\% = £18.43$

CTB reduced by  $£28.35 \times 20\% = £5.67$

Total £24.10

**Claim converted work-related activity component (WRAC) awarded**

<i>Income</i>		<i>HB/CTB</i>	
ESA(C) basic	£64.30	Personal Allowance	£64.30
WRAC	£25.50	WRAC	£25.50
Pension	£40.00		
<b>Total</b>	<b>£129.80</b>	<b>Total</b>	<b>£89.80</b>
		Less income	£129.80
		<b>Excess</b>	<b>£40.00</b>

HB reduced by  $£40 \times 65\% = £26.00$

CTB reduced by  $£40 \times 20\% = £8.00$

Total £34.00

Income increased by £9.65 HB/CTB reduced by £9.90 therefore customer 25p a week worse off. Adding a transitional addition of £2.00 a week to the applicable amount (the difference between the Disability Premium and the WRAC) would prevent the customer from losing out overall.

**Claim converted SC awarded**

<i>Income</i>		<i>HB/CTB</i>	
ESA(C) basic	£64.30	Personal Allowance	£64.30
SC	£30.85	SC	£30.85
Pension	£40.00	EDP	£13.40
<b>Total</b>	<b>£135.15</b>	<b>Total</b>	<b>£108.55</b>
		Less income	£129.80
		<b>Excess</b>	<b>£26.60</b>

HB reduced by  $£26.60 \times 65\% = £17.29$

CTB reduced by  $£26.60 \times 20\% = £5.32$

Total £22.61

Customer's HB/CTB would increase by £1.49. This is because the value of the support component and the enhanced disability premium (EDP) is higher than the disability premium. No transitional addition would be required. Overall, weekly income increases by £11.14 (£9.65 and £1.49).

### Example 5 – couple, IB more than ESA

<i>Income</i>		<i>HB/CTB</i>	
Long term IB	£89.80	Personal Allowance	£100.95
Adult Dependant Increase Age Addition	£41.35	Disability Premium	£39.15
	£15.65		
<b>Total</b>	<b>£146.80</b>	<b>Total</b>	<b>£140.10</b>
		Less income	£146.80
		<b>Excess</b>	<b>£6.70</b>

HB reduced by  $£6.70 \times 65\% = £4.36$   
CTB reduced by  $£6.70 \times 20\% = £1.34$   
Total £5.70

### Claim converted, work-related activity component (WRAC) awarded

<i>Income</i>		<i>HB/CTB</i>	
ESA(C) basic	£64.30	Personal Allowance	£100.95
WRAC	£25.50	WRAC	£25.50
Transitional Addition	£57.00		
<b>Total</b>	<b>£146.80</b>	<b>Total</b>	<b>£126.45</b>
		Less income	£146.80
		<b>Excess</b>	<b>£20.35</b>

HB reduced by  $£20.35 \times 65\% = £13.23$   
CTB reduced by  $£20.35 \times 20\% = £4.07$   
Total £17.30

Customer worse off by £11.60 a week. This is because the couple rate disability premium has a higher value than the WRAC. Transitional Protection of £13.65 a week (the difference between the Disability Premium and the WRAC) added to the applicable amount would restore the level of HB/CTB

### Claim converted support component (SC) awarded

<i>Income</i>		<i>HB/CTB</i>	
ESA(C) basic	£64.30	Personal Allowance	£100.95
SC	£30.85	SC	£30.85
Transitional Addition	£51.65	EDP	£19.30
<b>Total</b>	<b>£146.80</b>	<b>Total</b>	<b>£151.10</b>
		Less income	£146.80
		<b>No excess</b>	

Full HB/CTB, customer £5.70 a week better off. This is because the value of the support component and the enhanced disability premium (EDP) is higher than the disability premium. No transitional addition would be required.

**Example 6 – Couple ESA more than IB, partner has earnings**

<i>Income</i>		<i>HB/CTB</i>	
Long term IB	£89.80	Personal Allowance	£100.95
Earnings	£80.00 (following disregard)	Disability Premium	£39.15
<b>Total</b>	<b>£169.80</b>	<b>Total</b>	<b>£140.10</b>
		Less income	£169.80
		<b>Excess</b>	<b>£29.70</b>

HB reduced by  $£29.70 \times 65\% = £19.31$

CTB reduced by  $£29.70 \times 20\% = £5.94$

Total £25.25

**Claim converted support component (SC) awarded (must be SC as the total of basic ESA and the work-related activity component would not exceed IB)**

<i>Income</i>		<i>HB/CTB</i>	
ESA(C) basic	£64.30	Personal Allowance	£100.95
SC	£30.85	SC	£30.85
Earnings	£80.00 (following disregard)	EDP	£19.30
<b>Total</b>	<b>£175.15</b>	<b>Total</b>	<b>£151.10</b>
		Less income	£175.15
		<b>Excess</b>	<b>£24.05</b>

HB reduced by  $£24.05 \times 65\% = £15.63$

CTB reduced by  $£24.05 \times 20\% = £4.81$

Total £20.44

Customer better off in HB/CTB by  $£25.25 - £20.44 = £4.81$

Customer better off on ESA by  $£95.15 - £89.80 = £5.35$

**Weekly Total £10.16**

No transitional addition would be required.

**Example 7 – Couple enhanced disability premium (EDP) already awarded because the customer has highest rate care component of Disability Living Allowance (DLA). The partner is working and is registered as blind (this brings entitlement to the couple rate disability premium)**

<i>Income</i>		<i>HB/CTB</i>	
Long term IB	£89.80	Personal Allowance	£100.95
Adult Dependant Increase	£41.35	Disability Premium	£39.15
Age Addition	£15.65	EDP	£19.30
Earnings	£40.00		
	<b>Total</b>	<b>£186.80</b>	<b>Total</b>
<b>£159.40</b>		Less income	£186.80
		<b>Excess</b>	<b>£27.40</b>

HB reduced by  $£27.40 \times 65\% = £17.81$

CTB reduced by  $£27.40 \times 20\% = £5.48$

Total £23.29

**Claim converted support component (SC) awarded**

<i>Income</i>		<i>HB/CTB</i>	
ESA(C) basic	£64.30	Personal Allowance	£100.95
SC	£30.85	SC	£30.85
Transitional Addition	£51.65		
Earnings	£40.00	EDP	£19.30
<b>Total</b>	<b>£186.80</b>	<b>Total</b>	<b>£151.10</b>
		Less income	£186.80
		<b>Excess</b>	<b>£35.70</b>

HB reduced by  $£35.70 \times 65\% = £23.21$

CTB reduced by  $£35.70 \times 20\% = £7.14$

Total £ 30.35

Customer £7.06 a week worse off. This is because the couple rate disability premium has a higher value than the SC and the couple were entitled to the EDP prior to conversion to ESA. A transitional addition of £8.30 (the difference between the couple rate Disability Premium and the support component ) added to the applicable amount would restore the level of HB/CTB.

## Annex D – Keeling version of the regulations as amended<sup>22</sup>

### *The Housing Benefit Regulations 2006 (SI 2006/213)*

#### 22 Applicable amounts

Subject to regulations 23, 24, 80 and 81 and Schedule A1 (polygamous marriages, patients, calculation of weekly amounts, rent free periods and treatment of claims for housing benefit by refugees), a claimant's weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case –

- (a) an amount in respect of himself or, if he is a member of a couple, an amount in respect of both of them, determined in accordance with paragraph 1(1), (2) or (3), as the case may be, of Schedule 3;
- (b) an amount determined in accordance with paragraph 2 of Schedule 3 in respect of any child or young person who is a member of his family;
- (c) if he is a member of a family of which at least one member is a child or young person, an amount determined in accordance with Part 2 of Schedule 3 (family premium);
- (d) the amount of any premiums which may be applicable to him, determined in accordance with Parts 3 and 4 of Schedule 3 (premiums);
- (e) the amount of either the –
  - (i) work-related activity component; or
  - (ii) support component,

which may be applicable to him in accordance with Part 5 of Schedule 3 (the components);

- (f) ***the amount of any transitional addition which may be applicable to him in accordance with Parts 7 and 8 of Schedule 3 (transitional addition).***

#### 23 Polygamous marriages

Subject to regulations 24, 80 and 81 and Schedule A1 (patients, calculation of weekly amounts, rent free periods and treatment of claims for housing benefit by refugees), where a claimant is a member of a polygamous marriage, his weekly applicable amount shall be the aggregate of such of the following amounts as may apply in his case –

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<sup>22</sup> insertions are shown in *bold italics*; provisions within regulations that are unaffected by the amendments are omitted, unless needed to enable the effect to be understood; For the changes to the HB and CTB regulations, only the changes to HB version have been included as the CTB versions are the same.



- (a) the highest amount applicable to him and one of his partners determined in accordance with paragraph 1(3) of Schedule 3 as if he and that partner were a couple;
- (b) an amount equal to the difference between the amounts specified in sub-paragraphs (3)(b) and (1)(b) of paragraph 1 of Schedule 3 in respect of each of his other partners;
- (c) an amount determined in accordance with paragraph 2 of Schedule 3 (applicable amounts) in respect of any child or young person for whom he or a partner of his is responsible and who is a member of the same household;
- (d) if he or another partner of the polygamous marriage is responsible for a child or young person who is a member of the same household, the amount specified in Part 2 of Schedule 3 (family premium);
- (e) the amount of any premiums which may be applicable to him determined in accordance with Parts 3 and 4 of Schedule 3 (premiums);
- (f) the amount of either the –
  - (i) work-related activity component; or
  - (ii) support component,

which may be applicable to him in accordance with Part 5 of Schedule 3 (the components).

- (g) ***the amount of any transitional addition which may be applicable to him in accordance with Parts 7 and 8 of Schedule 3 (transitional addition).***

### Schedule 3

#### Applicable Amounts

#### Part 5 The Components

## 21

Subject to paragraph 22, the claimant is entitled to one, but not both, of the components in paragraphs 23 or 24 if –

- (a) the claimant or the claimant's partner has made a claim for employment and support allowance;
- (b) the Secretary of State has decided that the claimant or the claimant's partner has, or is to be treated as having, limited capability for work or limited capability for work-related activity; and

- (c) either –
- (i) the assessment phase as defined in section 24(2) of the Welfare Reform Act has ended; or
  - (ii) regulation 7 of the Employment and Support Allowance Regulations (circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work related activity component arises does not apply) applies.

***21A. Subject to paragraph 22, the claimant is entitled to one, but not both, of the components in paragraphs 23 and 24 if the claimant or his partner has had an award of benefit converted to an employment and support allowance in accordance with regulation 5(2)(a) of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010***

## **22**

- (1) The claimant has no entitlement under paragraph 23 or 24 if the claimant is entitled to the disability premium under paragraphs 12 and 13.
- (2) Where the claimant and the claimant's partner each satisfies paragraph 23 or 24, the component to be included in the claimant's applicable amount is that which relates to the claimant.

### **The work-related activity component**

## **23**

The claimant is entitled to the work-related activity component if the Secretary of State has decided that the claimant or the claimant's partner has, or is to be treated as having, limited capability for work.

### **The support component**

## **24**

The claimant is entitled to the support component if the Secretary of State has decided that the claimant or the claimant's partner has, or is to be treated as having, limited capability for work-related activity.

## **Part 6 Amount of Components**

## **25**

The amount of the work-related activity component is [£25.50].

## **26**

The amount of the support component is [£30.85].

## **Part 7**

### **Transitional Addition**

**27.**

**(1) The claimant is entitled to the transitional addition calculated in accordance with paragraph 28 where the claimant or the claimant's partner –**

- (a) has had an award of benefit converted to an employment and support allowance in accordance with regulation 5(2)(a) of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010; or**
- (b) is treated as having limited capability for work by virtue of regulation 18A(2)<sup>(23)</sup> of the Employment and Support Allowance Regulations,**

**unless the employment and support allowance is income-related or the amount of the transitional addition calculated in accordance with paragraph 28 would be nil.**

**(2) Subject to paragraphs (3) and (4), the claimant's entitlement to a transitional addition will end on whichever is the earlier of –**

- (a) the reduction of the transitional addition to nil in accordance with paragraph 29;**
- (b) the termination of the claimant's award of housing benefit;**
- (c) the termination of the employment and support allowance referred to in sub-paragraph (1)(a);**
- (d) 5th April 2020.**

**(3) Paragraph (2)(b) does not apply where –**

- (a) the claimant becomes entitled to housing benefit not more than 12 weeks after the award was terminated and during that period the person to whom the award of the employment and support allowance referred to in sub-paragraph(1)(a)was –**
  - (i) entitled to an employment and support allowance; or**
  - (ii) treated as having limited capability for work in accordance with regulation 145(1) of the Employment and Support Allowance Regulations; or**

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<sup>23</sup> Regulation 18A was inserted by S.I. 2010/[ ].

**(b) the claimant becomes entitled to housing benefit not more than 104 weeks after the award was terminated and during that period the person to whom the award of the employment and support allowance referred to in sub-paragraph (1)(a) was treated as having limited capability for work in accordance with regulation 145(2) Employment and Support Allowance Regulations;**

**(4) Where the employment and support allowance referred to in sub-paragraph (1)(a) is terminated and the person whose award was terminated –**

**(a) becomes entitled to an employment and support allowance; and**

**(b) is treated as having limited capability for work in accordance with regulation 145(1) or (2) of the Employment and Support Allowance Regulations for the period between the termination of the previous award and the new claim,**

**from the date that the second award of employment and support allowance takes effect, the claimant will be entitled to the transitional addition that would have applied had the person been entitled to an employment and support allowance during that period.**

#### **Part 8**

##### **Amount of transitional addition**

**28**

**(1) Subject to paragraph 29, the amount of the transitional addition is the amount by which Amount A exceeds Amount B.**

**(2) Amount A is the basic amount that would apply on the day the award of benefit is converted to an employment and support allowance, or entitlement to a provisional award begins, if that conversion did not occur or that entitlement did not begin.**

**(3) Amount B is the basic amount that applies on the day the award of benefit is converted to an employment and support allowance, or entitlement to a provisional award begins, after that conversion has occurred or that entitlement has begun.**

**29**

**(1) Where there is a change of circumstances which leads to an increase in the claimant's basic amount, the transitional addition that applies immediately before the change of circumstances shall be reduced by the amount by which Amount C exceeds Amount D.**

**(2) Amount C is the basic amount that applies on the day the change of circumstances takes effect.**

**(3) Amount D is the basic amount that applied immediately before the change of circumstances.**

**(4) In this paragraph and paragraph 28, “basic amount” means the aggregate of such amounts as may apply in the claimant’s case in accordance with regulation 22(a) to (e) or regulation 23(a) to (f).**

**The Housing Benefit and Council Tax Benefit (Decisions and Appeals)  
Regulations 2001 (SI 2001/1002)**

**7 Decisions superseding earlier decisions**

(1) Subject to the provisions in this regulation, the prescribed cases and circumstances in which a decision may be made under paragraph 4 of Schedule 7 to the Act (decisions superseding earlier decisions) are as set out in paragraph (2).

