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SOCIAL SECURITY

The Employment and Support Allowance Regulations 2012

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6th April 2013

[PLEASE NOTE: (1) REFERENCES IN CURLY BRACKETS IN THE HEADING TO REGULATIONS ARE TO THE EQUIVALENT REGULATION IN THE EMPLOYMENT AND SUPPORT ALLOWANCE REGULATIONS 2008.]

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The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections XXX of the Welfare Reform Act 2007(a).

[A draft of these Regulations has been laid before Parliament in accordance with section 26(1) of the Welfare Reform Act 2007 and approved by a resolution of each House of Parliament.]

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Employment and Support Allowance Regulations 2012.

(2) They come into force on 6th April 2013.

Interpretation {reg 2(1)}

2. In these Regulations—

“the Act” means the Welfare Reform Act 2007;

(a) 2007 c.5.

“attendance allowance” means—

- (a) an attendance allowance under section 64 of the Contributions and Benefits Act;
- (b) an increase of disablement pension under section 104 or 105 of that Act;
- (c) a payment under regulations made under section 111 of, and paragraph 7(2)(b) of Schedule 8 to, that Act;
- (d) an increase in allowance which is payable in respect of constant attendance under section 111 of, and paragraph 4 of Schedule 8 to, that Act;
- (e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983 or any analogous payment;
- (f) any payment based on the need for attendance which is paid as an addition to a war disablement pension (which means any retired pay or pension or allowance payable in respect of disablement under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003);

“basic rate” has the same meaning as in the Income Tax Act 2007 (see section 989 of that Act);

“benefit week” means a period of 7 days ending on such day as the Secretary of State may direct but for the purposes of calculating any payment of income “benefit week” means the period of 7 days ending on the day before the first day of the first benefit week following the date of claim or the last day on which an employment and support allowance is paid if it is in payment for less than a week;

“carer’s allowance” means an allowance under section 70 of the Contributions and Benefits Act;

“child” means a person under the age of 16;

“close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or if any of the preceding persons is one member of a couple, the other member of that couple;

“confinement” has the meaning given to it by section 171(1) of the Contributions and Benefits Act;

“councillor” means—

- (a) in relation to England and Wales, a member of a London borough council, a county council, a district council, a parish or community council, the Common Council of the City of London or the Council of the Isles of Scilly; and
- (b) in relation to Scotland, a member of a council constituted under section 2 of the Local Government etc (Scotland) Act 1994;

“councillor’s allowance” means—

- (a) in England or Wales, an allowance under or by virtue of—
 - (i) section 173 or 177 of the Local Government Act 1972; or
 - (ii) a scheme made by virtue of section 18 of the Local Government and Housing Act 1989,
other than such an allowance as is mentioned in section 173(4) of the Local Government Act 1972; or
- (b) in Scotland, an allowance or remuneration under or by virtue of—
 - (i) a scheme made by virtue of section 18 of the Local Government and Housing Act 1989; or
 - (ii) sections 11 and 16 of the Local Governance (Scotland) Act 2004;

“couple” means—

- (a) a man and woman who are married to each other and are members of the same household;

- (b) a man and woman who are not married to each other but are living together as husband and wife;
- (c) two people of the same sex who are civil partners of each other and are members of the same household; or
- (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners,

and for the purposes of paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex;

“descriptor” means, in relation to an activity specified in column (1) of Schedule 2, a descriptor in column (2) of that Schedule which describes a person’s ability to perform that activity;

“doctor” means a registered medical practitioner, or in the case of a medical practitioner practising outside the United Kingdom of whom the Secretary of State may request a medical opinion, a person registered or recognised as such in the country in which the person undertakes medical practice;

“employed earner” is to be construed in accordance with section 2(1)(a) of the Contributions and Benefits Act;

“employment” includes any trade, business, profession, office or vocation and “employed” has a corresponding meaning;

“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;

“family” means—

- (a) a couple;
- (b) a couple and a member of the same household for whom one of them is or both are responsible and who is a child or a young person;
- (c) a person who is not a member of a couple and a member of the same household for whom that person is responsible and who is a child or a young person;

“first contribution condition” means the condition set out in paragraph 1(1) of Schedule 1 to the Act;

“First-tier Tribunal” has the meaning given by section 3(1) of the Tribunals, Courts and Enforcement Act 2007;

“health care professional” means—

- (a) a registered medical practitioner;
- (b) a registered nurse; or
- (c) an occupational therapist or physiotherapist registered with a regulatory body established by an Order in Council under section 60 of the Health Act 1999;

“Health Service Act” means the National Health Service Act 2006;

“Health Service (Wales) Act” means the National Health Service (Wales) Act 2006;

“Income Support Regulations” means the Income Support (General) Regulations 1987;

“limited capability for work assessment” means the assessment of whether a person has limited capability for work as set out in regulation 15(2) and in Schedule 2;

“lone parent” means a person who has no partner and who is responsible for, and a member of the same household as, a child or young person;

“medical evidence”, except in regulation 28, means—

- (a) evidence from a health care professional approved by the Secretary of State; and
- (b) evidence (if any) from any health care professional or a hospital or similar institution,

or such part of such evidence as constitutes the most reliable evidence available in the circumstances;

“Medical Evidence Regulations” means the Social Security (Medical Evidence) Regulations 1976;

“medical treatment” means medical, surgical or rehabilitative treatment (including any course or diet or other regimen), and references to a person receiving or submitting to medical treatment are to be construed accordingly;

“member of Her Majesty’s forces” means a person, other than one mentioned in Part 2 of Schedule 1 who is—

- (a) over 16 years of age; and
- (b) a member of an establishment or organisation specified in Part 1 of that Schedule who gives full pay service,

but does not include any such person while absent on desertion;

“National Minimum Wage” means the rate of the national minimum wage specified in regulation 11 of the National Minimum Wage Regulations 1999 (rate of the national minimum wage);

“net earnings” means such earnings as are calculated in accordance with regulation 81;

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;

“partner” means where a claimant—

- (a) is a member of a couple, the other member of that couple;
- (b) is a husband or wife by virtue of a polygamous marriage, the other party to the marriage or any spouse additional to either party to the marriage;

“paternity leave” means a period of absence from work on ordinary paternity leave by virtue of section 80A or 80B of the Employment Rights Act 1996 or on additional paternity leave by virtue of section 80AA or 80BB of that Act;

“payment” includes a part of a payment;

“pay period” means the period in respect of which a claimant is, or expects to be, normally paid by the claimant’s employer, being a week, a fortnight, four weeks, a month or other shorter or longer period as the case may be;

“period of limited capability for work” means, except in regulation 3(3), a period throughout which a person has, or is treated as having, limited capability for work, and does not include a period which is outside the prescribed time for claiming as specified in regulation 19 of the Social Security (Claims and Payments) Regulations 1987;

“personal pension scheme” means—

- (a) a personal pension scheme as defined by section 1 of the Pension Schemes Act 1993;
- (b) an annuity contract or trust scheme approved under section 620 or 621 of the Income and Corporation Taxes Act 1988 or a substituted contract within the meaning of section 622(3) of that Act which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(f) of Schedule 36 to the Finance Act 2004;
- (c) a personal pension scheme approved under Chapter 4 of Part 14 of the Income and Corporation Taxes Act 1988 which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(g) of Schedule 36 to the Finance Act 2004;

“polygamous marriage” means any marriage entered into under a law which permits polygamy where—

- (a) either party has for the time being any spouse additional to the other party; and
- (b) the claimant, the other party to the marriage and the additional spouse are members of the same household;

“qualifying young person” has the meaning given by section 142 of the Contributions and Benefits Act (child and qualifying young person);

“relative” means close relative, grand-parent, grand-child, uncle, aunt, nephew or niece;

“second contribution condition” means the condition set out in paragraph 2(1) of Schedule 1 to the Act;

“self-employed earner” is to be construed in accordance with section 2(1)(b) of the Contributions and Benefits Act;

“single claimant” means a claimant who neither has a partner nor is a lone parent or a person who has no partner and who is responsible for and a member of the same household as a young person;

“state pension credit” means a state pension credit under the State Pension Credit Act 2002;

“the Tax Credits Act” means the Tax Credits Act 2002;

“terminally ill”, in relation to a claimant, means the claimant is suffering from a progressive disease and death in consequence of that disease can reasonably be expected within 6 months;

“training” means—

- (a) training in pursuance of arrangements made under section 2(1) of the Employment and Training Act 1973 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990; or
- (b) any training received on a course which a person attends for 16 hours or more a week, the primary purpose of which is the teaching of occupational or vocational skills;

“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State for Work and Pensions, Skills Development Scotland, Scottish Enterprise or Highlands and Islands Enterprise, the Young People’s Learning Agency for England, the Chief Executive of Skills Funding or the Welsh Ministers;
- (b) to a person for that person’s maintenance or in respect of a member of that person’s family; and
- (c) for the period, or part of the period, during which the person is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to that person or so provided or approved by or on behalf of the Secretary of State for Work and Pensions, Skills Development Scotland, Scottish Enterprise or Highlands and Islands Enterprise, or the Welsh Ministers,

but does not include an allowance paid by any Government department to or in respect of a person by reason of the fact that that person is following a course of full-time education, other than under arrangements made under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990, or is training as a teacher;

“voluntary organisation” means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit;

“week” means a period of 7 days except in relation to regulation 22;

“working tax credit” means a working tax credit under section 10 of the Tax Credits Act;

“young person” is a person who, except where section 6 of the Children (Leaving Care) Act 2000 (exclusion from benefits) applies, falls within the definition of qualifying young person in section 142 of the Contributions and Benefits Act (child and qualifying young person).

Further interpretation {reg 2(3) – (5)}

3.—(1) In these Regulations, any reference to the claimant’s family is to be construed as if it included in relation to a polygamous marriage a reference to any partner and any child or young person who is a member of the claimant’s household.

(2) For the purposes of paragraph 5 of Schedule 1 to the Act, “week” means a period of 7 days.

(3) For the purposes of paragraph 4 of Schedule 1 to the Act (condition relating to youth), “period of limited capability for work” means a period throughout which a person has, or is treated as having, limited capability for work.

Rounding of fractions {reg 3}

4. For the purposes of these Regulations—

- (a) where any calculation under these Regulations results in a fraction of a penny that fraction is, if it would be to the claimant’s advantage, to be treated as a penny, otherwise it must be disregarded;
- (b) where an employment and support allowance is awarded for a period which is not a complete benefit week and the applicable amount in respect of the period results in an amount which includes a fraction of a penny that fraction is to be treated as a penny.

PART 2

The assessment phase

The end of the assessment phase {reg 4}

5.—(1) Subject to paragraph (2) and regulation 6, the assessment phase in relation to a claimant ends on the last day of a period of 13 weeks beginning on the first day of the assessment phase as determined under section 24(2)(a) of the Act.