(2) The appropriate relevant authority may make a decision under paragraph 4 of Schedule 7 to the Act upon its own initiative or on an application made for the purpose on the basis that the decision to be superseded is a decision –

- (i) except where sub-paragraph (o) **(p) or (q)** applies, where –
  - (i) the claimant has been awarded entitlement to housing benefit or council tax benefit; and
  - (ii) subsequent to the first day of the period to which that entitlement relates, the claimant or a member of his family becomes entitled to an award of a relevant benefit within the meaning of section 8(3) of the 1998 Act or an increase in the rate of that relevant benefit;
- (o) where –
  - (i) the claimant has been awarded entitlement to housing benefit or council tax benefit;
  - (ii) the claimant or the claimant’s partner has made a claim for employment and support allowance;
  - (iii) subsequent to the first day of the period to which entitlement to housing benefit or council tax benefit relates, the Secretary of State has decided that the claimant or the claimant’s partner has, or is to be treated as having, limited capability for work within the meaning of section 1(4) of the Welfare Reform Act or limited capability for work-related activity within the meaning of section 2(5) of that Act; and

- (iv) either –
  - (aa) the assessment phase as defined in section 24(2) of the Welfare Reform Act has ended; or
  - (bb) regulation 7 of the Employment and Support Allowance Regulations 2008 (circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work related activity component arises does not apply) applies.

**(p) where –**

- (i) the claimant has been awarded entitlement to housing benefit or council tax benefit;**
  - (ii) the claimant or the claimant’s partner has had an award of benefit converted to an employment and support allowance in accordance with regulation 5(2)(a) of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010; and**
  - (iii) subsequent to the first day of the period to which that entitlement to housing benefit or council tax benefit relates, the Secretary of State makes a decision to supersede the award of employment and support allowance to award a different component;**
- (q) where the claimant has been awarded entitlement to housing benefit or council tax benefit and subsequent to the first day of the period to which that entitlement relates –**
- (i) a conversion decision within the meaning of regulation 5(2)(a) of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 takes effect in respect of the claimant or the claimant’s partner; or**
  - (ii) the claimant is treated as having limited capability for work by virtue of regulation 18A(2) of the Employment and Support Allowance Regulations.**

**8 Date from which a decision superseding an earlier decision takes effect**

(14D) Where the decision is superseded in accordance with regulation 7(2)

(o) **or (p)**, the decision shall take effect from –

- (a) the first day of entitlement to an amount in consequence of the decision of the Secretary of State referred to in regulation 7(2)(o)(iii); or



- (b) the first day that there would have been such entitlement had the claimant or the claimant's partner been entitled to an employment and support allowance by virtue of section 1 of the Welfare Reform Act,

if that day is the first day of the benefit week but, if it is not, from the next following such day.

***(14E) Where a decision is superseded in accordance with regulation 7(2)(q) the decision shall take effect –***

- (a) where the decision made in accordance with the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 takes effect on or after 1st April in any year but before 15th April of that year –***
  - (i) from 1st April for a council tax benefit award;***
  - (ii) from 1st April for a housing benefit award in which the claimant's weekly amount of eligible rent falls to be calculated in accordance with regulation 80(2)(b) or (c) of the Housing Benefit Regulations or, as the case may be, regulation 61(2)(b) or (c) of the Housing Benefit (State Pension Credit) Regulations;***
  - (iii) from the first Monday in April for a housing benefit award to which paragraph (a)(i) does not apply;***
- (b) in any other case from the day decision made in accordance with the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 takes effect.***

## APPENDIX 2

### THE EMPLOYMENT AND SUPPORT ALLOWANCE (TRANSITIONAL PROVISIONS) (EXISTING AWARDS) REGULATIONS 2010

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#### STATUTORY INSTRUMENTS

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2010 No.

### SOCIAL SECURITY

#### The Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010

*Made* - - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*Coming into force in accordance with regulation 1(2) and (3)*

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The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section 25(2), (3) and (5), 28(2) and 29 of, and paragraph 2 of Schedule 2 and paragraphs 1(1), 3(b), 7(1)(a) and (b), (2) and (3) and 8(1)(a) to (e) of Schedule 4 to, the Welfare Reform Act 2007(a).

In accordance with section 172(1) of the Social Security Administration Act 1992(b), the Secretary of State has referred these Regulations to the Social Security Advisory Committee.

[In accordance with section 176(1) of the Social Security Administration Act 1992, the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.]

PART 1  
GENERAL

**Citation and commencement**

**1.**— (1) These Regulations may be cited as the Employment and Support (Transitional Provisions) (Existing Awards) Regulations 2010.

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(a) 2007 c.5.

(b) 1992 c.5.

- (2) Subject to paragraph (3), these Regulations come into force on 1st October 2010.
- (3) Regulations 24 and 25 and paragraph 2 of Schedule 4 come into force on 31st January 2011.

## Interpretation

### 2.— In these Regulations—

- “the 2007 Act” means the Welfare Reform Act 2007;
- “the 2008 Regulations” means the Employment and Support Allowance Regulations 2008(a);
- “benefit week” has the same meaning as in the 2008 Regulations;
- “contributory allowance” means an employment and support allowance to which a person is entitled by virtue of these Regulations which was based on an award of incapacity benefit or severe disablement allowance to which the person was entitled(b);
- “conversion decision”, in relation to a notified person, has the meaning given in regulation 5(2);
- “effective date”, in relation to a conversion decision, is to be construed in accordance with regulation 14;
- “enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978(c));
- “income-related allowance” means an employment and support allowance to which a person is entitled by virtue of these Regulations which was based on an award of income support to which the person was entitled(d);
- “notified person” has the meaning given in regulation 4(2);
- “pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995(e);
- “relevant deduction”, in relation to a person, includes such of the following deductions as fall to be made in relation to the person—
- (a) any deduction made under any of the following provisions of the Social Security (Claims and Payments) Regulations 1987(f)—
    - (i) regulation 34A (deductions of mortgage interest which shall be made from benefit and paid to qualified lenders);
    - (ii) regulation 34B (deductions of mortgage interest which may be made from benefits and paid to qualified lenders in other cases); or
    - (iii) regulation 35 (deductions which may be made from benefit and paid to third parties);
  - (b) any deduction made under the Community Charges (Deductions from Income Support) (No.2) Regulations 1990(g) (deductions which may be made from benefit for meeting sums due in respect of community charges);
  - (c) any deduction made under the Fines (Deductions from Income Support) Regulations 1992(h) (deductions which may be made from an offender’s benefit);

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- (a) S.I. 2008/794.
- (b) “Incapacity benefit” and “severe disablement allowance” are defined in paragraph 11 of Schedule 4 to the Welfare Reform Act 2007.
- (c) 1978 c.30.
- (d) Awards of income support which are “existing awards” (being awards made to persons who are incapable of work or disabled) are specified in paragraph (c) of the definition of “existing award” in paragraph 11 of Schedule 4 to the Welfare Reform Act 2007.
- (e) 1995 c.26. Paragraph 1 of Schedule 4 was amended by paragraph 39 of Schedule 2 to the State Pension Credit Act 2002 (c.16), paragraph 13 of Schedule 3 to the Welfare Reform Act 2007 (c.5) and paragraph 4(2) to (6) of Schedule 3 to the Pensions Act 2007 (c.22).
- (f) S.I.1987/1968. Relevant amending instruments are S.I. 1988/522, 1992/1026, 2001/18, 2002/2441, 2002/3019 and 2002/3197.
- (g) S.I. 1990/545. These regulations lapsed on the repeal of the enabling authority, as from 1st April 1993, except in relation to any community charge in respect of a day falling before that date or in relation to any financial year beginning before that date.
- (h) S.I. 1992/2182.

- (d) any deduction made under the Council Tax (Deductions from Income Support) Regulations 1993(a) (deductions which may be made from benefit for meeting sums due in respect of council tax);
- (e) any deduction in respect of overpayment recovery or recovery of social fund loans made under any of the following provisions of the Administration Act(b)—
  - (i) section 71 (overpayments-general);
  - (ii) section 74 (income support and other payments); or
  - (iii) section 78 (recovery of social fund awards).

(2) A requirement under these Regulations to give a notice (or to notify) is a requirement to give notice in writing; and for that purpose—

- (a) a message sent by electronic communication shall be treated as a notice given in writing; and
- (b) electronic communication has the meaning given in section 15(1) of the Electronic Communications Act 2000(c).

(3) For the purposes of these Regulations, the conversion phase, in relation to any person entitled to an existing award or awards, is the period which—

- (a) begins in accordance with regulation 4(4); and
- (b) ends in accordance with regulation 5(6).

(4) Any reference in these Regulations to carrying out Steps 1 to 3 in relation to any person is to be construed in accordance with regulation 8.

### **Persons to whom these Regulations apply**

3. These Regulations apply to any person who, on or after the date on which these Regulations come into force, is entitled to an existing award(d).

## **PART 2**

### **CONVERSION DECISIONS**

#### **The notice commencing the conversion phase**

4.—(1) Subject to paragraph (5), the Secretary of State may at any time issue a notice to any person who is entitled to an existing award.

(2) Any person to whom such a notice is issued is referred to in these Regulations as a notified person.

(3) The notice must inform the notified person—

- (a) that an existing award is to be converted into an award of an employment and support allowance if certain conditions are satisfied;
- (b) that, if those conditions are not satisfied, the existing award will not be converted and will terminate by virtue of these Regulations;
- (c) of the requirements that must be met in order to satisfy those conditions; and
- (d) of such other matters as the Secretary of State considers appropriate.

(4) The issue of the notice to a notified person begins the conversion phase in relation to that person, with effect from the date of issue.

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(a) S.I. 1993/494.

(b) The “Administration Act” is defined in section 65 of the Welfare Reform Act 2007.

(c) 2000 c.7. The definition of “electronic communication” in section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

(d) “Existing award” is defined in paragraph 11 of Schedule 4 to the Welfare Reform Act 2007.

- (5) No notice may be issued to any person—
  - (a) who reaches pensionable age at any time before 6th April 2014; or
  - (b) at any time when payment of the existing award to the person is subject to adjustment under regulation 4 of the Social Security (Transitional Payments) Regulations 2009<sup>(a)</sup> (adjustment of subsequent payments following an adjusting payment of benefit).
- (6) Where a person is entitled to—
  - (a) an existing award of incapacity benefit or severe disablement allowance; and
  - (b) an existing award of income support,

the notice issued to the person under this regulation shall have effect in relation to both such awards.

### **Deciding whether an existing award qualifies for conversion**

**5.**—(1) In relation to the existing award or awards to which a notified person (“P”) is entitled, the Secretary of State must make a conversion decision in accordance with these Regulations.

- (2) A conversion decision is—
  - (a) a decision that P’s existing award or awards qualify for conversion into an employment and support allowance in accordance with regulation 7; or
  - (b) a decision that P’s existing award or awards do not qualify for conversion into an employment and support allowance.

(3) A notice under paragraph (2)(a) must specify the amount of an employment and support allowance to which P is entitled on and after the effective date (subject to any relevant deductions).

(4) The amount referred to in paragraph (3) is to be determined in accordance with regulation 8.

(5) The Secretary of State must notify P of the Secretary of State’s conversion decision, except where paragraph (8)(a) applies.

- (6) The conversion phase ends in relation to P—
  - (a) immediately before the effective date of the conversion decision notified to P; or
  - (b) if earlier, when P’s entitlement to the award or awards to which the notice under regulation 4 relates otherwise ceases to be subject to conversion (because entitlement to the award has terminated or for some other reason).

(7) The effective date of any conversion decision is to be determined in accordance with regulation 14.

(8) In the event that P’s entitlement to an existing award ceases to be subject to conversion (for example, because P’s entitlement to an award of income support has ceased to fall within paragraph (c) of the definition of “existing award” in Schedule 4 to the 2007 Act)—

- (a) before a conversion decision is made, the Secretary of State must notify P that the conversion phase has ended without a conversion decision being made; or
- (b) after the making of a conversion decision but before its effective date, the Secretary of State must notify P that the conversion decision shall not come into effect and it shall lapse with immediate effect.

### **Application of certain enactments for purpose of making conversion decisions**

**6.**—(1) The enactments listed in paragraph (2) apply with the modifications specified in Schedule 1 for the purposes of—

- (a) enabling the Secretary of State to make in relation to any person a conversion decision under this Part; and

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<sup>(a)</sup> S.I. 2009/609.

- (b) providing for the revision of such decisions at any time before the effective date.
- (2) The listed enactments are—
  - (a) Part 1 of the 2007 Act;
  - (b) the 2008 Regulations;
  - (c) regulation 32(1) and (1A) of the Social Security (Claims and Payments) Regulations 1987<sup>(a)</sup> (information to be given);
  - (d) Chapter 2 of Part 1 of the Social Security Act 1998<sup>(b)</sup> (social security decisions and appeals); and
  - (e) the Social Security and Child Support (Decisions and Appeals) Regulations 1999<sup>(c)</sup>.
- (3) In the application of the enactments listed in paragraph (2)(d) and (e), the conversion decision is to be treated as if it were a decision as to a person's entitlement to an employment and support allowance which had been made on a claim.

### **Qualifying for conversion**

7. For the purposes of regulation 5(2)(a), an existing award or awards to which a notified person is entitled qualify for conversion into an award of an employment and support allowance only if the person satisfies the basic conditions set out in section 1(3)(a) to (d) and (f) of the 2007 Act.

### **Amount of an employment and support allowance on conversion**

8. For the purposes of regulation 5(3), the amount of an employment and support allowance to which a notified person is entitled shall be determined as follows.

#### *Step 1*

Determine in accordance with Part 1 of the 2007 Act and the 2008 Regulations the amount (if any) of an employment and support allowance to which the notified person would be entitled if, on a claim made by that person—

- (a) it had been determined that the person was entitled to an award of an employment and support allowance; and
- (b) the assessment phase had ended.

#### *Step 2*

Determine in accordance with regulations 9 to 13—

- (a) whether the notified person is entitled to a transitional addition; and
- (b) if so, the amount of the transitional addition.

#### *Step 3*

Aggregate the amounts (if any) which result from Steps 1 and 2.

### **Determining entitlement to a transitional addition**

9.—(1) In relation to any notified person whose existing award or awards qualify for conversion into an employment and support allowance—

- (a) the person's entitlement (if any) to a transitional addition; and
- (b) the amount of any such transitional addition,

are to be determined in accordance with regulation 10(2) or 11(2).

- (2) Paragraph (1) is subject to regulations 13 and 18.

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<sup>(a)</sup> S.I. 1987/1968. Regulation 32(1) and (1A) were substituted by S.I. 2003/1050.

<sup>(b)</sup> 1998 c.14.

<sup>(c)</sup> S.I. 1999/991.



(3) The amount of transitional addition to which a notified person is entitled is subject to reduction in accordance with regulations 19 to 21.

(4) The entitlement of a notified person to any transitional addition terminates in accordance with regulation 22.

#### **Transitional addition: incapacity benefit or severe disablement allowance only**

**10.**—(1) This regulation applies to any notified person who—

- (a) is entitled to an existing award of incapacity benefit or severe disablement allowance; and
- (b) is not also entitled to any existing award of income support.

(2) In any case falling within paragraph (1)—

- (a) the notified person shall be entitled to a transitional addition if Amount A exceeds Amount B; and
- (b) the amount of transitional addition payable under this paragraph shall be equal to the amount of any such excess.

(3) Amount A is the amount of the weekly rate of the existing award applicable to the notified person.

(4) To calculate Amount B—

- (a) take the amount prescribed under paragraph (2) of regulation 67 of the 2008 Regulations (prescribed amounts for purpose of calculating a contributory allowance) which is applicable to the notified person; and
- (b) add the amount of the applicable component determined in accordance with regulation 12(5).

(5) In paragraph (3), the reference to the weekly rate of an existing award applicable to the notified person is to—

- (a) in the case of incapacity benefit, the weekly rate payable—
  - (i) under section 30B(2), (6) or (7) of the Contributions and Benefits Act<sup>(a)</sup> (incapacity benefit: rate);
  - (ii) under section 40(5) or 41(4) of the Contributions and Benefits Act<sup>(b)</sup> (long term incapacity benefit for widows and for widowers);
  - (iii) by virtue of regulation 11(4) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995<sup>(c)</sup> (former sickness benefit); or
  - (iv) by virtue of regulation 17(1) of those Regulations (former invalidity benefit);
- (b) in the case of severe disablement allowance, the weekly rate payable under sections 68(7) and 69(1) of the Contributions and Benefits Act (as they have effect by virtue of article 4 of the Welfare Reform and Pensions Act 1999 (Commencement No.9 and Transitional and Savings Provisions) Order 2000<sup>(d)</sup>).

#### **Transitional addition: income support**

**11.**—(1) This regulation applies to any notified person who is entitled to an existing award of income support (and for these purposes it is irrelevant whether the person is also entitled to any existing award of incapacity benefit or severe disablement allowance).

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(a) 1992 c.4. “Contributions and Benefits Act” is defined in section 65 of the Welfare Reform Act 2007. Section 30B was inserted by section 2(1) of the Social Security (Incapacity for Work) Act 1994 (c.18) and is to be repealed by paragraph 9(5) of Schedule 3 to the Welfare Reform Act 2007.

(b) Sections 40 and 41 were substituted by paragraphs 8 and 9 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994. They are to be repealed by Schedule 8 to the Welfare Reform Act 2007.

(c) S.I. 1995/310.

(d) S.I. 2000/2958 (C.89).

- (2) In any case falling within paragraph (1)—
- (a) the notified person shall be entitled to a transitional addition if Amount C exceeds Amount D; and
  - (b) the amount of transitional addition payable under this paragraph shall be equal to the amount of any such excess.
- (3) To calculate Amount C—
- (a) take the notified person’s weekly applicable amount under regulation 17 or 18 of, and Schedule 2 to, the Income Support (General) Regulations 1987<sup>(a)</sup> (applicable amounts);
  - (b) disregard any amount determined in accordance with regulation 17(1)(e) or 18(1)(f) of, and Schedule 3 to, those Regulations (housing costs) (as the case may be); and
  - (c) disregard any amount included in the person’s applicable amount—
    - (i) under regulation 17(1)(b), (c) or (d) of those Regulations<sup>(b)</sup> in respect of a child or young person who is a member of the notified person’s family; or
    - (ii) under regulation 18(1)(b), (c), (d) or (e) of those Regulations in respect of a child or young person who is a member of the same household as the notified person, as those provisions have effect by virtue of regulations 1 and 7 of the Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendment) Regulations 2003<sup>(c)</sup>.
- (4) To calculate Amount D—
- (a) take the amount prescribed under regulation 67(1) or 68(1) of the 2008 Regulations (prescribed amounts for purpose of calculating an income-related allowance) which is applicable to the notified person;
  - (b) disregard any amount determined in accordance with regulation 67(1)(c) or 68(1)(d) (housing costs) (as the case may be); and
  - (c) add the amount of the applicable component determined in accordance with regulation 12(5).

### **Regulations 10 and 11: supplementary**

**12.—**(1) This regulation has effect for the purposes of applying regulations 10 and 11 in relation to any notified person.

- (2) Subject to paragraphs (3) and (4)—
- (a) Amounts A and C are to be calculated in respect of the benefit week which ends immediately before the effective date of the notified person’s conversion decision; and
  - (b) Amounts B and D are to be calculated in respect of the benefit week the first day of which is the effective date of the notified person’s conversion decision.
- (3) Where—
- (a) by virtue of an order made under section 150 of the Administration Act (annual up-rating of benefits), there is an increase in—
    - (i) the weekly rate which, in accordance with regulation 10(3), is to be used to calculate Amount A; or

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<sup>(a)</sup> S.I. 1987/1967. Regulation 17 was amended by S.I. 1988/910 and 1445, 1989/1678, 1991/387, 1992/3147, 1996/206, 2003/455 and 1121, 2005/2687 and 2006/588. Regulation 18 was amended by S.I. 1988/1228 and 1445, 1989/1034, 1992/3147, 1996/206, 2001/3767, 2003/455 and 1121 and 2006/588.

<sup>(b)</sup> Regulations 17(1)(b) and (c) and 18(1)(c) and (d) of, and paragraphs 2, 3 and 6(1)(c) of Schedule 2 to, the Income Support (General) Regulations 1987 (“the 1987 Regulations”) (amounts for child or young person, family premium and disabled child premium) were revoked by S.I. 2003/455. Paragraph 13A(b) and (2)(a) of the 1987 Regulations (which provide for enhanced disability premium) were also amended by S.I. 2003/455 so as to exclude children or young persons from the list of persons to whom such premiums may relate. The revocations and amendments are subject to savings in accordance with regulations 1 and 7 of S.I. 2003/455, as amended by regulation 2(2) of S.I. 2005/2294.

<sup>(c)</sup> S.I. 2003/455.

(ii) the applicable amount which, in accordance with regulation 11(3), is to be used to calculate Amount C; and

(b) that increase takes effect from any day in the benefit week referred to in paragraph (2)(b),

the calculation of Amount A or C is to be made using the increased weekly rate or applicable amount (as the case may be).

(4) Where—

(a) there is a change of circumstances in relation to a notified person which, but for sub-paragraph (b), would have resulted in an increase or decrease of the weekly rate or applicable amount referred to in paragraph (3)(a)(i) or (ii); and

(b) that increase or decrease would have taken effect from any day in the benefit week referred to in paragraph (2)(b),

the calculation of Amount A or C is to be made using the weekly rate or applicable amount (as the case may be) which would have been payable in respect of the existing award if it had not been subject to conversion under these Regulations.

(4) The “applicable component”, in relation to the notified person, means—

(a) the work-related activity component, if it has been determined in accordance with the enactments applied by regulation 6 that the notified person does not have and is not to be treated as having limited capability for work-related activity;

(b) the support component, if it has been determined in accordance with those enactments that the notified person has or is to be treated as having limited capability for work-related activity.

### **Circumstances in which no transitional addition is payable**

**13.** A notified person is not entitled to any transitional addition if, in relation to that person, the amount which results from carrying out Step 1 is nil and the amount of transitional addition which results from Step 2 is less than 10 pence.

### **The effective date of a conversion decision**

**14.—(1)** For the purposes of determining the date on which a conversion decision takes effect in relation to any notified person—

(a) take the date on which the person is notified of the conversion decision; and

(b) unless paragraph (2) applies, determine the first complete fortnightly period in respect of which the person’s existing benefit is payable after that date;

and the effective date of the person’s conversion decision is the first day of the benefit week immediately following the end of the fortnightly period referred to in sub-paragraph (b).

(2) Where existing benefit is payable to the notified person in respect of a period other than a fortnight—

(a) determine the second complete benefit week in respect of which the person’s existing benefit is payable after the date on which the person is notified of the conversion decision; and

(b) the effective date of the person’s conversion decision is the first day of the benefit week immediately following the end of that second complete benefit week.

(3) “Existing benefit”, in relation to a notified person, means the benefit in respect of the person’s existing award or awards.

### **Conversion decision that existing award qualifies for conversion**

**15.**—(1) Paragraphs (2) and (3) apply in any case where the conversion decision is a decision that a notified person’s (“P”) existing award or awards qualify for conversion into an employment and support allowance.

(2) On the effective date of the conversion decision—

- (a) P’s existing award; or
- (b) both of P’s existing awards (as the case may be),

are by virtue of this paragraph converted into, and shall have effect on and after that date as, a single award of an employment and support allowance of such amount as is specified in the conversion decision.

(3) Where, before conversion, any relevant deduction was made from the existing award or awards, an equivalent deduction shall be made from the employment and support allowance to which P is entitled by virtue of these Regulations.

(4) Paragraphs (2) and (3) are subject to regulation 17(4).

### **Conversion decision that existing award does not qualify for conversion**

**16.**—(1) Paragraphs (2) and (3) apply in any case where the conversion decision is a decision that a notified person’s (“P”) existing award or awards do not qualify for conversion into an employment and support allowance.

(2) P’s entitlement to one or both of—

- (a) an existing award of incapacity benefit or severe disablement allowance; or
- (b) an existing award of income support (being an award made to a person incapable of work or disabled),

shall terminate by virtue of this paragraph immediately before the effective date of P’s conversion decision.

(3) Where, immediately before that date, P is entitled to be credited with any earnings under regulation 8B(2)(a) of the Social Security (Credits) Regulations 1975(a) (credits for incapacity for work), P shall not be entitled to be so credited under that regulation on or after that date.

(4) Paragraphs (2) and (3) are subject to regulation 17(4).

## **PART 3**

### **AFTER THE CONVERSION PHASE**

#### **Application of other enactments applying to employment and support allowances**

**17.**—(1) The enactments listed in paragraph (2) apply with the modifications specified in Schedule 2 for the purposes of—

- (a) providing for the revision or supersession of any person’s conversion decision at any time on or after that decision’s effective date; and
- (b) enabling any other matter to be determined in connection with any person’s entitlement or continuing entitlement to an award of an employment and support allowance by virtue of these Regulations.

(2) The listed enactments are—

- (a) Part 1 of the 2007 Act;

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(a) S.I. 1975/556. Regulation 8B was inserted by SI 1996/2367 and amended by S.I. 2008/1554.

- (b) Chapter 2 of Part 1 of the Social Security Act 1998<sup>(a)</sup> (social security decisions and appeals);
- (c) any other Act which is amended by Schedule 3 to the 2007 Act;
- (d) the Social Security (Recovery of Benefits) Act 1997<sup>(b)</sup>; and
- (e) the following regulations—
  - (i) this Part of these Regulations;
  - (ii) the 2008 Regulations; and
  - (iii) the Regulations listed in Schedule 3 to these Regulations (being regulations consequentially amended by regulations made under Part 1 of the 2007 Act).

(3) In the application of those enactments, the conversion decision is to be treated as if it were a decision as to a person's entitlement to an employment and support allowance which had been made on a claim.

(4) Where, on or after the effective date of any person's conversion decision, the Secretary of State is notified of any change of circumstances or other relevant event which occurred before that date, the Secretary of State—

- (a) must treat any award converted by virtue of regulation 15(2) or terminated by virtue of regulation 16(2) as if it had not been converted or terminated;
- (b) must take account of the change of circumstances or other relevant event for the purposes of determining whether to revise or supersede a decision ("the earlier decision") relating to the award or awards in respect of which the conversion decision was made;
- (c) in an appropriate case, must make a revision or supersession of the earlier decision;
- (d) if any such revision or supersession is made, must determine whether to revise the conversion decision made in relation to P; and
- (e) in an appropriate case, must make a revision of that conversion decision.

#### **Review of transitional addition in certain cases where income-related allowance terminates**

**18.**—(1) This regulation applies to any person ("T") who—

- (a) was entitled immediately before the effective date of T's conversion decision to both—
  - (i) an existing award of incapacity benefit or severe disablement allowance; and
  - (ii) an existing award of income support;
- (b) was entitled on and after that date to an amount of transitional addition under regulation 11; and
- (c) was entitled on and after that date to an income-related allowance which has since ceased to be payable.

(2) The Secretary of State must determine whether T would have been entitled to a transitional addition in accordance with regulation 10 if that person had not been entitled to an existing award of income support immediately before the effective date of T's conversion decision.

(3) For the purposes of paragraph (2)—

- (a) T's entitlement to, and amount of, a transitional addition (if any) is to be determined by reference to what would have been payable on the effective date, subject to any subsequent adjustment of that amount that would have been made under this Part; and
- (b) any amount of transitional addition which is payable as a result of that determination is in addition to any amount falling within paragraph (1)(b) to which T continues to be entitled.

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(a) 1998 c.14.

(b) 1997 c.27.

(4) Regulation 12 has effect for the purposes of making the determination under paragraph (2).

### **Reducing the transitional addition: general rule**

**19.**—(1) The amount of any transitional addition to which a person is entitled by virtue of these Regulations shall be reduced (but not below nil) by a sum equal to the aggregate amount of all relevant increases which occur on or after the effective date in the amount payable to the person by way of an employment and support allowance.

(2) For the purposes of paragraph (1), a relevant increase is—

- (a) in relation to a person entitled to a contributory allowance, an increase in any amount applicable to the person under regulation 67(2)(a) or (3) of the 2008 Regulations<sup>(a)</sup>; and
- (b) in relation to a person entitled to an income-related allowance, an increase in any amount applicable to the person under regulation 67(1)(a) or (b) or (3) or 68(1)(a), (b) or (c) of the 2008 Regulations,

which is not excluded by paragraph (3).

(3) In relation to any person, the excluded increases are—

- (a) any increase applicable to the benefit week the first day of which is the effective date of the person's conversion decision; and
- (b) any increase resulting from the reversal (on appeal or otherwise) of any decision made by the Secretary of State that a person who was previously entitled to the support component has become entitled to the work-related activity component.