(2) If at the end of the period of 13 weeks referred to in paragraph (1), it has not yet been determined whether the claimant has limited capability for work—

- (a) the claimant having been assessed in accordance with a limited capability for work assessment; or
- (b) as a result of the claimant being treated as having limited capability for work in accordance with regulation 16, 21, 22 or 25 (persons to be treated as having limited capability for work),

the assessment phase will end when the limited capability for work determination is made.

The assessment phase – previous claimants {reg 5}

6.—(1) Where the circumstances in paragraph (2) apply in relation to a claimant the assessment phase—

- (a) begins on the first day of the period for which the claimant was previously entitled to an employment and support allowance; and
- (b) subject to paragraph (3) and (4), ends on the day when the sum of the period for which the claimant was previously entitled to an employment and support allowance and the period for which the claimant is currently entitled to such an allowance is 13 weeks.

(2) The circumstances are that—

- (a) (i) the claimant’s current period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 86;
- (ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work;
- (iii) the assessment phase had not ended in the previous period for which the claimant was entitled to an employment and support allowance; and
- (iv) the period for which the claimant was previously entitled was no more than 13 weeks;

- (b) (i) the claimant's current period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 86;
- (ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work;
- (iii) the previous period of limited capability for work was terminated by virtue of a determination that the claimant did not have limited capability for work;
- (iv) the period for which the claimant was previously entitled was no more than 13 weeks; and
- (v) a determination is made in relation to the current period of limited capability for work that the claimant has or is treated as having limited capability for work, other than under regulation 26; or
- (c) (i) the claimant's current period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 86;
- (ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work;
- (iii) in relation to the previous award of an employment and support allowance, a determination was made that the claimant had limited capability for work or was treated as having limited capability for work, other than under regulation 26; and
- (iv) the period for which the claimant was previously entitled was no more than 13 weeks.

(3) If, on the day referred to in paragraph (1)(b), it has not yet been determined whether the claimant has limited capability for work—

- (a) the claimant having been assessed in accordance with a limited capability for work assessment; or
- (b) as a result of the claimant being treated as having limited capability for work in accordance with regulation 16, 21, 22 or 25 (persons to be treated as having limited capability for work),

the assessment phase will end when the limited capability for work determination is made.

(4) Where a person has made and is pursuing an appeal against a decision of the Secretary of State that embodies a determination that the claimant does not have limited capability for work—

- (a) paragraph (3) does not apply; and
- (b) paragraph (1) does not apply to any period of limited capability for work to which regulation 87(2) applies until a determination of limited capability for work has been made following the determination of the appeal by the First-tier Tribunal.

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 {reg 7}

7.—(1) Subject to paragraph (4), section 2(2)(a) and 2(3)(a) of the Act does not apply where—

- (a) a claimant is terminally ill and has either—
 - (i) made a claim expressly on the ground of being terminally ill; or
 - (ii) made an application for supersession or revision in accordance with the Social Security and Child Support (Decisions and Appeals) Regulations 1999 which contains an express statement that the claimant is terminally ill;
- (b) the case is a relevant linked case;
- (c) (i) the claimant's entitlement to an employment and support allowance commences within 12 weeks of the claimant's entitlement to income support coming to an end;
- (ii) in relation to that entitlement to income support, immediately before it ended the claimant's applicable amount included the disability premium by virtue of satisfying

the conditions in paragraphs 11 and 12 of Schedule 2 to the Income Support Regulations; and

(iii) that entitlement to income support ended solely by virtue of the coming into force, in relation to the claimant, of the Social Security (Lone Parents and Miscellaneous Amendments) Regulations 2008; or

(d) a claimant is entitled to an employment and support allowance by virtue of section 1B of the Act (further entitlement after time-limiting).

(2) For the purposes of paragraph (1)(b) a relevant linked case is a case mentioned in paragraph (3) where a period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 86.

(3) Paragraph (2) applies to the following cases—

(a) case 1 is where—

(i) the claimant was entitled to an employment and support allowance (including entitlement to a component under section 2(2) or 2(3) of the Act) in the earlier period of limited capability for work, and

(ii) the previous period for which the claimant was entitled to an employment and support allowance was terminated other than by virtue of a determination that the claimant did not have limited capability for work;

(b) case 2 is where—

(i) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work,

(ii) the previous period for which the claimant was entitled to an employment and support allowance was 13 weeks or longer,

(iii) the previous period for which the claimant was entitled to an employment and support allowance was terminated by virtue of a determination that the claimant did not have, or was treated as not having, limited capability for work, and

(iv) it is determined in relation to the current period of limited capability for work that the claimant has limited capability for work or is treated as having limited capability for work, other than under regulation 26;

(c) case 3 is where—

(i) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work,

(ii) the previous period for which the claimant was entitled to an employment and support allowance was 13 weeks or longer,

(iii) the previous period for which the claimant was entitled to an employment and support allowance was terminated before it could be determined whether the claimant had limited capability for work or was treated as having limited capability for work, other than under regulation 26, and

(iv) it is determined in relation to the current period of limited capability for work that the claimant has limited capability for work or is treated as having limited capability for work, other than under regulation 26; and

(d) case 4 is where—

(i) the claimant was entitled to an employment and support allowance (including entitlement to a component under section 2(2) or 2(3) of the Act) in the earlier period of limited capability for work,

(ii) the previous period for which the claimant was entitled to an employment and support allowance was terminated because it was determined that the claimant did not have limited capability for work or was treated as not having limited capability for work, and

- (iii) it is determined in relation to the current period of limited capability for work that the claimant has limited capability for work or is treated as having limited capability for work, other than under regulation 26.

(4) Paragraph (1)(b) does not apply to any period of limited capability for work to which regulation 87(2) applies until the determination of limited capability for work has been made following the determination of the appeal by the First-tier Tribunal.

PART 3

Conditions of entitlement

Conditions relating to national insurance and relevant earnings {reg 7A}

8.—(1) A claimant's relevant earnings for the purposes of paragraph 1(2)(a) of Schedule 1 to the Act (employment and support allowance: conditions relating to national insurance) are the total amount of the claimant's earnings at the lower earnings limit for the base tax year.

(2) For the purposes of paragraph (1), earnings which exceed the lower earnings limit are to be disregarded.

Relaxation of the first contribution condition {reg 8}

9.—(1) A claimant who satisfies any of the conditions in paragraph (2) is to be taken to satisfy the first contribution condition if—

- (a) the claimant paid Class 1 or Class 2 contributions before the relevant benefit week in respect of any one tax year; and
- (b) the claimant has—
 - (i) earnings at the lower earnings limit in that tax year on which primary Class 1 contributions have been paid or treated as paid which in total, and disregarding any earnings which exceed the lower earnings limit for that year, are not less than that limit multiplied by 26; or
 - (ii) earnings factors in that tax year derived from Class 2 contributions multiplied by 26.

(2) The conditions referred to in paragraph (1) are that the claimant—

- (a) was entitled to a carer's allowance in the last complete tax year immediately preceding the relevant benefit year;
- (b) had been engaged in qualifying remunerative work (which has the meaning given by Part 1 of the Tax Credits Act) for a period of more than 2 years immediately before the first day of the period of limited capability for work and who was entitled to working tax credit where the disability element or the severe disability element of working tax credit specified in regulation 20(1)(b) or (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 was included in the award;
- (c) in respect of any week in any tax year preceding the relevant benefit year—
 - (i) is entitled to be credited with earnings or contributions in accordance with regulation 9D of the Social Security (Credits) Regulations 1975 (credits for certain periods of imprisonment or detention in legal custody); or
 - (ii) would have been so entitled had an application to the Secretary of State been made for the purpose of that regulation; or
- (d) in respect of any week in the last complete tax year preceding the relevant benefit year, is entitled to be credited with earnings in accordance with regulation 9E of the Social Security (Credits) Regulations 1975 (credits for certain spouses and civil partners of members of Her Majesty's forces).

Condition relating to youth – claimants aged 20 or over but under 25 {reg 9}

10.—(1) For the purposes of paragraph 4(1)(a) of Schedule 1 to the Act, a claimant who satisfies the conditions specified in paragraph (2) falls within a prescribed case.

(2) The conditions are that the claimant—

(a) registered on a course of—

(i) full-time advanced or secondary education; or

(ii) training,

at least 3 months before attaining the age of 20; and

(b) not more than one academic term immediately after registration attended one or more such courses in respect of a period referred to in paragraph (3).

(3) The period mentioned in sub-paragraph (2)(b) is a period which—

(a) began on or before a day at least 3 months before the day the claimant attained the age of 20; and

(b) ended no earlier than the beginning of the last two complete tax years before the relevant benefit year which would have applied if the claimant was entitled to an employment and support allowance having satisfied the first contribution condition and the second contribution condition.

(4) For the purposes of this regulation a claimant is to be treated as attending a course on any day on which the course is interrupted by an illness or domestic emergency.

(5) In this regulation—

“advanced education” means education for the purposes of—

(a) a course in preparation for a degree, a diploma of higher education, a higher national diploma, a higher national diploma of the Business and Technician Education Council or the Scottish Qualifications Authority, or a teaching qualification; or

(b) any other course which is of a standard above ordinary national diploma, a diploma of the Business and Technical Education Council or a higher or advanced higher national certificate of the Scottish Qualifications Authority or a general certificate of education (advanced level);

“full-time” includes part-time where the person’s disability prevents attendance at a full-time course;

“secondary education” means a course of education below a course of advanced education—

(a) by attendance at an establishment recognised by the Secretary of State as being, or as comparable to, a university, college or school; or

(b) elsewhere where the Secretary of State is satisfied that the education is equivalent to that given in an establishment recognised as being, or as comparable to, a university, college or school.

(6) A claimant is to be treated as not having limited capability for work on a day which is not, for the purposes of paragraph 4(1)(d)(ii) of Schedule 1 to the Act (period of 196 consecutive days preceding the relevant period of limited capability for work), part of any consecutive days of limited capability for work.

Condition relating to youth – previous claimants {reg 10}

11.—(1) Paragraph 4(1)(a) of Schedule 1 to the Act does not apply to a claimant—

(a) who has previously ceased to be entitled to an employment and support allowance, entitlement for which was as a result of satisfying the condition set out in sub-paragraph (1) of that paragraph;

(b) whose previous entitlement had not been ended by a decision which embodied a determination (other than a determination in the circumstances applicable to a claimant under paragraph (2)(a)) that the claimant did not have limited capability for work;

- (c) in relation to whom regulation 86 (linking rules) does not apply;
 - (d) aged 20 or over, or, where regulation 10 would otherwise apply to the person, aged 25 or over; and
 - (e) to whom paragraph (2) applies.
- (2) This paragraph applies to a claimant—
- (a) whose previous entitlement to an employment and support allowance ended solely with a view to that person taking up employment or training;
 - (b) whose earnings factor from an employment or series of employments pursued in the period from the end of the previous entitlement to the beginning of the period of limited capability for work, was below the lower earnings limit multiplied by 25 in any of the last three complete tax years before the beginning of the relevant benefit year; and
 - (c) who—
 - (i) in respect of the last two complete tax years before the beginning of the relevant benefit year has either paid or been credited with earnings equivalent in each of those years to the year's lower earnings limit multiplied by 50, of which at least one, in the last tax year, was in respect of the disability element or severe disability element of working tax credit; or
 - (ii) makes a claim for an employment and support allowance within a period of 12 weeks after the day on which the last such employment pursued in accordance with sub-paragraph (b) ceased.