(4) No amount shall be payable by way of a transitional addition at any time when—

- (a) a person's entitlement to a transitional addition is less than 10 pence; and
- (b) the amount of an employment and support allowance that is otherwise payable to the person is nil.

### **Reducing the transitional addition: increases for dependent children**

**20.**—(1) Paragraphs (2) and (3) apply to any person ("T") who—

- (a) on the day before the effective date of T's conversion decision, was entitled in connection with an existing award of incapacity benefit or severe disablement allowance to an increase under section 80 of the Contributions and Benefits Act (beneficiary's dependent children), as that section has effect by virtue of article 3 of the Tax Credits (Commencement No.3 and Transitional Provisions and Savings) Order 2003<sup>(b)</sup>; and
- (b) on and after the effective date, is entitled by virtue of these Regulations to an employment and support allowance which includes an amount by way of a transitional addition.

(2) The amount of the transitional addition shall be reduced in accordance with paragraph (3) on the termination, on or after the effective date, of T's entitlement to child benefit in respect of the child or qualifying young person—

- (a) for whom; or
- (b) for whose care by an adult dependant,

T was entitled to the increase referred to in paragraph (1)(a).

(3) The amount of the transitional addition shall be reduced (but not below nil) by a sum equal to the amount which, on the day before the effective date, was the amount of the increase referred to in paragraph (1)(a) to which T was entitled.

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(a) The reference to regulation 67(2)(a) of the 2008 Regulations is to that regulation as modified by paragraph 14(b) of Schedule 2 these Regulations.

(b) S.I. 2003/938.



## **Reducing the transitional addition: increases for adult dependants**

- 21.**—(1) Paragraphs (2) and (3) apply to any person (“T”) who—
- (a) on the day before the effective date of T’s conversion decision, was entitled in connection with an existing award of incapacity benefit or severe disablement allowance to an increase under—
    - (i) section 86A of the Contributions and Benefits Act<sup>(a)</sup> (incapacity benefit – increases for adult dependants); or
    - (ii) section 90 of the Contributions and Benefits Act (adult dependants of beneficiaries in receipt of severe disablement allowance); and
  - (b) on and after the effective date, is entitled by virtue of these Regulations to an employment and support allowance which includes an amount by way of a transitional addition.
- (2) The amount of the transitional addition shall be reduced in accordance with paragraph (3) on the occurrence, on or after the effective date, of any of the following events—
- (a) the death of the adult dependant in respect of whom T was entitled to the increase referred to in paragraph (1)(a);
  - (b) the separation of T and that adult dependant;
  - (c) the award to that adult dependant of a personal benefit (within the meaning of the Social Security (Overlapping Benefits) Regulations 1979<sup>(b)</sup>) which is equal to or more than the amount which, on the day before the effective date, was the amount of the increase referred to in paragraph (1)(a) to which T was entitled.
- (3) The amount of the transitional addition shall be reduced (but not below nil) by a sum equal to the amount which, on the day before the effective date, was the amount of the increase referred to in paragraph (1)(a) to which T was entitled.

## **Termination of transitional addition**

- 22.**—(1) Any entitlement to a transitional addition which a person (“T”) may have by virtue of these Regulations terminates on whichever is the earlier of—
- (a) the reduction in accordance with regulations 19 to 21 of the amount of the transitional addition to nil;
  - (b) subject to paragraphs (2) and (3), the termination in accordance with the enactments applied by regulation 17 of T’s entitlement to an employment and support allowance; and
  - (c) 5th April 2020.
- (2) Nothing in paragraph (1)(b) prevents reinstatement of a person’s entitlement to a transitional addition following the reversal on appeal of any determination which results in the termination of the person’s entitlement to an employment and support allowance.
- (3) Any termination of T’s entitlement to a transitional addition by virtue of paragraph (1)(b) shall instead have effect as a suspension of that entitlement in Case 1 or Case 2.
- (4) Case 1 is where—
- (a) on a subsequent claim made by T for an employment and support allowance, a period of limited capability for work is treated under regulation 145(1) or (2) of the 2008 Regulations (linking rules) as a continuation of an earlier period of limited capability for work; and
  - (b) T’s entitlement to an employment and support allowance which is referred to in paragraph (1)(b) (“T’s old entitlement”) was in respect of that earlier period.

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<sup>(a)</sup> Section 86A was inserted by section 2(5) of the Social Security (Incapacity for Work) Act 1994 (c.18).

<sup>(b)</sup> S.I. 1979/597.



- (5) Case 2 is where—
- (a) T's old entitlement was to an income-related allowance;
  - (b) the reason for terminating that entitlement was that the condition set out in paragraph 6(1)(f) of Schedule 1 to the 2007 Act had ceased to be satisfied in T's case (no entitlement to income-related allowance where other member of a couple engages in remunerative work); and
  - (c) on a subsequent claim for an income-related allowance, T's entitlement to such an allowance commences before the end of the 12 week period which begins with the date of termination of T's old entitlement.
- (6) In Cases 1 and 2, the amount of the transitional addition which becomes payable on commencement of T's entitlement to an employment and support allowance is to be determined by reference to the amount of the transitional addition that was payable on the termination of T's old entitlement, subject to any subsequent adjustment of that amount that would have been made under this Part.

## PART 4

### MISCELLANEOUS

#### **Disapplication of certain enactments following conversion decision**

**23.** Where a conversion decision has been made in relation to any person, the following enactments shall not apply to that person with effect from the conversion decision's effective date—

- (a) sections 30A, 40 or 41 of the Contributions and Benefits Act(**a**) (incapacity benefit);
- (b) section 68 of the Contributions and Benefits Act (as it has effect by virtue of article 4 of the Welfare Reform and Pensions Act 1999 (Commencement No. 9, and Transitional and Savings Provisions) Order 2000(**b**));
- (c) regulation 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 1987(**c**) (prescribed category of persons for the purposes of entitlement on grounds of incapacity or disability);
- (d) the Income Support Transitional Regulations 1987(**d**);
- (e) the Incapacity Benefit Transitional Regulations 1995(**e**).

#### **Revocation of saving for certain linked claims**

**24.** In regulation 2 of the Employment and Support Allowance (Transitional Provisions) Regulations 2008(**f**) (claim for existing award), in paragraph (2), omit sub-paragraphs (a), (b) and (c).

#### **Amendment of the Employment and Support Allowance Regulations 2008**

**25.** In regulation 144(2) of the Employment and Support Allowance Regulations 2008(**g**) (which sets out exceptions from the requirement to serve a period of waiting days at the beginning of a period of limited capability for work)—

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- (a) Section 30A was inserted by section 1(1) of the Incapacity for Work Act 1994 (c.18) and is to be repealed by paragraph 9(5) of the Welfare Reform Act 2007. Section 40 was substituted, and section 41 inserted, by paragraphs 8 and 9 of Schedule 1 to the Incapacity for Work Act 1994 (c.18) and are to be repealed by Schedule 8 to the Welfare Reform Act 2007.
  - (b) S.I. 2000/2958 (C. 89).
  - (c) S.I. 1987/1967. Relevant amending instruments are S.I. 1996/206, 2000/1981 and 2006/718. The enactments referred to in regulation 23(c) are revoked, subject to savings, by S.I. 2009/3152 with effect from 30th December 2009.
  - (d) S.I. 1987/1969.
  - (e) S.I. 1995/310.
  - (f) S.I. 2008/795.
  - (g) S.I. 2880/794. Regulation 144(2)(d) was inserted by S.I. 2008/2428.

- (a) omit the word “or” at the end of sub-paragraph (c); and
- (b) after sub-paragraph (d) insert—
  - “or
  - (e) if the claim had been made before 31st January 2011, the claimant would have been able to claim incapacity benefit, severe disablement allowance or income support by virtue of any saving revoked by regulation 24 of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010.”.

**Consequential amendments**

26. Schedule 4 (which makes amendments consequential on these Regulations) has effect.

Signatory text

Address  
Date

*Name*  
Parliamentary Under Secretary of State  
Department for Work and Pensions

## SCHEDULES

### SCHEDULE 1

Regulation 6(1)

#### Modification of enactments: making conversion decisions

##### PART 1

##### MODIFICATION OF PART 1 OF THE 2007 ACT

1. Any reference to a claimant is to be read as if it were a reference to a notified person.
- 2.— (1) Section 1 is to be read as if—
  - (a) for subsection (2), there were substituted—
    - “(2) Subject to the provisions of this Part, a notified person is entitled to an employment and support allowance if the person satisfies the basic conditions and either—
      - (a) is entitled to an existing award of incapacity benefit or severe disablement allowance; or
      - (b) is entitled to an existing award of income support and satisfies the conditions set out in Part 2 of Schedule 1.”; and
    - (b) subsection (3)(e) were omitted.
3. Section 2 is to be read as if, in subsections (2)(a) and (3)(a), references to the assessment phase were to the conversion phase.
4. Section 4 is to be read as if, in subsections (4)(a) and (5)(a), references to the assessment phase were to the conversion phase.
5. Section 5 does not apply.
6. Schedule 1 to the 2007 Act is to be read as if—

- (a) paragraphs 1 to 5 were omitted; and
  - (b) in paragraph 6, after sub-paragraph (1), there were inserted—
    - “(1A) Paragraphs (1B) and (1C) apply in relation to any person (“P”) whose existing award of income support is subject to conversion under the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 (“the 2010 Regulations”).
    - (1B) In determining for the purposes of paragraph (1)(a) whether P’s income exceeds the applicable amount, any amount to which P may become entitled by way of a transitional addition under Part 2 of the 2010 Regulations shall be disregarded.
    - (1C) But where—
      - (a) P’s existing award would qualify for conversion under Part 2 of the 2010 Regulations but for the fact that the condition set out in paragraph (1)(a) is not satisfied in P’s case; and
      - (b) P would otherwise be entitled to an amount of transitional addition under Part 2 of the 2010 Regulations as a result of carrying out Step 2,
- the condition set out in paragraph (1)(a) shall be treated as having been satisfied and the amount of employment and support allowance which applies to P as a result of Step 1 shall be nil.”.

## PART 2

### MODIFICATION OF THE 2008 REGULATIONS

- 7. Any reference to a claimant is to be read as if it were a reference to the notified person.
- 8. Part 2 (which makes provision about the assessment phase) does not apply.
- 9. Part 3 (which makes provision about contribution conditions which do not apply by virtue of modifications contained in these Regulations) does not apply.
- 10. Regulation 30 (which provides for payment of the allowance pending determination of limited capability for work) does not apply.
- 11. Regulation 75 (payments treated as not being payments to which section 3 of the 2007 Act applies) is to be read as if—
  - (a) the existing provisions were renumbered as paragraph (1);
  - (b) at the end of that paragraph there were inserted—
    - “(g) any pension payment or PPF periodic payment which is made to a notified person and which falls within paragraph (2).”; and
  - (c) after that paragraph there were inserted—
    - “(2) This paragraph applies to any pension payment or PPF periodic payment made to the notified person where, immediately before the effective date of the person’s conversion decision, section 30DD(1) of the Contributions and Benefits Act(a) (incapacity benefit: reduction for pension payments and PPF periodic payments)—
      - (a) did not apply to the notified person by virtue of regulation 26 of the Social Security (Incapacity Benefit) Regulations 1994(b) (persons whose benefit is not to be reduced under section 30DD(1)); or
      - (b) was not treated as applying to the notified person by virtue of—
        - (i) regulation 19(1)(c) or (2)(c) of those Regulations (persons formerly entitled to severe disablement allowance); or

---

(a) Section 30DD was inserted by section 63 of the Welfare Reform and Pensions Act 1999 (c.30) and amended by S.I. 2006/343.

(b) S.I. 1994/2946.

- (ii) article 3 of the Welfare Reform and Pensions Act 1999 (Commencement No.9, and Transitional and Savings Provisions) Order 2000(a) (transitional provision in relation to incapacity benefit).”.

12. Regulation 144 (requirement to serve a period of waiting days at the beginning of a period of limited capability for work) does not apply.

### PART 3

#### MODIFICATION OF OTHER SECONDARY LEGISLATION

##### *Social Security (Claims and Payments) Regulations 1987*

13. Regulation 32 of the Social Security (Claims and Payments) Regulations 1987(b) is to be read as if it were modified so as to enable the Secretary of State to require from any person entitled to an existing award—

- (a) under paragraph (1), information or evidence for determining whether a decision on an existing award should be converted into an award of an employment and support allowance; and
- (b) under paragraph (1A), information or evidence in connection with payment of benefit in the event that an existing award is converted into an award of an employment and support allowance.

## SCHEDULE 2

Regulation 17(1)

### Modification of enactments: after the conversion phase

#### PART 1

##### MODIFICATION OF PART 1 OF THE 2007 ACT

1. Any reference to a claimant is to be read as if it were a reference to a person in relation to whom a conversion decision has been made under these Regulations.

2. Section 1 is to be read as if—

- (a) for subsection (2), there were substituted—

“(2) Subject to the provisions of this Part, a person is entitled to an employment and support allowance if the person satisfies the basic conditions and—

- (a) in accordance with Part 2 of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010, the effect of the conversion decision that was made in relation to the person was to convert the person’s existing award or awards into a single award of an employment and support allowance; and
- (b) that conversion decision has come into effect.”; and

- (b) for subsection (7), there were substituted—

“(7) In this Part—

“contributory allowance” means an employment and support allowance to which a person is entitled by virtue of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 which was based on an award of incapacity benefit or severe disablement allowance to which the person was entitled; and

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(a) S.I. 2000/2958.

(b) S.I. 1987/1968. Regulation 32(1) and (1A) were inserted by S.I. 2003/1050.

“income-related allowance” means an employment and support allowance to which a person is entitled by virtue of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 which was based on an award of income support to which the person was entitled.”.

3. Section 2 is to be read as if—

- (a) in subsection (1)(a), after the words “such amount” there were inserted “, or the aggregate of such amounts,”; and
- (b) in subsections (2)(a) and (3)(a), references to the assessment phase were to the conversion phase.

4. Section 4 is to be read as if, in subsections (4)(a) and (5)(a), references to the assessment phase were to the conversion phase.

5. Schedule 1 to the 2007 Act is to be read as if, in paragraph 6, after sub-paragraph (1), there were inserted—

“(1A) Paragraphs (1B) and (1C) apply where any person (“P”) is entitled by virtue of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 (“the 2010 Regulations”) to an employment and support allowance which is attributable to an income-related allowance.

(1B) In determining for the purposes of paragraph (1)(a) whether P’s income exceeds the applicable amount, the amount of any transitional addition to which P is entitled under the 2010 Regulations shall be disregarded.

(1C) Where—

- (a) P ceases to satisfy the condition set out in paragraph (1)(a); but
- (b) otherwise remains entitled to an amount by way of a transitional addition under the 2010 Regulations,

the condition set out in paragraph (1)(a) shall be treated as satisfied in P’s case and the amount of income-related allowance to which P is entitled shall be the amount of the transitional addition.”.

## PART 2

### MODIFICATION OF OTHER PRIMARY LEGISLATION

#### *Social Security Act 1998*

6. Schedule 3 to the Social Security Act 1998(a) (decisions against which an appeal lies) is to be read as if, after paragraph 8D, there were inserted—

*“Conversion of certain existing awards into awards of an employment and support allowance*

**8E.** A conversion decision within the meaning of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010.”.

#### *Social Security Contributions and Benefits Act 1992*

7. Section 44B of the Social Security Contributions and Benefits Act 1992(b) (deemed earnings factors: 2010-11 onwards) is to be read as if, after subsection (5), there were inserted—

“(5A) In determining whether Condition C is satisfied in relation to any pensioner, the following entitlements of the pensioner to an earnings factor credit may be aggregated if the weeks to which they relate comprise a continuous period—

- (a) any entitlement arising by virtue of section 44C(3)(d) below (eligibility for earnings factor enhancement in respect of a week in which long-term incapacity benefit was, or would have been, payable); and

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(a) 1998 (c.14). Paragraphs 8A to 8D of Schedule 3 were inserted by paragraph 12 of Schedule 1 to the State Pension Credit Act 2002 (c.16).

(b) 1992 c.4. Section 44B was inserted by section 9(1) of the Pensions Act 2007 (c.22) and amended by paragraph 5 of Schedule 1 to the National Insurance Act 2008 (c.16).

- (b) where an award of long-term capacity benefit was converted into an award of an employment and support allowance by virtue of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010, any entitlement arising by virtue of regulation 5A(2)(ba) of the Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2001<sup>(a)</sup> (earnings factor credits eligibility for pensioners to whom employment and support allowance was payable).”.

### PART 3

#### MODIFICATION OF THE 2008 REGULATIONS

- 8.** Any reference to a claimant is to be read as if it were a reference to a person in relation to whom a conversion decision has been made under these Regulations.
- 9.** Part 2 (which makes provision about the assessment phase) does not apply.
- 10.** Part 3 (which makes provision about contribution conditions which do not apply by virtue of modifications contained in these Regulations) does not apply.
- 11.** The 2008 Regulations are to be read as if, after Part 3, there were substituted—

### “PART 4A

#### APPEALS AGAINST CONVERSION DECISION

##### **Appeals against conversion decision**

- 18A.**—(1) Paragraph (2) applies where—
  - (a) a person has made and is pursuing an appeal against a conversion decision which embodies a determination that the person does not have limited capability for work; and
  - (b) that appeal has not yet been determined by a first-tier tribunal constituted under Chapter 2 of Part 1 of the Tribunals, Courts and Enforcement Act 2007<sup>(b)</sup>.
- (2) The person shall be treated in the same way as they would have been treated if they were appealing against a decision which—
  - (a) was made on a claim for an employment and support allowance; and
  - (b) embodies a determination that the claimant does not have limited capability for work.
- (3) Accordingly, if the person provides evidence of limited capability for work in accordance with the Medical Evidence Regulations, the person is to be treated as having limited capability for work until—
  - (a) another determination is made as to whether or not the person has limited capability for work;
  - (b) another determination is made as to whether or not the person is to be treated as having limited capability for work otherwise than by virtue of paragraph (2); or
  - (c) the appeal is abandoned or fails by reason of its non-prosecution,whichever occurs first.”.
- 12.** Regulation 30 (which provides for payment of the allowance pending determination of limited capability for work) is to be read as if, after paragraph (3), there were inserted—

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<sup>(a)</sup> S.I. 2001/1323. Regulation 5A was inserted by S.I. 2009/2206. The reference to regulation 5A(2)(d) is to the modification made by paragraph 25 of Schedule 2 to these Regulations.

<sup>(b)</sup> 2007 c.15.

“(4) Nothing in this regulation applies in any case falling within regulation 18A.”.

**13.** Regulation 45 (exempt work) is to be read as if, for the definition of “specified work” in paragraph (10), there were substituted—

““specified work” means—

- (a) work done in accordance with paragraph (4);
- (b) work done in accordance with regulation 17(4)(a) of the Social Security (Incapacity for Work) (General) Regulations 1995(a); or
- (c) work done in accordance with regulation 17(1A) of those Regulations, as then in force.”.

**14.** Regulation 67 (prescribed amounts) is to be read as if—

(a) in paragraph (1), after sub-paragraph (c) there were inserted—

“(d) the amount of any transitional addition to which the person is entitled under regulation 11 of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010.”;

(b) in paragraph (2), for the words from “is the amount” to the end, there were substituted are such of the following amounts as may apply in the person’s case—

“(a) the amount determined in accordance with paragraph 1(1) of Schedule 4; and

(b) the amount of any transitional addition to which the person is entitled under regulation 10 or 18 of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010.”.

**15.** Regulation 68 (polygamous marriages) is to be read as if, in paragraph (1), after sub-paragraph (d) there were inserted—

“(e) the amount of any transitional addition to which the person is entitled under regulation 11 of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010.”.

**16.** Regulation 75 (payments treated as not being payments to which section 3 of the 2007 Act applies) is to be read subject to the same modifications as are specified in paragraph 11 of Schedule 1 to these Regulations.

**17.** Schedule 5 (prescribed amounts in special case) is to be read as if any reference to the amount—

(a) applicable to a person under regulation 67(1)(a); or

(b) to which a person is entitled under regulation 67(1)(a),

included the amount of any transitional addition to which the person is entitled under regulation 67(1)(d) (see modification made by paragraph 14(a) of this Schedule).

#### PART 4

#### MODIFICATION OF OTHER SECONDARY LEGISLATION

##### *Social Security (Claims and Payments) Regulations 1987*

**18.** The Social Security (Claims and Payments) Regulations 1987(b) are to be read subject to the modifications set out in paragraphs 19 to 21 of this Schedule.

**19.** Regulation 3 of (claims not required for entitlement to benefits in certain cases) is to be read as if, after paragraph (j), there were inserted—

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(a) S.I. 1995/311. Regulation 17(1A) was in force from 8th April 2002 to 9th April 2006. Regulation 17 was substituted by S.I. 2006/757 with effect from 10th April 2006.

(b) S.I. 1987/1968. Regulation 3(j) was inserted by S.I. 2008/1554. Regulation 32(1B) was inserted by S.I. 2003/1050 and amended by S.I. 2003/3209. Paragraphs 1(3) and 8(4)(a)(iv) of Schedule 9 were inserted by SI 2008/1554.



“(k) in the case of an employment and support allowance where the beneficiary is entitled to an existing award which is subject to conversion under the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010.”.

20. Regulation 32(1B) (information to be given and changes to be notified) is to be read as if—

- (a) the word “or” at the end of sub-paragraph (a) were omitted; and
- (b) after that sub-paragraph, there were inserted—

“(ab) the amount of any transitional addition to which the beneficiary is entitled under the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010; or”.

21. Schedule 9 (deductions from benefit and direct payments to third parties) is to be read as if—

- (a) in paragraph 1 (interpretation)—

- (i) in sub-paragraph (3), after the words ““employment and support allowance” means”, there were inserted “(subject to sub-paragraph (4))”; and

- (ii) after sub-paragraph (3), there were inserted—

“(4) In the application of sub-paragraph (3) to a beneficiary whose award of an employment and support allowance is by virtue of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 (“the 2010 Regulations”), any reference to an employment and support allowance includes any transitional addition to which the beneficiary is entitled under those Regulations.

(5) Where a specified benefit awarded to a beneficiary is subject to conversion under the 2010 Regulations and—

- (a) immediately before the effective date of the conversion decision made in relation to the beneficiary, any deduction is being made in accordance with this Schedule from sums payable to the offender by way of the specified benefit; and
  - (b) with effect from that date, the award of specified benefit is converted into an award of an employment and support allowance under the 2010 Regulations,

any deduction falling within paragraph (a) shall have effect as a deduction from the employment and support allowance to which the beneficiary is entitled.”.

- (b) in paragraph 8—

- (i) in sub-paragraph (4), for paragraph (a)(iv), there were substituted—

- “(iv) in the case of an employment and support allowance, the applicable amount for the family as is awarded under the provisions specified in sub-paragraph (5); or”; and

- (ii) after sub-paragraph (4) there were inserted—

“(5) The specified provisions are—

- (a) where the person is entitled to an employment and support allowance by virtue of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 (“the 2010 Regulations”)—

- (i) paragraph (1)(a), (b) and (d) of regulation 67 (prescribed amounts); or

- (ii) paragraph (1)(a), (b), (c) and (e) of regulation 68 (polygamous marriages), of the Employment and Support Allowance Regulations (as modified by paragraphs 14 and 15 of Schedule 2 to the 2010 Regulations); and

- (b) in any other case, paragraph (1)(a) and (b) of regulation 67 or paragraph (1)(a) to (c) of regulation 68 of the Employment and Support Allowance Regulations.”.

*Community Charges (Deductions from Income Support) (No. 2) Regulations 1990*

**22.** Regulation 1 of the Community Charges (Deductions from Income Support) (No. 2) Regulations 1990(a) (citation, commencement and interpretation) is to be read as if, after paragraph (2), there were inserted—

“(2A) In the application of these Regulations to a debtor whose entitlement to an employment and support allowance is by virtue of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 (“the 2010 Regulations”), any reference to an employment and support allowance includes any transitional addition to which the debtor is entitled under those Regulations.

(2B) Where a debtor’s award of income support is subject to conversion under the 2010 Regulations and—

- (a) immediately before the effective date of the conversion decision made in relation to the debtor, any deduction is being made under these Regulations from sums payable to the debtor by way of income support; and
- (b) with effect from that date, the award of income support is converted into an award of an employment and support allowance under the 2010 Regulations,

any deduction falling within sub-paragraph (a) shall have effect as a deduction from the employment and support allowance to which the debtor is entitled.”.

*Fines (Deductions from Income Support) Regulations 1992*

**23.** Regulation 1 of the Fines (Deductions from Income Support) Regulations 1992(b) (citation, commencement and interpretation) is to be read as if, after paragraph (2), there were inserted—

“(2A) In the application of these Regulations to an offender whose entitlement to an employment and support allowance is by virtue of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 (“the 2010 Regulations”), any reference to an employment and support allowance includes any transitional addition to which the offender is entitled under those Regulations.

(2B) Where an offender’s award of income support is subject to conversion under the 2010 Regulations and—

- (a) immediately before the effective date of the conversion decision made in relation to the offender, any deduction is being made under these Regulations from sums payable to the offender by way of income support; and
- (b) with effect from that date, the award of income support is converted into an award of an employment and support allowance under the 2010 Regulations,

any deduction falling within sub-paragraph (a) shall have effect as a deduction from the employment and support allowance to which the offender is entitled.”.

*Council Tax (Deductions from Income Support) Regulations 1993*

**24.** Regulation 1 of the Council Tax (Deductions from Income Support) Regulations 1993(c) (citation, commencement and interpretation) is to be read as if, after paragraph (2), there were inserted—

“(2A) In the application of these Regulations to a debtor whose entitlement to an employment and support allowance is by virtue of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 (“the 2010 Regulations”),

- 
- (a) S.I. 1990/545. These Regulations lapsed on the repeal of the enabling authority, as from 1st April 1993, except in relation to any community charge in respect of a day falling before that date or in relation to any financial year beginning before that date.
  - (b) S.I. 1992/2182. S.I. 2008/1554 added an employment and support allowance to the benefits from which deductions may be made, inserted definitions of “contributory employment and support allowance”, “income related employment and support allowance” and made other relevant amendments.
  - (c) S.I. 1993/494. S.I. 2008/1554 added an employment and support allowance to the benefits from which deductions may be made, inserted definitions of “contributory employment and support allowance”, “income related employment and support allowance” and made other relevant amendments.

any reference to an employment and support allowance includes any transitional addition to which the debtor is entitled under those Regulations.

(2B) Where a debtor's award of income support is subject to conversion under the 2010 Regulations and—

- (a) immediately before the effective date of the conversion decision made in relation to the debtor, any deduction is being made under these Regulations from sums payable to the debtor by way of income support; and
- (b) on that date, the award of income support is converted into an award of an employment and support allowance under the 2010 Regulations,

any deduction falling within sub-paragraph (a) shall have effect as a deduction from the employment and support allowance to which the debtor is entitled.”

*Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2001*

**25.** Regulation 5A of the Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2001(a) is to be read as if—

- (a) the word “or” at the end of paragraph (2)(b) were omitted; and
- (b) after that paragraph (2)(b), there were inserted—

“(ba)that allowance was an employment and support allowance to which the pensioner was entitled by virtue of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 and either—

- (i) long-term incapacity benefit was payable to the pensioner immediately before its conversion into an employment and support allowance in accordance with those Regulations; or
- (ii) the condition in sub-paragraph (b) was satisfied; or ”.

## SCHEDULE 3

Regulation 17(2)(e)(i)

### List of regulations that apply after the conversion phase

The regulations referred to in regulation 17(2)(e)(i) are—

The Social Security (Benefit) (Married Women and Widows Special Provisions) Regulations 1974(b)

The Social Security (Benefit) (Members of the Forces) Regulations 1975(c)

The Social Security (Airmen's Benefits) Regulations 1975(d)

The Social Security (Mariners' Benefits) Regulations 1975(e)

The Social Security (Credits) Regulations 1975(f)

The Social Security (Medical Evidence) Regulations 1976(g)

The Social Security (Overlapping Benefits) Regulations 1979(h)

The Statutory Sick Pay (General) Regulations 1982(i)

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(a) S.I. 2001/1323. Regulation 5A was inserted by S.I. 2009/2206.

(b) S.I. 1974/2010.

(c) S.I. 1975/493.

(d) S.I. 1975/494.

(e) S.I. 1975/529.

(f) S.I. 1975/556.

(g) S.I. 1976/615.

(h) S.I. 1979/597.

(i) S.I. 1982/894.