Condition relating to youth – residence or presence {reg 11}

12.—(1) The prescribed conditions for the purposes of paragraph 4(1)(c) of Schedule 1 to the Act as to residence or presence in Great Britain are that the claimant—

- (a) is ordinarily resident in Great Britain;
- (b) is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 or is a person to whom paragraph (3) applies;
- (c) is present in Great Britain; and
- (d) has been present in Great Britain for a period of, or for periods amounting in aggregate to, not less than 26 weeks in the 52 weeks immediately preceding the relevant benefit week.

(2) For the purposes of paragraph (1), a claimant is to be treated as being resident and present in Great Britain where the claimant is absent from Great Britain by reason only of being—

- (a) the spouse, civil partner, son, daughter, father, father-in-law, mother or mother-in-law of, and living with, a member of Her Majesty's forces who is abroad in that capacity;
- (b) in employment prescribed for the purposes of paragraph 7(1)(c) of Schedule 2 to the Act in connection with continental shelf operations; or
- (c) abroad in the capacity of being an aircraft worker or mariner.

(3) This paragraph applies where a person is—

- (a) a member of a family of a national of an European Economic Area state;
- (b) a person who is lawfully working in Great Britain and is a national of a State with which the European Union has concluded an agreement under Article 217 of the Treaty on the Functioning of the European Union providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families;
- (c) a person who is a member of a family of, and living with, a person specified in sub-paragraph (b); or
- (d) a person who has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules within the meaning of the Immigration Act 1971 to be responsible for that person's maintenance and accommodation.

(4) A person is to be treated as having satisfied the residence or presence conditions in paragraph (1) throughout a period of limited capability for work where those conditions are satisfied on the first day of that period of limited capability for work.

(5) In this regulation—

“aircraft worker” means a person who is, or has been, employed under a contract of service either as a pilot, commander, navigator or other member of the crew of any aircraft, or in any other capacity on board any aircraft where—

- (a) the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mail carried on that aircraft; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the aircraft is in flight,
- (c) but does not include a person who is in employment as a member of Her Majesty’s forces;

“mariner” means a person who is or has been in employment under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—

- (a) the employment in that other capacity is for the purposes of that ship or vessel or her crew or any passengers or cargo or mails carried by the ship or vessel; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on her voyage;

but does not include a person who is in employment as a member of Her Majesty’s forces;

“passenger” means any person carried on a ship except—

- (a) a person employed or engaged in any capacity on board the ship on the business of the ship; or
- (b) a person on board the ship either in pursuance of the obligation to carry shipwrecked, distressed or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.

Condition relating to youth – full-time education {reg 12}

13.—(1) For the purposes of paragraph 4(4) of Schedule 1 to the Act, a claimant is to be treated as receiving full-time education for any period during which the claimant—

- (a) is at least 16 years old but under the age of 19; and
- (b) attends a course of education for 21 hours or more a week.

(2) For the purposes of paragraph (1)(b), in calculating the number of hours a week during which a claimant attends a course, no account is to be taken of any instruction or tuition which is not suitable for persons of the same age who do not have a disability.

(3) In determining the duration of a period of full-time education under paragraph (1) any temporary interruption of that education may be disregarded.

(4) A claimant who is 19 years of age or over is not to be treated for the purposes of paragraph 4(1)(b) of Schedule 1 to the Act as receiving full-time education.

Modification of the relevant benefit year {reg 13}

14.—(1) Where paragraph (2) applies, sub-paragraph (1)(f) of paragraph 3 of Schedule 1 to the Act has effect as if “relevant benefit year” is any benefit year which includes all or part of the period of limited capability for work which includes the relevant benefit week.

(2) This paragraph applies where a claimant has made a claim to employment and support allowance but does not satisfy—

- (a) the first contribution condition;
- (b) the second contribution condition; or

(c) both contribution conditions,
but would satisfy those conditions if the modified definition of “relevant benefit year” provided in paragraph (1) applied.

PART 4

Limited Capability for Work

Determination of limited capability for work {reg 19}

15.—(1) For the purposes of Part 1 of the Act, whether a claimant’s capability for work is limited by the claimant’s physical or mental condition and, if it is, whether the limitation is such that it is not reasonable to require the claimant to work is to be determined on the basis of a limited capability for work assessment of the claimant in accordance with [Part XXX].

(2) The limited capability for work assessment is an assessment of the extent to which a claimant who has some specific disease or bodily or mental disablement is capable of performing the activities prescribed in Schedule 2 or is incapable by reason of such disease or bodily or mental disablement of performing those activities.

(3) Subject to paragraph (6), for the purposes of Part 1 of the Act a claimant has limited capability for work if, by adding the points listed in column (3) of Schedule 2 against any descriptor listed in that Schedule, the claimant obtains a total score of at least—

- (a) 15 points whether singly or by a combination of descriptors specified in Part 1 of that Schedule;
- (b) 15 points whether singly or by a combination of descriptors specified in Part 2 of that Schedule; or
- (c) 15 points by a combination of descriptors specified in Parts 1 and 2 of that Schedule.

(4) In assessing the extent of a claimant’s capability to perform any activity listed in Part 1 of Schedule 2, the claimant is to be assessed as if wearing any prosthesis with which the claimant is fitted or, as the case may be, wearing or using any aid or appliance which is normally worn or used.

(5) In assessing the extent of a claimant’s capability to perform any activity listed in Schedule 2, it is a condition that the claimant’s incapability to perform the activity arises from—

- (a) a specific bodily disease or disablement;
- (b) a specific mental illness or disablement; or
- (c) as a direct result of treatment provided by a registered medical practitioner, for such a disease, illness or disablement.

(6) Where more than one descriptor specified for an activity apply to a claimant, only the descriptor with the highest score in respect of each activity which applies is to be counted.

(7) Where a claimant—

- (a) has been determined to have limited capability for work; or
- (b) is to be treated as having limited capability for work under regulations 16, 21, 22 or 25,

the Secretary of State may, if paragraph (8) applies, determine afresh whether the claimant has or is to be treated as having limited capability for work.

(8) This paragraph applies where—

- (a) the Secretary of State wishes to determine whether there has been a relevant change of circumstances in relation to the claimant’s physical or mental condition;
- (b) the Secretary of State wishes to determine whether the previous determination of limited capability for work or that the claimant is to be treated as having limited capability for work, was made in ignorance of , or was based on a mistake as to, some material fact; or

- (c) at least 3 months have passed since the date on which the claimant was determined to have limited capability for work or to be treated as having limited capability for work.

Certain claimants to be treated as having limited capability for work {reg 20}

- 16.**—(1) A claimant is to be treated as having limited capability for work if—
- (a) the claimant is terminally ill;
 - (b) the claimant is—
 - (i) receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy, or is likely to receive such treatment within 6 months after the date of the determination of capability for work; or
 - (ii) recovering from that treatment and the Secretary of State is satisfied the claimant should be treated as having limited capability for work;
 - (c) the claimant is—
 - (i) excluded or abstains from work, or from work of such a kind, pursuant to a request or notice in writing lawfully made under an enactment; or
 - (ii) otherwise prevented from working pursuant to an enactment,
by reason of it being known or reasonably suspected that the claimant is infected or contaminated by, or has been in contact with a case of, a relevant infection or contamination;
 - (d) in the case of a pregnant woman, there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work;
 - (e) in the case of a pregnant woman, she—
 - (i) is within the maternity allowance period (which has the meaning it has in section 35(2) of the Contributions and Benefits Act); and
 - (ii) is entitled to a maternity allowance under section 35(1) of the Contributions and Benefits Act;
 - (f) in the case of a pregnant woman whose expected or actual date of confinement has been certified in accordance with the Medical Evidence Regulations, on any day in the period—
 - (i) beginning with the first date of the 6th week before the expected week of her confinement or the actual date of her confinement, whichever is earlier; and
 - (ii) ending on the 14th day after the actual date of her confinement,
if she would have no entitlement to a maternity allowance or statutory maternity pay were she to make a claim in respect of that period;
 - (g) the claimant meets any of the descriptors at paragraph 15 or 16 of Schedule 3;
 - (h) it has been determined that the claimant has limited capability for work on the basis of an assessment under Part 5 of the Universal Credit Regulations 2012.
- (2) In this regulation, “relevant infection or contamination” means—
- (a) in England and Wales—
 - (i) any incidence or spread of infection or contamination, within the meaning of section 45A(3) of the Public Health (Control of Disease) Act 1984 in respect of which regulations are made under Part 2A of that Act (public health protection) for the purpose of preventing, protecting against, controlling or providing a public health response to, such incidence or spread, or
 - (ii) any disease, food poisoning, infection, infectious disease or notifiable disease to which regulation 9 (powers in respect of persons leaving aircraft) of the Public Health (Aircraft) Regulations 1979 applies or to which regulation 10 (powers in respect of certain persons on ships) of the Public Health (Ships) Regulations 1979 applies; and

- (b) in Scotland, any—
 - (i) infectious disease within the meaning of section 1(5) of the Public Health etc (Scotland) Act 2008, or exposure to an organism causing that disease, or
 - (ii) contamination within the meaning of section 1(5) of that Act, or exposure to a contaminant,
- (c) to which sections 56 to 58 of that Act (compensation) apply.

Information required for determining capability for work {reg 21}

17.—(1) Subject to paragraphs (2) and (3), the information or evidence required to determine whether a claimant has limited capability for work is—

- (a) evidence of limited capability for work in accordance with the Medical Evidence Regulations (which prescribe the form of doctor’s statement or other evidence required in each case);
- (b) any information relating to a claimant’s capability to perform the activities referred to in Schedule 2 as may be requested in the form of a questionnaire; and
- (c) any such additional information as may be requested.

(2) Where the Secretary of State is satisfied that there is sufficient information to determine whether a claimant has limited capability for work without the information specified in paragraph (1)(b), that information will not be required for the purposes of making the determination.

(3) Paragraph (1) does not apply in relation to a determination whether a claimant is to be treated as having limited capability for work under any of regulations 16 (certain claimants to be treated as having limited capability for work), 21 (hospital in-patients) and 22 (claimants receiving certain regular treatment).

Failure to provide information in relation to limited capability for work {reg 22}

18.—(1) Where a claimant fails without good cause to comply with the request referred to in regulation 17(1)(b), that claimant is, subject to paragraph (2), to be treated as not having limited capability for work.