The Statutory Maternity Pay (General) Regulations 1986**(a)**  
The Income Support (General) Regulations 1987**(b)**  
The Social Security (Claims and Payments) Regulations 1987**(c)**  
The Social Fund (Recovery by Deductions from Benefits) Regulations 1988**(d)**  
The Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988**(e)**  
The Social Fund Cold Weather Payments (General) Regulations 1988**(f)**  
The Community Charges (Deductions from Income Support) (No.2) Regulations 1990**(g)**  
The Child Support (Maintenance Assessment Procedure) Regulations 1992**(h)**  
The Child Support (Maintenance Assessments and Special Cases) Regulations 1992**(i)**  
The Fines (Deductions from Income Support) Regulations 1992**(j)**  
The Council Tax (Deductions from Income Support) Regulations 1993**(k)**  
The Jobseeker's Allowance Regulations 1996**(l)**  
The Social Security Benefits (Maintenance Payments and Consequential Amendments) Regulations 1996**(m)**  
The Child Support Departure Direction and Consequential Amendments Regulations 1996**(n)**  
The Social Security and Child Support (Decisions and Appeals) Regulations 1999**(o)**  
The Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000**(p)**  
The Social Fund Winter Fuel Payment Regulations 2000**(q)**  
The Child Support (Maintenance Calculations and Special Cases) Regulations 2000**(r)**  
The Child Support (Variations) Regulations 2000**(s)**  
The Child Support (Maintenance Calculation Procedure) Regulations 2000**(t)**  
The Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001**(u)**  
The Children (Leaving Care) Social Security Benefits Regulations 2001**(v)**  
The Social Security (Loss of Benefit) Regulations 2001**(w)**  
The State Pension Credit Regulations 2002**(x)**  
The Social Security (Jobcentre Plus Interviews for Partners) Regulations 2003**(y)**  
The Age-Related Payments Regulations 2005**(x)**

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- (a)** S.I. 1986/1960.
  - (b)** S.I. 1987/1967.
  - (c)** S.I. 1987/1968.
  - (d)** S.I. 1988/35.
  - (e)** S.I. 1988/664.
  - (f)** S.I. 1988/1724.
  - (g)** S.I. 1990/545.
  - (h)** S.I. 1992/1813.
  - (i)** S.I. 1992/1815.
  - (j)** S.I. 1992/2182.
  - (k)** S.I. 1993/494.
  - (l)** S.I. 1996/207.
  - (m)** S.I. 1996/940.
  - (n)** S.I. 1996/2907.
  - (o)** S.I. 1999/991.
  - (p)** S.I. 2000/636.
  - (q)** S.I. 2000/729.
  - (r)** S.I. 2001/155.
  - (s)** S.I. 2001/156.
  - (t)** S.I. 2001/157.
  - (u)** S.I. 2001/769.
  - (v)** S.I. 2001/3074.
  - (w)** S.I. 2001/4022.
  - (x)** S.I. 2002/1792.
  - (y)** S.I. 2003/1886.
  - (z)** S.I. 2005/1983.

## SCHEDULE 4

Regulation 26

### Consequential amendments

#### *The Social Security (Claims and Payments) Regulations 1987*

1. In paragraph 8 of Schedule 9 to the Social Security (Claims and Payments) Regulations 1987(b) (deductions from benefit and direct payments to third parties), in sub-paragraph (4), for paragraph (a)(iv) substitute—

“(iv) in the case of an employment and support allowance, the applicable amount for the family as is awarded under paragraph (1)(a) and (b) of regulation 67 (prescribed amounts) or paragraph (1)(a) to (c) of regulation 68 (polygamous marriages) of the Employment and Support Allowance Regulations; or”.

#### *The Employment and Support Allowance (Transitional Provisions) Regulations 2008*

2. In regulation 2(3) of the Employment and Support Allowance (Transitional Provisions) Regulations 2008(c), omit the words “severe disablement allowance,”.

### EXPLANATORY NOTE

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

These Regulations make transitional provision in relation to the introduction of employment and support allowance and apply to persons entitled to any existing award (which is defined in Schedule 4 to the Welfare Reform Act 2007 in terms of incapacity benefit, severe disablement allowance and income support on grounds of disability). The Regulations set out the process for determining whether existing awards are to be converted into awards of an employment and support allowance. An award may be converted only if certain conditions are satisfied in relation to the person entitled to the award.

Part 2 of, and Schedule 1 to, the Regulations set out the process for determining whether or not a person’s existing award is to be converted into an award of an employment and support allowance. The conversion process operates on an individual basis and, in each case, begins when the Secretary of State sends a notice under regulation 4 to a particular person. Where the person is entitled to more than one existing award the notice and conversion process apply to both awards. Regulation 5 requires the Secretary of State to determine whether or not the existing award (or awards) qualify for conversion and to notify the person accordingly. There is also provision for notification to be given in the event that an existing award ceases to be subject to conversion. Regulation 6 and Schedule 1 establish the statutory machinery to facilitate this determination, by cross-applying certain enactments that already have effect in relation to persons who make a claim for an employment and support allowance. Schedule 1 modifies these enactments to take account of the differences that arise because a person is already entitled to an existing award and is not required to make a claim. There is also provision to enable the Secretary of State to obtain information in order to make conversion decisions and to provide for conversion decisions to be revised before they come into effect.

Under regulation 7, a person’s existing award (or awards) qualify for conversion if the person satisfies the basic conditions for entitlement to an employment and support allowance, except for the condition that they are not entitled to income support. One of these basic conditions is that the person has limited capability for work. This will be determined on an individual basis, in

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(a) S.I. 2005/3061.

(b) Paragraph 8(4)(a)(iv) of Schedule 9 was inserted by SI 2008/1554.

(c) S.I. 2008/795. Regulation 2(2) was amended by S.I. 2008/2783.

accordance with the arrangements for work capability assessments set out in the Employment and Support Allowance Regulations 2008 (as modified by Schedule 1 to these Regulations).

If an existing award (or awards) do qualify for conversion, the Secretary of State must determine in accordance with regulations 8 to 13 the amount to which the person is entitled. In broad terms, this is the aggregate of (a) the amount to which the person would have been entitled on a successful claim for an employment and support allowance, and (b) an additional amount, referred to in the Regulations as a “transitional addition”. The transitional addition is based on the difference between specified elements of the person’s existing award and specified elements of the employment and support allowance into which it is to be converted.

The date on which the Secretary of State’s decision about conversion comes into effect is provided for in regulation 14, and regulations 15 and 16 set out the consequences that follow from the decision. Where the decision is that a person’s award (or awards) do qualify for conversion, regulation 15 converts them into a single award of employment and support allowance. Where the decision is that a person’s existing award (or awards) do not qualify, regulation 16 provides that the award (or awards) terminate immediately before the effective date of the conversion decision.

Part 3 of, and Schedules 2 and 3 to, the Regulations set out the framework which has effect in relation to any person with effect from the effective date of their conversion decision under Part 2 of the Regulations. In relation to any matter to be determined in connection with a person’s entitlement to an employment and support allowance (including a decision not to convert an award), regulation 17 and Schedules 2 and 3 cross-apply the enactments that already have effect in relation to an employment and support allowance made on a claim. This includes provision for revision, supersession and appeals in connection with conversion decisions which have come into effect. There are modifications of these enactments in Schedule 2. Regulations 18 to 23 make further provision about the transitional addition: regulation 18 provides for a review in certain cases where a person ceases to be entitled to an income-related employment and support allowance, regulations 19 to 21 set out the circumstances in which the amount is to be reduced and regulation 22 provide for termination when the amount is reduced to nil, when the person ceases to be entitled to an employment and support allowance or 5th April 2020 (whichever occurs first).

Part 4 of the Regulations contains miscellaneous provisions, including provision in regulation 24 which revokes the saving in regulation 2(2)(a), (b) and (c) of the Employment and Support Allowance (Transitional Provisions) Regulations 2008. This saving enables a person previously entitled to incapacity benefit, severe disablement allowance or income support on grounds of disability to make a repeat (linked) claim for that benefit in certain circumstances, rather than having to make a new claim for employment and support allowance. The revocation of this saving comes into force on 31st January 2011. Regulation 25 amends regulation 144 of the Employment and Support Allowance Regulations 2008 so that a person does not have to serve a period of waiting days in relation to a new claim for employment and support allowance if that person would have benefited from the saving revoked by regulation 24 if they had made a claim before 31st January 2011.



## APPENDIX 3

# THE HOUSING BENEFIT AND COUNCIL TAX BENEFIT (EMPLOYMENT AND SUPPORT ALLOWANCE) AMENDMENT REGULATIONS 2010

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### STATUTORY INSTRUMENTS

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2010 No.

## SOCIAL SECURITY

### The Housing Benefit and Council Tax Benefit (Employment and Support Allowance) Amendment Regulations 2010

*Made* - - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*Coming into force* - - - *1st October 2010*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(d) and (e), 135(1), 137(1) and 175(1) of the Social Security Contributions and Benefits Act 1992(a) and paragraphs 4(4) and (6), 20(1) and 23(1) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000(b).

[In accordance with section 173(1)(b)(c) of the Social Security Administration Act 1992, the Secretary of State has obtained the agreement of the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it.]

[In accordance with section 172(1) of the Social Security Administration Act 1992, the Secretary of State has referred these Regulations to the Social Security Advisory Committee.]

[In accordance with section 176(1) of the Social Security Administration Act 1992, the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.]

#### Citation and commencement

1. These Regulations may be cited as the Housing Benefit and Council Tax Benefit (Employment and Support Allowance) Amendment Regulations 2010 and shall come into force on 1st October 2010.

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(a) 1992 c. 4. Section 123(1)(e) was substituted by the Local Government Finance Act 1992 (c. 14), Schedule 9, paragraph 1(1). Section 137(1) is an interpretation provision and is cited for the definition of “prescribed”. Section 175(1) was amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 3, paragraph 29.

(b) 2000 c. 19. Paragraph 23(1) is an interpretation provision and is cited for the definition of “prescribed”.

(c) 1992 c. 5.



## Amendment of the Housing Benefit Regulations 2006

- 2.—(1) The Housing Benefit Regulations 2006(a) are amended as follows.
- (2) In regulation 22(b) (applicable amounts) after sub-paragraph (e) add—
- “(f) the amount of any transitional addition which may be applicable to him in accordance with Parts 7 and 8 of Schedule 3 (transitional addition).”.
- (3) In regulation 23(c) (polygamous marriages) after sub-paragraph (f) add—
- “(g) the amount of any transitional addition which may be applicable to him in accordance with Parts 7 and 8 of Schedule 3 (transitional addition).”.
- (4) In Schedule 3 (applicable amounts)—
- (a) after paragraph 21(d) insert
- “**21A.**—(1) Subject to paragraph 22, the claimant is entitled to one, but not both, of the components in paragraphs 23 and 24 if the claimant or his partner is entitled to a converted employment and support allowance.
- (2) In this paragraph and in Parts 7 and 8 “converted employment and support allowance” means an award of benefit converted to an employment and support allowance in accordance with regulation 5(2)(a) of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010.”;
- (b) after Part 6(e) add—

### “Part 7 Transitional Addition

27.—(1) The claimant is entitled to the transitional addition calculated in accordance with paragraph 28 where the claimant or the claimant’s partner (“the relevant person”)—

- (a) is entitled to a converted employment and support allowance; or
- (b) is treated as having limited capability for work by virtue of regulation 18A(3)(f) of the Employment and Support Allowance Regulations,

unless the employment and support allowance is income-related or the amount of the transitional addition calculated in accordance with paragraph 28 would be nil.

(2) Subject to paragraphs (3) and (4), the claimant’s entitlement to a transitional addition will end on whichever is the earliest of—

- (a) the reduction of the transitional addition to nil in accordance with paragraph 29;
- (b) the termination of the claimant’s award of housing benefit;
- (c) the relevant person ceasing to meet the requirements of paragraph (1)(a) or (b), as the case may be;
- (d) 5th April 2020.

(3) Where the claimant’s entitlement to a transitional addition has ended by virtue of paragraph (2)(b), the claimant will be entitled to the transitional addition that would have applied had the claimant’s entitlement to a transitional addition not ended where—

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(a) S.I. 2006/213.  
(b) Regulation 22 was amended by S.I. 2008/1082 (as amended by S.I. 2008/2428).  
(c) Regulation 23 was amended by S.I. 2008/1082 (as amended by S.I. 2008/2428).  
(d) Paragraph 21 was inserted by S.I. 2008/1082 (as amended by S.I. 2008/2428).  
(e) Part 6 was inserted by S.I. 2008/1082 (as amended by S.I. 2008/2428).  
(f) Regulation 18A was inserted by S.I. 2010/[ ].

- (a) the claimant subsequently becomes entitled to housing benefit not more than 12 weeks after the award of housing benefit was terminated and during that period the relevant person was—
  - (i) entitled to an employment and support allowance or, as the case may be, treated as having limited capability for work by virtue of regulation 18A(3) of the Employment and Support Allowance Regulations; or
  - (ii) was treated as having limited capability for work in accordance with regulation 145(1) of the Employment and Support Allowance Regulations; or
- (b) the claimant subsequently becomes entitled to housing benefit not more than 104 weeks after the award of housing benefit was terminated and during that period the relevant person was treated as having limited capability for work in accordance with regulation 145(2) Employment and Support Allowance Regulations.

(4) Where—

- (a) the claimant’s entitlement to a transitional addition has ended by virtue of paragraph (2)(c);
- (b) the relevant person subsequently becomes entitled to an employment and support allowance; and
- (c) the relevant person is treated as having limited capability for work in accordance with regulation 145(1) or (2) of the Employment and Support Allowance Regulations during the period between the events in paragraphs (a) and (b),

from the date that the subsequent award of an employment and support allowance takes effect, the claimant will be entitled to the transitional addition that would have applied had the claimant’s entitlement to a transitional addition not ended.

## Part 8

### Amount of transitional addition

**28.**—(1) Subject to paragraph 29, the amount of the transitional addition is the amount by which Amount A exceeds Amount B.

(2) Where a conversion decision as described in regulation 5(2)(a) of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 is made in respect of the relevant person—

- (a) Amount A is the basic amount that would have applied on the day that decision took effect had that decision not been made; and
- (b) Amount B is the basic amount that applied on that day as a result of that decision.

(3) Where the relevant person is treated as having limited capability for work by virtue of regulation 18A(3) of the Employment and Support Allowance Regulations—

- (a) Amount A is the basic amount that would have applied on the day that person was first treated as having limited capability for work if the person had not been so treated; and
- (b) Amount B is the basic amount that applied on that day as a result of that person being so treated.

**29.**—(1) Where there is a change of circumstances which leads to an increase in the claimant’s basic amount, the transitional addition that applies immediately before the change of circumstances shall be reduced by the amount by which Amount C exceeds Amount D.

(2) Amount C is the basic amount that applies on the day the change of circumstances takes effect.

(3) Amount D is the basic amount that applied immediately before the change of circumstances.

(4) In this paragraph and paragraph 28, “basic amount” means the aggregate of such amounts as may apply in the claimant’s case in accordance with regulation 22(a) to (e) or regulation 23(a) to (f).”.

## Amendment of the Council Tax Benefit Regulations 2006

- 3.—(1) The Council Tax Benefit Regulations 2006(a) are amended as follows.
- (2) In regulation 12(b) (applicable amounts) after sub-paragraph (e) add—
- “(f) the amount of any transitional addition which may be applicable to him in accordance with Parts 7 and 8 of Schedule 1 (transitional addition).”.
- (3) In regulation 13(c) (polygamous marriages) after sub-paragraph (f) add—
- “(g) the amount of any transitional addition which may be applicable to him in accordance with Parts 7 and 8 of Schedule 1 (transitional addition).”.
- (4) In Schedule 1 (applicable amounts)—
- (a) after paragraph 21(d) insert
- “21A.—(1) Subject to paragraph 22, the claimant is entitled to one, but not both, of the components in paragraphs 23 and 24 if the claimant or his partner is entitled to a converted employment and support allowance.
- (2) In this paragraph and in Parts 7 and 8 “converted employment and support allowance” means an award of benefit converted to an employment and support allowance in accordance with regulation 5(2)(a) of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010.”;
- (b) after Part 6(e) add—

### “Part 7 Transitional Addition

27.—(1) The claimant is entitled to the transitional addition calculated in accordance with paragraph 28 where the claimant or the claimant’s partner (“the relevant person”)—

- (a) is entitled to a converted employment and support allowance; or
- (b) is treated as having limited capability for work by virtue of regulation 18A(3)(f) of the Employment and Support Allowance Regulations,

unless the employment and support allowance is income-related or the amount of the transitional addition calculated in accordance with paragraph 28 would be nil.

(2) Subject to paragraphs (3) and (4), the claimant’s entitlement to a transitional addition will end on whichever is the earliest of—

- (a) the reduction of the transitional addition to nil in accordance with paragraph 29;
- (b) the termination of the claimant’s award of council tax benefit;
- (c) the relevant person ceasing to meet the requirements of paragraph (1)(a) or (b), as the case may be;
- (d) 5th April 2020.

(3) Where the claimant’s entitlement to a transitional addition has ended by virtue of paragraph (2)(b), the claimant will be entitled to the transitional addition that would have applied had the claimant’s entitlement to a transitional addition not ended where—

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(a) S.I. 2006/215.  
(b) Regulation 12 was amended by S.I. 2008/1082 (as amended by S.I. 2008/2428).  
(c) Regulation 13 was amended by S.I. 2008/1082 (as amended by S.I. 2008/2428).  
(d) Paragraph 21 was inserted by S.I. 2008/1082 (as amended by S.I. 2008/2428).  
(e) Part 6 was inserted by S.I. 2008/1082 (as amended by S.I. 2008/2428).  
(f) Regulation 18A was inserted by S.I. 2010/[ ].

- (a) the claimant subsequently becomes entitled to council tax benefit not more than 12 weeks after the award of council tax benefit was terminated and during that period the relevant person was—
  - (i) entitled to an employment and support allowance or, as the case may be, treated as having limited capability for work by virtue of regulation 18A(3) of the Employment and Support Allowance Regulations; or
  - (ii) was treated as having limited capability for work in accordance with regulation 145(1) of the Employment and Support Allowance Regulations; or
- (b) the claimant subsequently becomes entitled to council tax benefit not more than 104 weeks after the award of council tax benefit was terminated and during that period the relevant person was treated as having limited capability for work in accordance with regulation 145(2) Employment and Support Allowance Regulations.

(4) Where—

- (a) the claimant's entitlement to a transitional addition has ended by virtue of paragraph (2)(c);
- (b) the relevant person subsequently becomes entitled to an employment and support allowance; and
- (c) the relevant person is treated as having limited capability for work in accordance with regulation 145(1) or (2) of the Employment and Support Allowance Regulations during the period between the events in paragraphs (a) and (b),

from the date that the subsequent award of an employment and support allowance takes effect, the claimant will be entitled to the transitional addition that would have applied had the claimant's entitlement to a transitional addition not ended.

## Part 8

### Amount of transitional addition

**28.**—(1) Subject to paragraph 29, the amount of the transitional addition is the amount by which Amount A exceeds Amount B.

(2) Where a conversion decision as described in regulation 5(2)(a) of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 is made in respect of the relevant person—

- (a) Amount A is the basic amount that would have applied on the day that decision took effect had that decision not been made; and
- (b) Amount B is the basic amount that applied on that day as a result of that decision.

(3) Where the relevant person is treated as having limited capability for work by virtue of regulation 18A(3) of the Employment and Support Allowance Regulations—

- (a) Amount A is the basic amount that would have applied on the day that person was first treated as having limited capability for work if the person had not been so treated; and
- (b) Amount B is the basic amount that applied on that day as a result of that person being so treated.

**29.**—(1) Where there is a change of circumstances which leads to an increase in the claimant's basic amount, the transitional addition that applies immediately before the change of circumstances shall be reduced by the amount by which Amount C exceeds Amount D.

(2) Amount C is the basic amount that applies on the day the change of circumstances takes effect.

(3) Amount D is the basic amount that applied immediately before the change of circumstances.

(4) In this paragraph and paragraph 28, “basic amount” means the aggregate of such amounts as may apply in the claimant’s case in accordance with regulation 22(a) to (e) or regulation 23(a) to (f).”.

#### **Amendment of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001**

**4.—**(1) The Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(a) are amended as follows.

(2) In regulation 7(2)—

(a) in paragraph (i)(b) after “paragraph (o)” insert “(p) or (q)”;

(b) after paragraph (o)(c) add—

“(p) where—

(i) the claimant has been awarded entitlement to housing benefit or council tax benefit;

(ii) the claimant or the claimant’s partner has had an award of benefit converted to an employment and support allowance in accordance with regulation 5(2)(a) of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010; and

(iii) subsequent to the first day of the period to which that entitlement to housing benefit or council tax benefit relates, the Secretary of State makes a decision to supersede the award of employment and support allowance to award a different component;

(q) where the claimant has been awarded entitlement to housing benefit or council tax benefit and subsequent to the first day of the period to which that entitlement relates—

(i) a conversion decision within the meaning of regulation 5(2)(a) of the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 takes effect in respect of the claimant or the claimant’s partner; or

(ii) the claimant is treated as having limited capability for work by virtue of regulation 18A(2) of the Employment and Support Allowance Regulations.”.

(3) In regulation 8—

(a) in paragraph (14D)(d) after “regulation 7(2)(o)” insert “or (p)”;

(b) after paragraph (14D) insert—

“(14E) Where a decision is superseded in accordance with regulation 7(2)(q) the decision shall take effect—

(a) where the decision made in accordance with the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 takes effect on or after 1st April in any year but before 15th April of that year—

(i) from 1st April for a council tax benefit award;

(ii) from 1st April for a housing benefit award in which the claimant’s weekly amount of eligible rent falls to be calculated in accordance with regulation 80(2)(b) or (c) of the Housing Benefit Regulations or, as the case may be, regulation 61(2)(b) or (c) of the Housing Benefit (State Pension Credit) Regulations;

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(a) S.I. 2001/1002

(b) Paragraph (i) was inserted by S.I. 2003/2275 and amended by S.I. 2008/1082 (as amended by S.I. 2008/2428).

(c) Paragraph (o) was inserted by S.I. 2008/1082 (as amended by S.I. 2008/2428).

(d) Paragraph (14D) was inserted by S.I. 2008/1082 (as amended by S.I. 2008/2428).

- (iii) from the first Monday in April for a housing benefit award to which paragraph (a)(i) does not apply;
- (b) in any other case from the day decision made in accordance with the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010 takes effect.”.

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

*Name*  
Parliamentary Under Secretary of State,  
Department for Work and Pensions

Date

#### **EXPLANATORY NOTE**

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

These Regulations amend the Housing Benefit Regulations 2006, Council Tax Benefit Regulations 2006 and the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 (“the Decisions and Appeals Regulations”).

Regulation 2 amends the Housing Benefit Regulations 2006 to make provision for a transitional addition to a claimant’s applicable amount where the claimant or the claimant’s partner has had an award of benefit converted to an employment and support allowance in accordance with the Employment and Support Allowance (Transitional Provisions) (Existing Awards) Regulations 2010. This will ensure that the claimant’s applicable amount for housing benefit purposes will not decrease because an existing benefit has been converted to an employment and support allowance or because a person has appealed a decision not to convert an existing benefit to an employment and support allowance.

Regulation 3 makes equivalent amendment to the Council Tax Benefit Regulations 2006.

Regulation 4 amends the Decisions and Appeals Regulations to make provision for the supersession of awards where the claimant or the claimant’s partner has had an award of benefit converted to an employment and support allowance or is treated as having limited capability for work while appealing a decision not to convert an existing award of benefit. This will take effect for housing benefit and council tax benefit purposes from the date of the decision to convert the award unless this occurs in the first two weeks of April. In this case, the supersession will take effect on the same day that housing benefit and council tax benefit are up-rated.

Regulation 4 also amends regulation 7 of the Decisions and Appeals Regulations to allow for the supersession of housing benefit or council tax benefit where the claimant or the claimant’s partner has had an award of benefit or credits converted to an employment and support allowance and there is a later change to the employment and support allowance component .

A full impact assessment has not been produced for this instrument as it has no impact on the private or voluntary sectors.



## APPENDIX 4

### EXPLANATION OF THE EMPLOYMENT AND SUPPORT ALLOWANCE (TRANSITIONAL PROVISIONS) (EXISTING AWARDS) REGULATIONS 2010

#### PART 1 – GENERAL

**Regulation 1** – cites two commencement dates. The principal date is **1 October 2010** – this is the date on or after which the exercise to convert customers in receipt of “existing awards” (see regulation 3) onto ESA may commence in any particular case. In other words, it is the date on or after which the first notices relating to the conversion process will be issued (see regulation 4). The secondary date is **31 January 2011** – this is the date on or after which all new claims to incapacity benefits will automatically be treated as a claim for ESA, regardless of the period for which the claim is made, and regardless of whether the claim may otherwise have linked back to an earlier claim for an incapacity benefit (see regulation 24).

**Regulation 2** – provides the normal interpretation of references within the text of the Regulations

**Regulation 3** – defines the customers who will undergo the conversion process, namely all recipients in receipt of an “existing award” as defined in the Welfare Reform Act 2007 ie awards of incapacity benefit (IB), severe disablement allowance (SDA) and income support (IS) where paid on the grounds of incapacity

#### PART 2 – CONVERSION DECISIONS

**Regulation 4** – provides for the issue of notices to customers, thereby commencing the “conversion phase”. The notices will inform the customers that they are subject to the conversion process, and of the conditions to be satisfied and with which they must comply. Non-compliance will result in termination of their existing awards. No notice will be issued to customers approaching state pension age (**paragraph (5)(a)**) or to SDA customers over state pension age – these customers will not undergo the conversion process.

**Regulation 5** – provides for decision as to whether an existing award will qualify for conversion, and for the issue of “conversion decisions”. The conversion phase ends on the day before the effective date of the conversion decision – (regulation 14 provides for a gap of between 2 and 4 weeks between the date of the decision and its effective date) – or earlier, if the claimant ceases to be entitled to an existing award. [This might apply where an IS customer with a second condition of entitlement decides to opt out of the conversion process and stay on IS. If they opt to remain on IS, their award of IS will continue, but any disability premium in payment will be removed (where it was awarded solely on the basis of the claimant’s incapacity – not where they have entitlement to a disability premium on any other grounds)]

**Regulation 6** – the nature of a “converted award” of ESA is distinct from that of a standard award of ESA (because the customer is already entitled to an



existing award and is not required to make a claim). This regulation provides for the application of the existing primary and secondary legislation, with the modifications specified in **Schedule 1**, to accommodate the distinction.

In **Schedule 1**, in particular –

**paragraph 6** dis-applies the condition in paragraph 6(1)(a) of Schedule 1 to the Welfare Reform Act 2007, which prevents awards of income-related ESA to any customer who has an income which exceeds the applicable amount. This dis-application is necessary to allow the customer whose award qualifies for conversion but whose income (including earnings), at the point of conversion, exceeds their ESA applicable amount but did not previously exceed their IS applicable amounts, to receive a transitional addition (see regulation 8), and thereby avoid suffering a drop in their benefit income;

**paragraph 11** modifies regulation 75 of the ESA Regulations to protect the position of those customers who have occupational pensions which are currently wholly disregarded for the purposes of their existing awards. Where a customer's award qualifies for conversion, then, for the purposes of determining their standard entitlement to contributory ESA (see regulation 8), these pensions will continue to be disregarded; and

**paragraph 12** modifies regulation 144 of the ESA Regulations to provide that any customer whose award qualifies for conversion is not required to serve any waiting days before ESA becomes payable

**Regulation 7** – provides that, in determining the conversion decision, the basic conditions of entitlement to ESA, as listed in section 1(3) of the Welfare Reform Act 2007 will apply. In particular, the customer has to have (or can be treated as having) limited capability for work.

**Regulation 8** – provides for the Steps to be followed, to arrive at the overall amount of ESA payable to a customer whose award qualifies for conversion. It makes provision for the award of a transitional addition to be paid on top of the customer's standard entitlement to ESA, where appropriate, to prevent any customer suffering a loss of benefit income at the point of conversion.

**Regulations 9–11** – provide for the basis of the calculation of the transitional addition. In each case, a comparison will be made between the applicable amounts payable under the existing award in the week before the effective date of the conversion decision, and those payable under ESA in the week that includes the effective date. The calculation of the ESA applicable amounts will include the relevant main phase component (**regulations 10(4)(b) and 11(4)(c)**).

The calculations will take into account, where appropriate, any Adult or Child Dependency Increases payable on top of IB or SDA (**regulation 10(5)**). They will exclude any amounts previously payable within the IS award by way of allowances or premiums in respect of children (**regulation 11(3)(c)**) or housing costs (**regulations 11(3)(b) and 11(4)(b)**). Any shortfall between the two sets of figures will be met by way of a transitional addition.

**Regulation 12** – provides for modifications to the normal basis upon which the transitional addition is calculated in cases where either (i) the calculation straddles uprating (**paragraph (3)**) or (ii) a change in the customer's circumstances results in a change in their applicable amounts during the week that includes the effective date (**paragraph (4)**). In either event, the calculation will be based on what the incapacity benefit applicable amounts would have been in the week that includes the effective date had conversion not taken place. This removes the risk of the customer going forward with an artificially deflated, or artificially inflated, transitional addition, on the basis of an event or change that had nothing to do with the conversion exercise.

**Regulation 13** – provides that no transitional addition will be payable where the standard award of ESA is nil and any transitional addition, as calculated, would be less than 10p.