(2) Paragraph (1) does not apply unless—

- (a) at least 4 weeks have passed since the claimant was sent the first request for the information; and
- (b) the claimant was sent a further request at least 3 weeks after the date of the first request, and at least 1 week has passed since the further request was sent.

Claimant may be called for a medical examination to determine whether the claimant has limited capability for work {reg 23}

19.—(1) Where it falls to be determined whether a claimant has limited capability for work, that claimant may be called by or on behalf of a health care professional approved by the Secretary of State to attend for a medical examination.

(2) Subject to paragraph (3), where a claimant fails without good cause to attend for or to submit to an examination listed in paragraph (1), the claimant is to be treated as not having limited capability for work.

(3) Paragraph (2) does not apply unless written notice of the time and place for the examination was sent to the claimant at least 7 days in advance, or unless that claimant agreed to accept a shorter period of notice whether given in writing or otherwise.

Matters to be taken into account in determining good cause in relation to regulations 18 or 19 {reg 24}

20. The matters to be taken into account in determining whether a claimant has good cause under regulations 18 (failure to provide information in relation to limited capability for work) or 19 (failure to attend a medical examination to determine limited capability for work) include—

- (a) whether the claimant was outside Great Britain at the relevant time;
- (b) the claimant's state of health at the relevant time; and
- (c) the nature of any disability the claimant has.

Hospital in-patients {reg 25}

21.—(1) A claimant is to be treated as having limited capability for work on any day on which that claimant is undergoing medical or other treatment as an in-patient in a hospital or similar institution, or which is a day of recovery from that treatment.

(2) The circumstances in which a claimant is to be regarded as undergoing treatment falling within paragraph (1) include where the claimant is attending a residential programme of rehabilitation for the treatment of drug or alcohol addiction.

(3) For the purposes of this regulation, “day of recovery” means a day on which a claimant is recovering from treatment as an in-patient in a hospital or equivalent under paragraph (1) and the Secretary of State is satisfied that the claimant should be treated as having limited capability for work on that day.

Claimants receiving certain regular treatment {reg 26}

22.—(1) Subject to paragraph (2), a claimant receiving—

- (a) regular weekly treatment by way of haemodialysis for chronic renal failure;
- (b) treatment by way of plasmapheresis or by way of radiotherapy; or
- (c) regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function,

is to be treated as having limited capability for work during any week in which that claimant is engaged in that treatment or has a day of recovery from that treatment.

(2) A claimant who receives the treatment referred to in paragraph (1) is only to be treated as having limited capability for work from the first week of treatment in which the claimant undergoes no fewer than—

- (a) two days of treatment;
- (b) two days of recovery from any of the forms of treatment listed in paragraph (1)(a) to (c);
or
- (c) one day of treatment and one day of recovery from that treatment,

but the days of treatment or recovery from that treatment or both need not be consecutive.

(3) For the purpose of this regulation “day of recovery” means a day on which a claimant is recovering from any of the forms of treatment listed in paragraph (1)(a) to (c) and the Secretary of State is satisfied that the claimant should be treated as having limited capability for work on that day.

Claimant to be treated as having limited capability for work throughout a day {reg 27}

23. A claimant who at the commencement of any day has, or thereafter develops, limited capability for work as determined in accordance with the limited capability for work assessment is to be treated as having limited capability for work throughout that day.

Night workers {reg 28}

24.—(1) Where a claimant works for a continuous period which extends over midnight into the following day, that claimant is to be treated as having limited capability for work on the day on which the lesser part of that period falls if that claimant had limited capability for work for the remainder of that day.

(2) Where, in relation to a period referred to in paragraph (1), the number of hours worked before and after midnight is equal—

- (a) if the days in question fall at the beginning of a period of limited capability for work, the claimant is to be treated as having limited capability on the second day; and
- (b) if the days in question fall at the end of a period of limited capability for work, the claimant is to be treated as having limited capability for work on the first day.

Exceptional circumstances {reg 29}

25.—(1) A claimant who does not have limited capability for work as determined in accordance with the limited capability for work assessment is to be treated as having limited capability for work if paragraph (2) applies to the claimant.

(2) This paragraph applies if—

- (a) the claimant is suffering from a life threatening disease in relation to which—
 - (i) there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure; and
 - (ii) in the case of a disease that is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure; or
- (b) the claimant suffers from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if the claimant were found not to have limited capability for work.

Conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made {reg 30}

26.—(1) A claimant is, if the conditions set out in paragraph (2) are met, to be treated as having limited capability for work until such time as it is determined—

- (a) whether or not the claimant has limited capability for work;
- (b) whether or not the claimant is to be treated as having limited capability for work otherwise than in accordance with this regulation; or
- (c) whether the claimant falls to be treated as not having limited capability for work in accordance with regulation 18 (failure to provide information in relation to limited capability for work) or 19 (failure to attend a medical examination to determine limited capability for work).

(2) The conditions are—

- (a) that the claimant provides evidence of limited capability for work in accordance with the Medical Evidence Regulations; and
- (b) that it has not, within the 6 months preceding the date of claim, been determined, in relation to the claimant's entitlement to any benefit, allowance or advantage which is dependent on the claimant having limited capability for work, that the claimant does not have limited capability for work or is to be treated as not having limited capability for work under regulation 18 or 19 unless—
 - (i) the claimant is suffering from some specific disease or bodily or mental disablement from which the claimant was not suffering at the time of that determination;

- (ii) a disease or bodily or mental disablement from which the claimant was suffering at the time of that determination has significantly worsened; or
 - (iii) in the case of a claimant who was treated as not having limited capability for work under regulation 18 (failure to provide information), the claimant has since provided the information requested under that regulation; or
- (c) that it has not, within the 6 months preceding the date of claim, been determined, in relation to the claimant's entitlement to any benefit, allowance or advantage, which is dependent upon the claimant being incapable of work, that the claimant is capable of work, or is to be treated as capable of work under regulation 7 or 8 of the Social Security (Incapacity for Work) (General) Regulations 1995 ("the 1995 Regulations"), unless—
- (i) the claimant is suffering from some specific disease or bodily or mental disablement from which the claimant was not suffering at the time of that determination,
 - (ii) a disease or bodily or mental disablement from which the claimant was suffering at the time of that determination has significantly worsened, or
 - (iii) in the case of a claimant who was treated as capable of work under regulation 7 of the 1995 Regulations (failure to provide information), the claimant has since provided the information requested by the Secretary of State under that regulation.

(3) Paragraph (2)(b) does not apply where a claimant has made and is pursuing an appeal against a decision that embodies a determination that the claimant does not have limited capability for work and that appeal has not yet been determined by the First-tier Tribunal.

Certain claimants to be treated as not having limited capability for work {reg 32}

27.—(1) A claimant who is or has been a member of Her Majesty's forces is to be treated as not having limited capability for work on any day which is recorded by the Secretary of State for Defence as a day of sickness absence from duty.

(2) A claimant is to be treated as not having limited capability for work on any day on which the claimant attends a training course in respect of which the claimant is paid a training allowance or premium pursuant to arrangements made under section 2 of the Employment and Training Act 1973 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990.

(3) Paragraph (2) is not to apply—

- (a) for the purposes of any claim to an employment and support allowance for a period commencing after the claimant ceased attending the training course in question; or
- (b) where any training allowance or premium paid to the claimant is paid for the sole purpose of travelling or meal expenses incurred or to be incurred under the arrangement made under section 2 of the Employment and Training Act 1973 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990.

(4) A claimant is to be treated as not having limited capability for work where—

- (a) it has previously been determined on the basis of an assessment under Part 5 of the Universal Credit Regulations 2012 that the claimant does not have limited capability for work, and
- (b) it appears to the Secretary of State that—
 - (i) the determination was not based on ignorance of, or mistake as to, a material fact, and
 - (ii) there has been no relevant change of circumstances in relation to the claimant's physical or mental condition.

Claimants to be treated as not having limited capability for work at the end of the period covered by medical evidence {reg 32A}

28.—(1) Where the Secretary of State is satisfied that it is appropriate in the circumstances of the case then a claimant may be treated as not having limited capability for work if—

- (a) the claimant has supplied medical evidence;
- (b) the period for which medical evidence was supplied has ended;
- (c) the Secretary of State has requested further medical evidence; and
- (d) the claimant has not, before whichever is the later of either the end of the period of 6 weeks beginning with the date of the Secretary of State’s request or the end of 6 weeks beginning with the day after the end of the period for which medical evidence was supplied—
 - (i) supplied further medical evidence, or
 - (ii) otherwise made contact with the Secretary of State to indicate that they wish to have the question of limited capability for work determined.

(2) In this regulation “medical evidence” means evidence provided under regulation 2 or 5 of the Medical Evidence Regulations.

Additional circumstances where claimants are to be treated as having limited capability for work {reg 33}

29. For the purposes of paragraph 4(1)(d)(ii) of Schedule 1 to the Act, a claimant is to be treated as having limited capability for work on any day in respect of which that claimant is entitled to statutory sick pay.

PART 5

Limited Capability for Work-related Activity

Determination of limited capability for work-related activity {reg 34}

30.—(1) For the purposes of Part 1 of the Act, where, by reason of a claimant’s physical or mental condition, at least one of the descriptors set out in Schedule 3 applies to the claimant, the claimant’s capability for work-related activity will be limited and the limitation will be such that it is not reasonable to require that claimant to undertake such activity.

(2) A descriptor applies to a claimant if that descriptor applies to the claimant for the majority of the time or, as the case may be, on the majority of the occasions on which the claimant undertakes or attempts to undertake the activity described by that descriptor.

(3) In determining whether a descriptor applies to a claimant, the claimant is to be assessed as if the claimant were wearing any prosthesis with which the claimant is fitted or, as the case may be, wearing or using any aid or appliance which the claimant normally wears or uses.

(4) Where a determination has been made about whether a claimant—

- (a) has limited capability for work-related activity;
- (b) is to be treated as having limited capability for work-related activity; or
- (c) is to be treated as not having limited capability for work-related activity,

the Secretary of State may, if paragraph (5) applies, determine afresh whether the claimant has or is to be treated as having limited capability for work-related activity.

(5) This paragraph applies where—

- (a) the Secretary of State wishes to determine whether there has been a relevant change of circumstances in relation to the claimant’s physical or mental condition;
- (b) the Secretary of State wishes to determine whether the previous determination about limited capability for work-related activity or about treating the claimant as having or as not having limited capability for work-related activity, was made in ignorance of, or was based on a mistake as to, some material fact; or

- (c) at least 3 months have passed since the date of the previous determination about limited capability for work-related activity or about treating the claimant as having or as not having limited capability for work-related activity.