**Regulation 14** – provides for the determination of the effective date of a conversion decision. Where benefit is paid fortnightly (**paragraph (1)**), the effective date will be the first day of the benefit week immediately following the period covered by the first full fortnightly payment after the date of issue of the decision (**paragraph (1)**). Where benefit is paid other than fortnightly, the effective date will be the first day of the benefit week immediately following the end of the second complete benefit week after the date of issue of the decision (**paragraph (2)**).

**Regulation 15** – provides that awards that qualify for conversion will be converted to awards of ESA from the effective date of the conversion decision, and that existing awards will be terminated from the same date.

**Paragraph (3)** provides for any sums being taken off the existing award (eg in respect of gas or electricity consumption and arrears) to be carried forward to the award of ESA, without interruption, to safeguard the customer's interests.

**Regulation 16** – provides that existing awards which do not qualify for conversion will be terminated from the effective date of the conversion decision.

### **PART 3 – AFTER THE CONVERSION PHASE**

**Regulation 17** – provides for the revision of the conversion decision or for its later supersession (**paragraph (1)(a)**). **Paragraph (4)** provides for the retrospective revision or supersession of the decision relating to the incapacity benefit award after that decision has ceased to exist ie at any time after the effective date of the conversion decision. This, in turn, will prompt the SoS to look again at the conversion decision and to revise it as necessary. As per the explanation relating to regulation 6, **paragraph (3)** provides for the application of the existing legislation with the modifications specified in **Schedule 2**

In **Schedule 2**, in particular –

**paragraph 5** continues to dis-apply the condition in paragraph 6(1)(a) of Schedule 1 to the Welfare Reform Act 2007, which prevents awards of income-related ESA to any customer who has an income which exceeds

the applicable amount. This dis-application is necessary to allow the customer whose award qualified for conversion but whose income (including earnings), at the point of conversion, exceeded their ESA applicable amount but did not previously exceed their IS applicable amounts, to continue to receive a transitional addition;

**paragraph 11** modifies the ESA Regulations by inserting a new Part 4A which provides for an award of ESA to be made to the customer at the equivalent of the assessment phase rate (ie without any component or any transitional addition) in the event of an appeal against a conversion decision that embodies a determination that the customer does not have limited capability for work;

**paragraph 13** modifies regulation 45 of the ESA Regulations (exempt work, more commonly referred to as “permitted work”) to provide that any customer who, at the point of conversion to ESA, is undertaking exempt work of a category prescribed in regulation 17(4)(a) of the Social Security (Incapacity for Work) (General) Regulations 1995 (being work that is done for less than 16 hours a week, and where the weekly earnings from that work do not exceed £93), can carry on undertaking such work once on ESA, for the balance of the 52 week permitted work period, as calculated;

**paragraphs 14 and 15** modify regulations 67 and 68 of the ESA Regulations, respectively, to provide for the inclusion of the transitional addition (where appropriate) within the calculation of the customer’s applicable amounts;

**paragraph 16** provides for the continuing disregard, within the assessment of awards of contributory ESA, of occupational pensions which were previously wholly disregarded for the purposes of customer’s incapacity benefit awards;

**paragraph 18** amends regulation 3 the Social Security (Claims and Payments) Regulations 1987 (claims not required for entitlement to benefit in certain cases) to enable the SoS to make a conversion decision without first requiring a claim; and

**paragraph 20** amends Schedule 9 to the Social Security (Claims and Payments) Regulations 1987 (deductions from benefit and direct payments to third parties) to provide for such deductions to be taken off converted awards of ESA

**Regulation 18** concerns the cases where, upon conversion, a customer is entitled to both contributory and income-related ESA, with the latter “topping up” the former. It provides that, where a change in circumstances operates to terminate the award of income-related ESA, the customer will be able to fall back on to the award of contributory ESA, including any transitional addition separately payable on top of that award (**paragraph (2)**). The amount of the transitional addition will be based on the amount that would, at that point, have been payable on top of contributory ESA had the customer been in receipt of contributory ESA throughout the period since conversion (**paragraph (3)**).

**Regulations 19 – 21** outline the rules under which the transitional addition will be eroded.

**Regulation 19** provides that, in both contributory and income-related ESA cases, any transitional addition will be reduced by an amount equivalent to any increase in the applicable amount (eg as a result of uprating or the award of a component at a rate higher than the existing rate).

**Regulation 20** – provides that, where, at the point of conversion, a Child Dependency Increase (CDI) was in payment as part of the incapacity award, the value of any transitional addition will be reduced by an amount equivalent to the value of the CDI (or to nil, as appropriate) in payment at the point of conversion, where child benefit ceases to be payable in respect of the child in respect of whom the CDI was formerly in payment (**paragraph (3)**).

**Regulation 21** – provides that, where, at the point of conversion, an Adult Dependency Increase (ADI) was in payment as part of the incapacity award, the value of any transitional addition will be reduced by an amount equivalent to the value of the ADI (or to nil, as appropriate) in payment at the point of conversion in the circumstances where the partner in respect of whom the ADI was formerly in payment either dies; or separates from the claimant; or is no longer responsible for a dependent child ie entitlement to child benefit ceases; or becomes entitled to a Social Security benefit in their own right at a rate equivalent to, or more than, the amount of the ADI in force at the point of conversion (**paragraph(3)**).

**Regulation 22** – provides that a transitional addition will be terminated if the erosion rules outlined in regulations 19-21 have reduced it to nil (**paragraph (1) (a)**), or where there is no longer any entitlement to ESA (**paragraph (1)(b)**), or on 5 April 2020 (**paragraph (1)(c)**).

**Paragraphs (4) and (5)** provide safeguards for when there is no longer any entitlement to ESA. **Paragraph (4)** provides that where a repeat claim is made within the normal linking periods specified in regulation 145 of the ESA Regulations (12 weeks in a normal case; 104 weeks where the customer was a welfare to work beneficiary), the customer will become entitled to any transitional addition in force at the point the previous award terminated.

**Paragraph (5)** provides that, where the customer has ceased to receive income-related ESA because their partner has started remunerative work, if they successfully make a repeat claim within 12 weeks, they will become entitled to any transitional addition in force at the point the previous award terminated. In both cases, the transitional addition will be based on the amount that would, at that point, have been payable on top of ESA had the customer remained entitled to the addition continuously (**paragraph (6)**).

## **PART 4 – MISCELLANEOUS**

**Regulation 23** establishes a clean break from the past. It provides that the provisions of the existing incapacity benefit legislation (as listed) will cease to apply to the customer at the effective date of their conversion decision.

**Regulation 24** amends the ESA (Transitional Provisions) Regulations 2008, by revoking the pre-existing saving provisions that enable a customer, even after the introduction of ESA on 27 October 2008, to make a repeat (linked) claim for an incapacity benefit, rather than a new claim for ESA. As per regulation 1(3), the revocation comes into force on 31 January 2011.

The provision under which a customer can make a claim for an income-related top-up to an existing IB/SDA award (ie before their case is converted) has not been revoked. Such a claim will continue to be accepted as an IS claim, until such time as a conversion decision is made in their case.

**Regulation 25** sits alongside regulation 24, and comes into effect on the same date. It amends the ESA Regulations to ensure that a customer who, on or after 31 January 2011, makes a claim to ESA within 12 weeks of a previous award of an incapacity benefit – (and which, therefore, would have linked back to that previous award had it not been for regulation 24) – does not have to serve any waiting days in respect of the new claim.

**Regulation 26** relates to the amendments listed in Schedule 4. These correct a minor error in the Claims and Payments Regulations, rectifying the cross-references, and provide for a consequential amendment to the ESA (Transitional Provisions) Regulations 2008

## APPENDIX 5

### EXPLANATION OF THE HOUSING BENEFIT AND COUNCIL TAX BENEFIT (EMPLOYMENT AND SUPPORT ALLOWANCE) AMENDMENT REGULATIONS 2010

**Please note:** the HB/CTB amendments are presented as a separate draft Statutory Instrument for the purposes of consultation. We intend to combine the HB/CTB amendments with the ESA provisions for the final package.

**Regulation 1** provides the citation and commencement date of 1 October 2010. As the regulations will be a part of a set making amendments to ESA itself, this provision will not be included specifically for HB/CTB. All the amendments will come into force at the same time,

**Regulation 2(1)** amends the Housing Benefit Regulations 2006 (the provisions do not apply to customers who have reached the qualifying age for Pension Credit).

**Regulation 2(2) and (3) respectively** amend the applicable amounts for single customers and couples and applicable amounts for polygamous marriages provisions so that a transitional addition may form a part of the applicable amount.

**Regulation 2(4)(a)** inserts a new paragraph 21A into HB Schedule 3 (applicable amounts) so that a customer whose claim has been converted to ESA may have either a work-related activity component or a support component added to their applicable amount. A separate paragraph has been added for converted claims because the existing provision (paragraph 21) requires that the customer must have claimed ESA. Where a claim is converted the customer will not have done that.

**Regulation 2(4)(b)** inserts new paragraphs 27(1)-(4), 28(1)-(3) and 29(1)-(4) into Schedule 3 (applicable amounts) to provide for a transitional addition in certain cases.

#### ***Transitional addition entitlement***

The new paragraph 27(1) provides that a customer is not entitled to a transitional addition:

- if their IB or SDA award has been converted to ESA(IR). There is no need for local authority to calculate a transitional addition as entitlement to full eligible (passported) HB will be retained;
- if the transitional addition would be nil. This provision would prevent local authorities from needing to award a transitional addition at a nil amount and recalculating that award at the next change of circumstances.

Customers who will be entitled to a transitional addition in HB are:

- those whose award of IB or SDA is converted to ESA(C) or are a converted credits only case; and



- those who are awaiting an appeal hearing having appealed against a decision that they would not be entitled to converted ESA because they do not have limited capability for work. Such customers will be awarded assessment phase rate ESA but no transitional addition to increase their ESA to their IB level, until the appeal is decided.

### ***Ending the HB transitional addition***

The new paragraph 27(2) contains the provisions for when a HB transitional addition will end. This will be whichever of the following occurs first:

- the transitional addition is reduced to nil (the provisions for how this will happen are set out in new paragraph 29 of Schedule 3);
- the customer's HB ends;
- the ESA converted award ends;
- the ESA awarded on appeal against a decision that the customer does not have limited capability for work ends; or,
- the 5 April 2020, – this mirrors the ESA transitional addition provision.

### ***Linking rules***

The new paragraphs 27(3) and (4) contain the linking rule provisions for when paragraph 27(2) will cease to apply.

Where HB ends for any reason and irrespective of whether the ESA ends, the HB transitional addition will be reinstated where a customer becomes re-entitled to HB, based upon ESA. However the break in HB entitlement must not last for more than 12 weeks. On reinstatement the HB transitional addition will be subject to any changes that would have eroded it had the customer been continuously on ESA based HB.

When ESA ends and HB continues the transitional addition will be removed. Where a customer becomes re-entitled to ESA in a period not exceeding 12 weeks the HB transitional addition will be reinstated, subject to any changes that would have eroded it had the customer remained on ESA.

Where the ESA ends and the customer becomes re-entitled to ESA within 104 weeks and during that period the customer was a welfare to work beneficiary, (see below) the HB transitional addition can be reinstated in the same manner as the 12 week linking rule explained in the previous two paragraphs.

Welfare to work beneficiaries are those to whom regulation 145(2) of the Employment and Support Allowance Regulations 2008 apply. In summary they are customers who:

- have had limited capability for work for more than 13 weeks and



- have left ESA because they have started remunerative work or a training course for which a training allowance is received, within a month of ESA ceasing.

Once the customer has limited capability for work once again they will be a welfare to work beneficiary.

### ***Calculating the transitional addition***

The new paragraph 28 contains the provision for calculating the transitional addition. The calculation will be made by comparing the HB applicable amount on the day the relevant incapacity benefit award is converted to ESA, on the basis that the conversion had not happened, with the applicable amount on that same day, the conversion having happened.

Where the first amount is higher than the second, the transitional allowance would make up the shortfall. Comparing applicable amounts that would apply from the same day would prevent changes not related to the conversion inflating or deflating the transitional addition.

### ***Eroding the transitional addition***

The new paragraph 29 contains the provisions for eroding the transitional addition. The calculation of the amount of the erosion is to be achieved by comparing the applicable amount, excluding the transitional addition, appropriate on the day before the change of circumstance (which includes an annual uprating) is effective, with the applicable amount, excluding the transitional addition, on the day the change is effective. If the second amount is greater than the first, the transitional addition would be eroded by the amount that the second amount exceeds the first.

**Regulation 3** amends the Council Tax Benefit Regulations 2006 in the same way as the amendments to HB described above.

**Regulation 4(1)** amends the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 to allow local authorities to adjust the HB/CTB award to reflect ESA structure.

**Regulation 4(2)(a)** amends regulation 7(2)(i) which contains the provisions for when HB/CTB awards can be superseded on the award of or increase to a social security benefit. This enables the local authority to amend the HB/CTB award from the date that the change becomes effective, as set out in the new regulations 7(2)(p) or (q) and the new provisions inserted by draft regulation 4(3).

**Regulation 4(2)(b)** inserts the new regulations 7(2)(p) and (q).

7(2)(p) allows the local authority to award a different component in HB/CTB to a customer who has had their incapacity benefit converted to ESA and, subsequent to that conversion, the ESA component changes.

7(2)(q) allows the local authority to change the calculation of HB/CTB to reflect the ESA structure and award a transitional addition where appropriate when:

- a HB/CTB customer's incapacity benefit is converted to ESA or
- ESA is awarded pending the outcome of a customer's appeal against a decision that they do not have limited capability for work.

**Regulation 4(3)** inserts the provisions for determining the effective date of the decision made by using regulation 7(2)(p) or 7(2)(q). It provides that where the HB/CTB is amended using regulation 7(2)(p) (a different component is awarded subsequent to conversion) the effective date would be that day if it were a Monday or if not, the following Monday. This would be in line with the effective date of a change of component for existing HB/CTB awards assessed in line with ESA structure.

It also provides that where HB/CTB is amended using 7(2)(q) (a newly converted incapacity benefit claim or ESA awarded pending the outcome of an appeal) the effective date will be either:

- the date the decision to convert the claim to ESA or award ESA pending appeal takes effect or
- where the decision to convert the claim to ESA or to award ESA pending appeal takes effect during the first two weeks of April (the annual uprating period) the effective date will be the 1st of April for CTB and where rent is payable other than on a weekly basis. Where rent is payable on a weekly basis the effective date will be the first Monday in April. This will be in line with existing provisions for uprating and therefore, will allow local authorities to combine conversion with the annual uprating process.



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