Certain claimants to be treated as having, or not having, limited capability for work-related activity {reg 35}

31.—(1) A claimant is to be treated as having limited capability for work-related activity if—

- (a) the claimant is terminally ill;
- (b) the claimant is—
 - (i) receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy, or is likely to receive such treatment within 6 months after the date of the determination of capability for work-related activity; or
 - (ii) recovering from that treatment and the Secretary of State is satisfied that the claimant should be treated as having limited capability for work-related activity;
- (c) in the case of a woman, she is pregnant and there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work-related activity; or
- (d) it has been determined that the claimant has limited capability for work-related activity on the basis of an assessment under Part 5 of the Universal Credit Regulations 2012.

(2) A claimant who does not have limited capability for work-related activity as determined in accordance with regulation 30(1) is to be treated as having limited capability for work-related activity if—

- (a) the claimant suffers from some specific disease or bodily or mental disablement; and
- (b) by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if the claimant were found not to have limited capability for work-related activity.

(3) A claimant is to be treated as not having limited capability for work-related activity where—

- (a) it has previously been determined on the basis of an assessment under Part 5 of the Universal Credit Regulations 2012 that the claimant does not have limited capability for work-related activity, and
- (b) it appears to the Secretary of State that—
 - (i) the determination was not based on ignorance of, or mistake as to, a material fact, and
 - (ii) there has been no relevant change of circumstances in relation to the claimant's physical or mental condition.

Relevant linked cases – limited capability for work-related activity {reg 35A}

32. A claimant is to be treated as having limited capability for work-related activity where—

- (a) they fall within case 1, as defined in regulation 7(3); and
- (b) in respect of the earlier period of limited capability for work referred to in regulation 7(3)(a)(i), they had been entitled to a support component under section 2(2) of the Act.

Information required for determining capability for work-related activity {reg 36}

33.—(1) Subject to paragraph (2), the information or evidence required to determine whether a claimant has limited capability for work-related activity is—

- (a) any information relating to the descriptors set out in Schedule 3 as may be requested in the form of a questionnaire; and
- (b) any such additional information as may be requested.

(2) Where the Secretary of State is satisfied that there is sufficient information to determine whether a claimant has limited capability for work-related activity without the information specified in paragraph (1)(a), that information will not be required for the purposes of making the determination.

Failure to provide information in relation to work-related activity {reg 37}

34.—(1) Where a claimant fails without good cause to comply with the request referred to in regulation 33(1)(a), the claimant is, subject to paragraph (2), to be treated as not having limited capability for work-related activity.

(2) Paragraph (1) does not apply unless—

- (a) at least 4 weeks have passed since the claimant was sent the first request for the information; and
- (b) the claimant was sent a further request at least 3 weeks after the date of the first request, and at least 1 week has passed since the further request was sent.

Claimant may be called for a medical examination to determine whether the claimant has limited capability for work-related activity {reg 38}

35.—(1) Where it falls to be determined whether a claimant has limited capability for work-related activity, that claimant may be called by or on behalf of a health care professional approved by the Secretary of State to attend for a medical examination.

(2) Subject to paragraph (3), where a claimant fails without good cause to attend for or to submit to an examination listed in paragraph (1), the claimant is to be treated as not having limited capability for work-related activity.

(3) Paragraph (2) does not apply unless written notice of the time and place for the examination was sent to the claimant at least 7 days in advance, or unless the claimant agreed to accept a shorter period of notice whether given in writing or otherwise.

Matters to be taken into account in determining good cause in relation to regulations 34 or 35 {reg 39}

36. The matters to be taken into account in determining whether a claimant has good cause under regulations 34 (failure to provide information in relation to work-related activity) or 35 (failure to attend a medical examination to determine limited capability for work-related activity) include—

- (a) whether the claimant was outside Great Britain at the relevant time;
- (b) the claimant's state of health at the relevant time; and
- (c) the nature of any disability the claimant has.

PART 6

Effect of work on entitlement to an Employment and Support Allowance

A claimant who works to be treated as not entitled to an employment and support allowance {reg 40}

37.—(1) Subject to the following paragraphs, a claimant is to be treated as not entitled to an employment and support allowance in any week in which that claimant does work.

(2) Paragraph (1) does not apply to—

- (a) work as a councillor;
- (b) duties undertaken on either one full day or two half-days a week as a member of the First-tier Tribunal where the member is eligible for appointment to be such a member in

accordance with article 2(3) of the Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008;

- (c) domestic tasks carried out in the claimant's own home or the care of a relative;
- (d) duties undertaken in caring for another person who is accommodated with the claimant by virtue of arrangements made under any of the provisions referred to in paragraph (7) where the claimant is in receipt of any payment specified in that paragraph;
- (e) any activity the claimant undertakes during an emergency to protect another person or to prevent serious damage to property or livestock; or
- (f) any of the categories of work set out in regulation 39 (exempt work).

(3) This regulation is subject to regulation 40 (effect of work on entitlement to an employment and support allowance where claimant is receiving certain regular treatment).

(4) A claimant who does work to which this regulation applies in a week which is—

- (a) the week in which the claimant first becomes entitled to a benefit, allowance or advantage on account of the claimant's limited capability for work in any period; or
- (b) the last week in any period in which the claimant has limited capability for work or is treated as having limited capability for work,

is to be treated as not entitled to an employment and support allowance by virtue of paragraph (1) only on the actual day or days in that week on which the claimant does that work.

(5) Regulation 86 (linking rules) does not apply for the purposes of calculating the beginning or end of any period of limited capability for work under paragraph (4).

(6) The day or days in a week on which a night worker works, for the purposes of paragraph (4), are to be calculated by reference to regulation 24 (night workers).

(7) The payments and provisions mentioned in paragraph (2)(d) are—

- (a) any payment made to the claimant with whom a person is accommodated by virtue of arrangements made—
 - (i) by a local authority under—
 - (aa) section 23(2)(a) of the Children Act 1989 (provision of accommodation and maintenance for a child whom they are looking after), or
 - (bb) section 26 of the Children (Scotland) Act 1995 (manner of provision of accommodation to child looked after by local authority), or
 - (cc) regulations 33 or 51 of the Looked After Children (Scotland) Regulations 2009 (fostering and kinship care allowances and fostering allowances); or
 - (ii) by a voluntary organisation under section 59(1)(a) of the 1989 Act (provision of accommodation by voluntary organisations);
- (b) any payment made to the claimant or the claimant's partner for a person ("the person concerned"), who is not normally a member of the claimant's household but is temporarily in the claimant's care, by—
 - (i) a health authority;
 - (ii) a local authority but excluding payments of housing benefit made in respect of the person concerned;
 - (iii) a voluntary organisation;
 - (iv) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948;
 - (v) a Primary Care Trust established under section 16A of the National Health Service Act 1977 or by an order made under section 18(2)(c) of the Health Service Act; or
 - (vi) a Local Health Board established under section 16BA of the National Health Service Act 1977 or by an order made under section 11 of the Health Service (Wales) Act.

(8) In this regulation—

“week” means a week in respect of which a claimant is entitled to an employment and support allowance;

“work” means any work which a claimant does, whether or not that claimant undertakes it in expectation of payment;

“work as a councillor” is to be taken to include any work which a claimant undertakes as a member of any of the bodies referred to in section 177(1) of the Local Government Act 1972 or sub-sections 49(1) or 49(1A) of the Local Government (Scotland) Act 1973, of which the claimant is a member by reason of being a councillor.

Claimants who are treated as not entitled to any allowance at all by reason of regulation 36(1) are to be treated as not having limited capability for work {reg 44}

38.—(1) Where a claimant is treated as not entitled to an employment and support allowance by reason of regulation 37(1), the claimant is to be treated as not having limited capability for work.

(2) Paragraph (1) applies even if—

- (a) it has been determined that the claimant has or is to be treated as having, under any of regulations 16 (certain claimants to be treated as having limited capability for work), 21 (hospital in-patients), 22 (claimants undergoing certain regular treatment) or 25 (exceptional circumstances), limited capability for work; or
- (b) the claimant meets the conditions set out in regulation 26(2) for being treated as having limited capability for work until a determination is made in accordance with the limited capability for work assessment.

Exempt work {reg 45}

39.—(1) The categories of work referred to in regulation 37(2)(f) are set out in the following paragraphs.

(2) Work for which the earnings in any week do not exceed £20.00.

(3) Work for which the earnings in any week do not exceed 16 x National Minimum Wage, subject to paragraph (10), and which—

- (a) is part of the claimant’s treatment programme and is done under medical supervision while the claimant is an in-patient, or is regularly attending as an out-patient, of a hospital or similar institution; or
- (b) is supervised by a person employed by a public or local authority or by a voluntary organisation or community interest company engaged in the provision or procurement of work for persons who have disabilities.

(4) Work which is done for less than 16 hours a week, for which earnings in any week do not exceed 16 x National Minimum Wage, subject to paragraph (10), and which is done—

- (a) during a period of specified work, provided that—
 - (i) the claimant has not previously done specified work,
 - (ii) since the beginning of the last period of specified work, the claimant has ceased to be entitled to a relevant benefit for a continuous period exceeding 12 weeks, or
 - (iii) not less than 52 weeks have elapsed since the last period of specified work; or
- (b) by a claimant who has or is treated as having limited capability for work-related activity,

and for the purposes of this paragraph, a period of specified work begins on the first day on which any specified work is undertaken and continues for a period of 52 weeks, whether or not any further specified work is undertaken during that period.

(5) Work done in the course of receiving assistance in pursuing self-employed earner’s employment whilst participating in a programme provided or other arrangements made under section 2 of the Employment and Training Act 1973 (functions of the Secretary of State) or section 2 of the Enterprise and New Towns (Scotland) Act 1990 (functions in relation to training for employment etc).

(6) Work done where the claimant receives no payment of earnings and where the claimant—

- (a) is engaged by a charity or voluntary organisation; or
- (b) is a volunteer,

where the Secretary of State is satisfied in any of those cases that it is reasonable for the claimant to provide the service free of charge.

(7) Work done in the course of participating in a work placement approved in writing by the Secretary of State before the placement starts.

(8) The number of hours for which a claimant is engaged in work is to be determined—

- (a) where no recognisable cycle has been established in respect of a claimant's work, by reference to the number of hours or, where those hours are likely to fluctuate, the average of the hours, which the claimant is expected to work in a week;
- (b) where the number of hours for which the claimant is engaged fluctuate, by reference to the average of hours worked over—
 - (i) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences);
 - (ii) in any other case, the period of five weeks immediately before the date of claim or the date on which a superseding decision is made under section 10 (decisions superseding earlier decisions) of the Social Security Act 1998, or such other length of time as may, in the particular case, enable the claimant's average hours of work to be determined more accurately.

(9) For the purposes of determining the number of hours for which a claimant is engaged in work, that number is to include any time allowed to that claimant by the claimant's employer for a meal or for refreshment, but only where that claimant is, or expects to be, paid earnings in respect of that time.

(10) Where the amount determined by the calculation in paragraphs (3) and (4) would, but for this paragraph, include an amount of—

- (a) less than 50p, that amount shall be rounded up to the nearest 50p; or
- (b) less than £1 but more than 50p, that amount shall be rounded up to the nearest £1.

(11) In this regulation—

“relevant benefit” means—

- (a) an employment and support allowance; or
- (b) credits under regulations made under section 22(5) of the Contributions and Benefits Act, in respect of which the question of the claimant's limited capability for work arises under the Act;

“specified work” means work done in accordance with paragraph (4);

“supervised work” means work done in accordance with paragraph (3)(a) or (b);

“volunteer” means a person who is engaged in voluntary work otherwise than for a relative, where the only payment received or due to be paid to the person by virtue of being so engaged is in respect of any expenses reasonably incurred by the person in connection with that work.

“work placement” means practical work experience with an employer, which is neither paid nor undertaken in expectation of payment.

Effect of work on entitlement to an employment and support allowance where claimant is receiving certain regular treatment {reg 46}

40. Where a claimant who is entitled to an employment and support allowance and is treated as having limited capability for work by virtue of regulation 22 works on any day during a week when the claimant is, in accordance with regulation 22, receiving certain regular treatment or

recovering from that treatment, that work is to have no effect on the claimant's entitlement to the employment and support allowance.

PART 7

Claimant responsibilities and sanctions

CHAPTER 1

Entitlement to an employment and support allowance and universal credit

Application of regulations where there is dual entitlement {new}

41.—(1) This regulation applies where a person is entitled to universal credit and an employment and support allowance.

(2) Chapters 2 (claimant responsibilities) and 3 (sanctions) of this Part do not apply to such a person.

(3) Part 8 (claimant responsibilities) and chapter 1 of Part 9 (sanctions) of the Universal Credit Regulations 2012 apply to such a person.

(4) Where a sanction is applied to the person under chapter 1 of Part 9 of those Regulations, that sanction is not to apply to the employment and support allowance.

Sanction for an employment and support allowance moving to universal credit where there is dual entitlement {new}

42.—(1) This regulation applies where—

- (a) a person is entitled to an employment and support allowance,
- (b) there is a sanction relating to the award of the employment and support allowance,
- (c) the person becomes entitled to universal credit, and
- (d) the person remains entitled to an employment and support allowance.

(2) Any sanction relating to the award of the employment and support allowance is to cease being applied to the award of the employment and support allowance.

CHAPTER 2

Claimant responsibilities

Interpretation {new}

43.—(1) In this chapter—

“adopter” means a person who has been matched with a child for adoption who is, or is intended to be, the responsible carer for the child, but excluding a person who is a foster carer, step-parent, relative or step-relative of the child;

“adoptive carer” in relation to a child means—

- (a) a single person who is an adopter; or
- (b) a person who is a member of a couple where—
 - (i) the couple are both adopters, and
 - (ii) the person has been nominated by the couple jointly as responsible for the child;

“foster carer” in relation to a child means—

- (a) a single person who is a foster parent; or
- (b) a person who is a member of a couple where—
 - (i) the couple are foster parents, and

(ii) the person has been nominated by the couple jointly as responsible for the child;
“foster parent” has the same meaning as under the Fostering Services (England) Regulations 2001;

“nominated parent” in relation to a child means a person who is a member of a couple where—

- (a) the couple are parents of the child, and
- (b) the person has been nominated by the couple jointly as responsible for the child.

(2) For the purpose of this chapter—

- (a) a person is matched with a child for adoption when it is decided by an adoption agency that the person would be a suitable adoptive parent for the child; and
- (b) references to paid work include more paid work or better-paid work.

Information to be included in the claimant commitment {new}

44. A claimant commitment is to include—

- (a) the amount by, and period of time for, which an award of an employment and support allowance may be reduced in accordance with section 11J of the Act in the event that the claimant fails to comply with any of the requirements recorded in their claimant commitment; and
- (b) notice of the claimant’s right of appeal against a decision to reduce an award of an employment and support allowance in accordance with section 11J of the Act.

Method of acceptance of the claimant commitment {new}

45. A claimant must accept a claimant commitment by one of the following methods, as specified by the Secretary of State—

- (a) electronically;
- (b) by telephone; or
- (c) in writing.

Claimants subject to no work-related requirements {new}

46.—(1) A claimant who is of a description set out in paragraph (2) falls within section 11D of the Act (persons subject to no work-related requirements).

(2) A claimant who—

- (a) has caring responsibilities of more than 35 hours per week for a severely disabled person;
- (b) is a foster carer or a nominated parent who is responsible for, and a member of the same household as, a child under the age of one;
- (c) has been an adoptive carer of a child for less than a year;
- (d) is pregnant and it is 11 weeks or less before her expected week of confinement; or
- (e) was pregnant and it is 15 weeks or less since the date of her confinement.

Claimants subject to work-focused interview requirement only {new}

47.—(1) For the purposes of section 11E(1)(a) of the Act (a claimant is the responsible carer for a child aged at least 1, and under a prescribed age) the age is 5.

(2) A claimant falls within section 11E (claimants subject to work-focused interview requirement only) if—

- (a) the claimant is the foster carer of a child;

- (b) [they are a relative or other person who undertakes the care of a child in certain circumstances and they only fall within section 11E for less than a year;] or
- (c) the claimant is a foster parent who—
 - (i) does not have a child or qualifying young person placed with them, but intends to; and
 - (ii) is within 8 weeks of having fallen within paragraph (a).

Imposition of requirements: victims of domestic violence {new}

48.—(1) Where a claimant has recently been a victim of domestic violence, and the circumstances set out in paragraph (3) apply—

- (a) a requirement imposed on that claimant under Part 1 of the Welfare Reform Act 2007 ceases to have effect for a period of 13 weeks starting on the date of the notification referred to in paragraph (3)(a); and
- (b) the Secretary of State must not impose any other requirement under Part 1 of that Act on that claimant during that period.

(2) A person has recently been a victim of domestic violence if 6 months has not expired since the violence was inflicted or threatened.

(3) The circumstances are that—

- (a) the claimant notifies the Secretary of State, in such manner as the Secretary of State specifies, that domestic violence has been inflicted on or threatened against the claimant by a person specified in paragraph (4) during the period of 6 months ending on the date of the notification;
- (b) this regulation has not applied to the claimant for a period of 12 months before the date of the notification;
- (c) on the date of the notification the claimant is not living at the same address as the person who inflicted or threatened the domestic violence;
- (d) as soon as possible, and no later than 1 month, from the date of the notification the claimant provides evidence from a person acting in an official capacity which demonstrates that—
 - (i) the claimant’s circumstances are consistent with those of a person who has had domestic violence inflicted or threatened against them during the period of 6 months ending on the date of the notification; and
 - (ii) the claimant has made contact with the person acting in an official capacity in relation to such an incident, which occurred during that period.

(4) A person referred to in paragraph (3)(a) is—

- (a) where the claimant is, or was, a member of a couple, the other member of the couple;
- (b) the claimant’s grandparent, grandchild, parent, parent-in-law, son, son-in-law, daughter, daughter in-law, step-parent, step-son, step-daughter, brother, brother-in-law, sister or sister-in-law; or
- (c) where any person listed in sub-paragraph (b) is a member of a couple, the other member of that couple.

(5) In this regulation—

“domestic violence” means abuse of a kind specified on page 11, of section 2.2. of ‘Responding to domestic abuse: a handbook for health professionals’ published by the Department of Health in December 2005(a);

(a) [Available from: XXX.]

“health care professional” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002;

“person acting in an official capacity” means a health care professional, a police officer, a registered social worker, the claimant’s employer, a representative of the claimant’s trade union or any public, voluntary or charitable body which has had direct contact with the claimant in connection with domestic violence;

“registered social worker” means a person registered as a social worker in a register maintained by—

- (a) The General Social Care Council;
- (b) The Care Council for Wales;
- (c) The Scottish Social Services Council; or
- (d) The Northern Ireland Social Care Council.

Purposes of a work-focused interview {new}

49. The purposes of a work-focused interview are any or all of the following—

- (a) assessing the claimant’s prospects for remaining in or obtaining work;
- (b) assisting or encouraging the claimant to remain in or obtain work;
- (c) identifying activities that the claimant may undertake that will make remaining in or obtaining work more likely;
- (d) identifying training, educational or rehabilitation opportunities for the claimant which may make it more likely that the claimant will remain in or obtain work or be able to do so;
- (e) identifying current or future work opportunities for the claimant that are relevant to the claimant’s needs and abilities.

CHAPTER 3

Sanctions

Interpretation {new}

50. For the purposes of this chapter—

“compliance period” means the period between two consecutive dates on which the Secretary of State requires a claimant to confirm compliance with a work-related requirement in accordance with section 11G of the Act (connected requirements);

“current sanctionable failure” means a failure which is sanctionable under section 11J of the Act (sanctions) in relation to which the Secretary of State has not yet determined whether the amount of an award is to be reduced in accordance with section 11J of the Act;

“daily reduction amount” means the amount set out in regulations 53, 54 or 55 that applies in the claimant’s case;

“sanctionable failure” means a failure which is sanctionable under section 11J of the Act;

“total outstanding reduction period” means the total of the number of days provided for under regulations 56 and 57 that apply in the claimant’s case, but not including any day which has already resulted in a reduction to the amount of an award of an employment and support allowance.

Calculation of a reduction under section 11J of the Act {new}

51.—(1) Where the Secretary of State has determined that the amount of an award of an employment and support allowance is to be reduced in accordance with section 11J of the Act, the reduction for each benefit week is to be calculated as follows.

- (2) Multiply the daily reduction amount by—
 - (a) the number of days in the benefit week, or
 - (b) if lower, the total outstanding reduction period.
- (3) The total outstanding reduction period for a claimant is to be calculated as follows—

Step 1

Add together the number of days which apply in the claimant's case under regulations 56 and 57 and which have not yet resulted in a reduction to the amount of the award for a benefit week.

The result of this step is the total outstanding reduction period, but this is subject to steps 2 and 3.

Step 2

Where an award of an employment and support allowance is terminated ("the old award") and—

- (a) the old award had not been reduced for the claimant's total outstanding reduction period; and
- (b) the claimant (as a single person or a member of a couple), is awarded a new award of an employment and support allowance,

reduce the total outstanding reduction period by the number of days between the date on which the old award was terminated and the date on which the new award starts.

Step 3

Where the total outstanding reduction period is more than 1095 days, reduce the period of a reduction for the most recent sanctionable failure by such number of days as is required for the total outstanding reduction period to be 1095 days.

Effective date of a reduction under section 11J of the Act {new}

52. A reduction calculated in accordance with regulation 12 takes effect from—

- (a) the first day of the benefit week in which the failure occurred,
- (b) where the payment of an employment and support allowance for the benefit week referred to in paragraph (a) is not reduced in accordance with the Secretary of State's determination, the first day of the next benefit week,
- (c) where the amount of the award of the employment and support allowance for the benefit week referred to in paragraph (a) or (b) is already subject to a reduction because of a determination under section 11J of the Act, the first day in respect of which the amount of the award is no longer subject to a reduction.

Amount of a reduction under section 11J of the Act {new}

53. The daily reduction amount that applies to a claimant for the purposes of regulation 51 is, unless regulation 54 or 55 applies—

- (a) £8 of the claimant's employment and support allowance where they are under 25 years old on the last day of a benefit week; or
- (b) £10 of the claimant's employment and support allowance where they are 25 years old or over on the last day of a benefit week.

Amount of a reduction under section 27: claimants subject to work-focused interview requirement only {new}

54.—(1) This regulation applies where—

- (a) the claimant falls within section 11E of the Act on the last day of a benefit week,
- (b) the claimant falls within section 11D(2)(c) of the Act or regulation 46(2)(b) to (d) on the last day of a benefit week, or

- (c) the claimant's current sanctionable failure is a failure to comply with a requirement under section 11G(4) (connected requirements).

(2) Where this regulation applies, the daily reduction amount that applies to a claimant for the purposes of regulation 51 is, unless regulation 55 applies—

- (a) £3 of the claimant's employment and support allowance where they are under 25 years old on the last day of a benefit week; or
- (b) £4 of the claimant's employment and support allowance where they are 25 years old or over on the last day of a benefit week.

Amount of a reduction under section 27: cases where the reduction amount is zero {new}

55.—(1) This regulation applies where the claimant—

- (a) ceases to fall within section 11E or 11F of the Act; and instead
- (b) falls within section 11D(2)(a) of the Act (claimants subject to no work-related requirements because of limited capability for work) on the last day of an assessment period.

(2) Where this regulation applies, the daily reduction amount is zero.

Period of a reduction under section 11J of the Act {new}

56.—(1) The period for which a sanction is to have effect is to be calculated in accordance with paragraph (2), subject as follows.

(2) A sanction is to have effect for the total of—

- (a) 7 days, and
- (b) the number of days beginning with the date of the current sanctionable failure and ending with the date on which—
 - (i) the claimant meets a compliance condition specified by the Secretary of State, or
 - (ii) if sooner, the claimant's award of an employment and support allowance is terminated.

(3) Where there has been a sanctionable failure by the claimant which—

- (a) resulted in a sanction under this regulation for a period of 7 days (or would have done but for step 3 of regulation 51(3)); and
- (b) occurred—
 - (i) before the compliance period for the current sanctionable failure; and
 - (ii) 365 days or less before the date of the current sanctionable failure,

the reference to 7 days in paragraph (2)(a) is to be read as if it were a reference to 14 days.

(4) Where there has been a sanctionable failure by the claimant which—

- (a) resulted in a sanction under this regulation for a period of 14 days (or would have done but for step 3 of regulation 51(3)); and
- (b) occurred—
 - (i) before the compliance period for the current sanctionable failure; and
 - (ii) 365 days or less before the date of the current sanctionable failure,

the reference to 7 days in paragraph (2)(a) is to be read as if it were a reference to 28 days.

(5) Where there has been a sanctionable failure by the claimant which—

- (a) resulted in a sanction under this regulation for a period of 28 days (or would have done but for step 3 of regulation 51(3)); and
- (b) occurred 365 days or less before the date of the current sanctionable failure,

the reference to 7 days in paragraph (2)(a) is to be read as if it were a reference to 28 days.

(6) In this regulation, “a sanction” means a reduction to the amount of an award of an employment and support allowance in accordance with section 11J of the Act as a result of a failure by a claimant who falls within section 11F of the Act (persons subject to work preparation and work-focused interview requirement) at the date of that failure, to comply with—

- (a) a work-focused interview requirement under section 11B(1) of the Act;
- (b) a work preparation requirement under section 11C(1) of the Act; or
- (c) a requirement under section 11G of the Act (connected requirements).

Period of a reduction under section 11J of the Act: claimants subject to work-focused interview requirement only {new}

57.—(1) This regulation applies where the claimant falls within section 11E of the Act (persons subject to work-focused interview requirement only) on the date of the failure.

(2) Where this regulation applies, a reduction in accordance with section 11J of the Act is to have effect for the number of days between—

- (a) the date of the current sanctionable failure; and
- (b) the date on which—
 - (i) the claimant meets a compliance condition specified by the Secretary of State, or
 - (ii) if sooner, the claimant’s award of an employment and support allowance is terminated.

(3) Paragraph (2) is subject to step 3 of regulation 51(3).

Provision of information and evidence showing good reason {new}

58.—(1) A claimant is to be treated as not having a good reason for an act or omission for the purposes of a sanction under section 11J of the Act where paragraph (2) applies.

(2) This paragraph applies where the claimant has not provided information or evidence to the Secretary of State within [a specified time].

Cases in which a reduction made under section 11J of the Act is to be terminated {new}

59.—(1) A reduction to the amount of an award of an employment and support allowance in accordance with section 11J of the Act is to be terminated where paragraph (2) applies.

(2) This paragraph applies where the claimant has been in paid work within the meaning in paragraph (3) for a period of at least 182 days since the most recent sanctionable failure by the claimant.

(3) The claimant is in paid work for the purposes of paragraph (2) where their weekly earnings are at least equal to 16 multiplied by the national minimum wage which would apply for a person of the claimant’s age.

Cases in which a reduction made under section 11J of the Act is to be suspended {new}

60.—(1) A reduction in the amount of an award of an employment and support allowance in accordance with section 11J of the Act is to be suspended where a sanction is imposed on the claimant’s employment and support allowance under section 6B or 7 of the Social Security Fraud Act 2001.

(2) The suspension referred to in paragraph (1) ends when the sanction ceases to be imposed under section 6B or 7 of the Social Security Fraud Act 2001.

CHAPTER 4

Moving from universal credit to employment and support allowance

Sanctions on universal credit where a person becomes entitled to an employment and support allowance {new}

61.—(1) This regulation applies where—

- (a) a person ceases to be entitled to universal credit,
- (b) there is a sanction relating to the award of the universal credit, and
- (c) the person becomes entitled to an employment and support allowance.

(2) Any sanction relating to the award of the universal credit is to be applied to the award of the employment and support allowance.

(3) The period for which the sanction is to have effect is the number of days which apply to the person under regulations SA4, SA18, SA19, SA5, SA20, SA6, SA21 or SA7 of the Universal Credit Regulations 2012 minus any such days—

- (a) which have already resulted in a reduction to the amount of universal credit, and
- (b) between the date the award of universal credit was terminated and the date on which the award of an employment and support allowance starts.

(4) The daily reduction amount for the sanction is—

- (a) the amount referred to in regulation 54(2) where—
 - (i) the claimant falls within section 11E of the Act on the date they become entitled to an employment and support allowance, or
 - (ii) the sanction resulted from a failure to comply with a requirement under section 23 of the Welfare Reform Act 2012,
- (b) zero where the claimant falls within section 11D(2)(a) of the Act, or
- (c) the amount referred to in regulation 53(a) or (b) in all other cases.

(5) The reduction of the claimant's award of an employment and support allowance is the period for which the sanction is to have effect referred to in paragraph (3) multiplied by the daily reduction amount referred to in paragraph (4).

PART 8

Amounts of Allowance

Prescribed amounts {reg 67}

62.—(1) Subject to regulation 63 (special cases) the amount prescribed for the purposes of the calculation of the amount of a claimant's employment and support allowance under section 2(1)(a) of the Act is—

- (a) £67.50, where the claimant satisfies the conditions set out in section 2(2) or (3) of the Act,
- (b) £67.50, where the claimant is aged not less than 25,
- (c) £53.45, where the claimant is aged less than 25.

(2) Subject to regulation 63, the amount of—

- (a) the work-related activity component is £26.75, and
- (b) the support component is £32.35.

Special cases {reg 69 and Sch 5}

63.—(1) The amount in respect of a claimant who is—

- (a) a person serving a sentence of imprisonment detained in hospital, or
- (b) a single claimant who has been a patient for a continuous period of more than 52 weeks,

is the amount applicable under regulation 62(1) and the amount of nil under regulation 62(2),

(2) The amount in respect of a claimant who is a person in hardship, is the amount to which the claimant is entitled under regulation 62(1) reduced by 20%.

(3) In this regulation—

“patient” means a person (other than a prisoner) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005;

“person in hardship” means a person who satisfies regulation 94 but only for a period not exceeding 6 weeks;

“person serving a sentence of imprisonment detained in hospital” means a person (“P”) who satisfies either of the conditions in paragraphs (4) or (5).

“prisoner” means a person who—

- (a) is detained in custody pending trial or sentence on conviction or under a sentence imposed by a court; or
- (b) is on temporary release in accordance with the provisions of the Prison Act 1952 or the Prisons (Scotland) Act 1989,

other than a person who is detained in hospital under the provisions of the Mental Health Act 1983 or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995.

(4) The first condition is that—

- (a) P is being detained under section 45A or 47 of the Mental Health Act 1983 (power of higher courts to direct hospital admission; removal to hospital of persons serving sentences of imprisonment etc); and
- (b) in any case where there is in relation to P a release date within the meaning of section 50(3) of that Act, P is being detained on or before the day which the Secretary of State certifies to be that release date.

(5) The second condition is that P is being detained under—

- (a) section 59A of the Criminal Procedure (Scotland) Act 1995 (hospital direction); or
- (b) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment of mental disorder).

Permanent health insurance {reg 72}

64.—(1) For the purposes of sections 2(1)(c) and 3 of the Act (deductions from an employment and support allowance) pension payment is to include a permanent health insurance payment.

(2) In this regulation “permanent health insurance payment” means any periodical payment arranged by an employer under an insurance policy providing benefits in connection with physical or mental illness or disability, in relation to a former employee on the termination of that person’s employment.

Financial Assistance Scheme {reg 72A}

65.—(1) For the purposes of sections 2(1)(c) and 3 of the Act (deductions from an employment and support allowance) pension payment is to include a Financial Assistance Scheme payment.

(2) In this regulation “Financial Assistance Scheme payment” means a payment made under the Financial Assistance Scheme Regulations 2005.

Councillor's allowance {reg 73}

66. For the purposes of section 3(1)(c) of the Act—

- (a) a councillor's allowance is a payment of a prescribed description; and
- (b) the prescribed bodies carrying out public or local functions are those councils referred to in the definition of "councillor".

Deductions for pension payment and PPF payment {reg 74}

67.—(1) Where—

- (a) a claimant is entitled to an employment and support allowance in respect of any period of a week or part of a week;
- (b) there is—
 - (i) a pension payment;
 - (ii) a PPF periodic payment; or
 - (iii) any combination of the payments specified in paragraphs (i) and (ii), payable to that person in respect of that period (or a period which forms part of that period or includes that period or part of it); and
- (c) the amount of the payment, or payments when taken together, exceeds—
 - (i) if the period in question is a week, £85.00; or
 - (ii) if that period is not a week, such proportion of the amount mentioned in paragraph (i) as falls to be calculated in accordance with regulation 79(1) or (6) (calculation of weekly amount of income),

the amount of that allowance is to be reduced by an amount equal to 50% of the excess.

(2) For the purposes of this Chapter "payment" means a payment or payments, as the case may be, referred to in paragraph (1)(b).

Payments treated as not being payments to which section 3 applies {reg 75}

68. The following payments are to be treated as not being payments to which section 3 applies—

- (a) any pension payment made to a claimant as a beneficiary on the death of a member of any pension scheme;
- (b) any PPF periodic payment made to a claimant as a beneficiary on the death of a person entitled to such a payment;
- (c) where a pension scheme is in deficit or has insufficient resources to meet the full pension payment, the extent of the shortfall;
- (d) any pension payment made under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003;
- (e) any guaranteed income payment (which means a payment made under article 14(1)(b) or 21(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005);
- (f) any permanent health insurance payment in respect of which the employee had contributed to the premium to the extent of more than 50%.

Deductions for councillor's allowance {reg 76}

69.—(1) Where the net amount of councillor's allowance to which a claimant is entitled in respect of any week exceeds 16 x National Minimum Wage, subject to paragraph (3), an amount equal to the excess is to be deducted from the amount of an employment and support allowance to which that person is entitled in respect of that week, and only the balance remaining (if any) is to be payable.

(2) In paragraph (1) “net amount”, in relation to any councillor’s allowance to which a claimant is entitled, means the aggregate amount of the councillor’s allowance or allowances, or remuneration to which that claimant is entitled for the week in question, reduced by the amount of any payment in respect of expenses wholly, exclusively and necessarily incurred by that claimant, in that week, in the performance of the duties of a councillor.

(3) Where the amount determined by the calculation in paragraph (1) would, but for this paragraph, include an amount of—

- (a) less than 50p, that amount shall be rounded up to the nearest 50p; or
- (b) less than £1 but more than 50p, that amount shall be rounded up to the nearest £1.

Date from which payments are to be taken into account {reg 77}

70. Where regulations 67(1) and 69(1) apply, deductions must have effect, calculated where appropriate in accordance with regulation 79(1) or (6), from the first day of the benefit week in which the payment or councillor’s allowance is paid to a claimant who is entitled to an employment and support allowance in that week.

Date from which a change in the rate of the payment takes effect {reg 78}

71. Where a payment or councillor’s allowance is already being made to a claimant and the rate of that payment or that allowance changes, the deduction at the new rate must take effect, calculated where appropriate in accordance with regulation 79(1) or (6), from the first day of the benefit week in which the new rate of the payment or councillor’s allowance is paid.

Calculation of payment made other than weekly {reg 79}

72.—(1) Where the period in respect of which a payment or councillor’s allowance is paid is otherwise than weekly, an amount calculated or estimated in accordance with regulation 79(1) or (6) is to be regarded as the weekly amount of that payment or allowance.

(2) In determining the weekly payment, where two or more payments are payable to a claimant, each payment is to be calculated separately in accordance with regulation 79(1) or (6) before aggregating the sum of those payments for the purposes of the reduction of an employment and support allowance in accordance with regulation 67.

Effect of statutory maternity pay on an employment and support allowance {reg 80}

73.—(1) This regulation applies where—

- (a) a woman is entitled to statutory maternity pay and, on the day immediately preceding the first day in the maternity pay period—
 - (i) is in a period of limited capability for work; and
 - (ii) satisfies the conditions of entitlement to an employment and support allowance in accordance with section 1(2)(a) of the Act; and
- (b) on any day during the maternity pay period—
 - (i) she is in a period of limited capability for work; and
 - (ii) that day is not a day where she is treated as not having limited capability for work.

(2) Where this regulation applies, notwithstanding section 20(2) of the Act, a woman who is entitled to statutory maternity pay is to be entitled to an employment and support allowance in respect of any day that falls within the maternity pay period.

(3) Where by virtue of paragraph (2) a woman is entitled to an employment and support allowance for any week (including part of a week), the total amount of such benefit payable to her for that week is to be reduced by an amount equivalent to any statutory maternity pay to which she is entitled in accordance with Part 12 of the Contributions and Benefits Act for the same week (or equivalent part of a week where entitlement to an employment and support allowance is for part of

a week) and only the balance, if any, of the employment and support allowance is to be payable to her.

Effect of statutory adoption pay on an employment and support allowance {reg 81}

74.—(1) This regulation applies where—

- (a) a claimant is entitled to statutory adoption pay and, on the day immediately preceding the first day in the adoption pay period—
 - (i) is in a period of limited capability for work; and
 - (ii) satisfies the conditions of entitlement to an employment and support allowance in accordance with section 1(2)(a) of the Act; and
- (b) on any day during the adoption pay period—
 - (i) that claimant is in a period of limited capability for work; and
 - (ii) that day is not a day where that claimant is treated as not having limited capability for work.

(2) Where this regulation applies, notwithstanding section 20(4) of the Act, a claimant who is entitled to statutory adoption pay is to be entitled to an employment and support allowance in respect of any day that falls within the adoption pay period.

(3) Where by virtue of paragraph (2) a claimant is entitled to an employment and support allowance for any week (including part of a week), the total amount of such benefit payable to that claimant for that week is to be reduced by an amount equivalent to any statutory adoption pay to which that claimant is entitled in accordance with Part 12ZB of the Contributions and Benefits Act for the same week (or equivalent part of a week where entitlement to an employment and support allowance is for part of a week) and only the balance, if any, of the employment and support allowance is to be payable to that claimant.

Effect of additional statutory paternity pay on an employment and support allowance {reg 82}

75.—(1) This regulation applies where—

- (a) a claimant is entitled to additional statutory paternity pay and, on the day immediately preceding the first day in the additional paternity pay period—
 - (i) is in a period of limited capability for work; and
 - (ii) satisfies the conditions of entitlement to an employment and support allowance in accordance with section 1(2)(a) of the Act; and
- (b) on any day during the additional statutory paternity pay period—
 - (i) that claimant is in a period of limited capability for work; and
 - (ii) that day is not a day where that claimant is treated as not having limited capability for work.

(2) Where this regulation applies, notwithstanding section 20(6) of the Act, a claimant who is entitled to additional statutory paternity pay is to be entitled to an employment and support allowance in respect of any day that falls within the additional paternity pay period.

(3) Where by virtue of paragraph (2) a person is entitled to an employment and support allowance for any week (including part of a week), the total amount of such benefit payable to that claimant for that week is to be reduced by an amount equivalent to any additional statutory paternity pay to which that claimant is entitled in accordance with Part 12ZA of the Contributions and Benefits Act for the same week (or equivalent part of a week where entitlement to an employment and support allowance is for part of a week) and only the balance, if any, of the employment and support allowance is to be payable to that claimant.

PART 9

Income and earnings

Calculation of earnings derived from employed earner's employment and income which consists of earnings {reg 91}

76.—(1) Earnings derived from employment as an employed earner are to be taken into account over a period determined in accordance with the following provisions of this regulation and at a weekly amount determined in accordance with regulation 79 (calculation of weekly amount of income).

(2) Subject to the following provisions of this regulation, the period over which a payment is to be taken into account is to be—

- (a) where the payment is monthly, a period equal to the number of weeks from the date on which the payment is treated as paid to the date immediately before the date on which the next monthly payment would have been so treated as paid whether or not the next monthly payment is actually paid;
- (b) where the payment is in respect of a period which is not monthly, a period equal to the length of the period for which payment is made;
- (c) in any other case, a period equal to such number of weeks as is equal to the number obtained (and any fraction is to be treated as a corresponding fraction of a week) by dividing the net earnings by the amount of an employment and support allowance which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from that payment under Schedule 4 (earnings to be disregarded), as is appropriate in the claimant's case,

and that period is to begin on the date on which the payment is treated as paid under regulation 78 (date on which income is treated as paid).

(3) Where, but for this paragraph—

- (a) earnings not of the same kind are derived from the same source; and
- (b) the periods in respect of which those earnings would fall to be taken into account overlap, wholly or partly,

those earnings are to be taken into account over a period equal to the aggregate length of those periods and that period is to begin with the earliest date on which any part of those earnings would otherwise be treated as paid under regulation 78.

(4) In a case to which paragraph (5) applies, earnings under regulation 80 (earnings of employed earners) are to be taken into account in the following order of priority—

- (a) earnings normally derived from the employment;
- (b) any payment to which paragraph (1)(b) or (c) of that regulation applies;
- (c) any payment to which paragraph (1)(j) of that regulation applies;
- (d) any payment to which paragraph (1)(d) of that regulation applies.

(5) Where earnings to which regulation 80(1)(b) to (d) applies are paid in respect of part of a day, those earnings are to be taken into account over a period equal to a day.

(6) Any earnings to which regulation 80(1)(j) applies which are paid in respect of, or on the termination of, part-time employment (which means, if the claimant were entitled to income support, employment in which the claimant is not to be treated as engaged in remunerative work under regulation 5 or 6(1) and (4) of the Income Support Regulations (persons treated, or not treated, as engaged in remunerative work)), are to be taken into account over a period equal to one week.

(7) For the purposes of this regulation the claimant's earnings are to be calculated in accordance with Chapters 3 and 6 respectively of this Part.

(8) For the purposes of paragraph 10 of Schedule 2 to the Act (effect of work), the income which consists of earnings of a claimant is to be calculated on a weekly basis by determining the weekly amount of those earnings in accordance with paragraph (2) and regulations 76 to 83.

Calculation of earnings of self-employed earners {reg 92}

77.—(1) Except where paragraph (2) applies, where a claimant's income consists of earnings from employment as a self-employed earner the weekly amount of the claimant's earnings is to be determined by reference to the claimant's average weekly earnings from that employment—

- (a) over a period of one year; or
- (b) where the claimant has recently become engaged in that employment or there has been a change which is likely to affect the normal pattern of business, over such other period as may, in any particular case, enable the weekly amount of the claimant's earnings to be determined more accurately.

(2) (a) Where the claimant's earnings consist of any items to which this paragraph applies those earnings shall be taken into account over a period equal to such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the earnings by the amount of an employment and support allowance which would be payable had the payment not been made as is appropriate in the claimant's case;

- (b) This paragraph applies to—
 - (i) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark; or
 - (ii) any payment in respect of any book registered under the Public Lending Right Scheme 1982 or work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982,
where the claimant is the first owner of the copyright, design, patent or trademark, or an original contributor to the book or work concerned.

(3) For the purposes of this regulation the claimant's earnings are to be calculated in accordance with [Part XXX].

Date on which income is treated as paid {reg 93}

78.—(1) Except where paragraph (2) applies, a payment of income to which regulation 76 (calculation of earnings derived from employed earner's employment and income which consists of earnings) applies is to be treated as paid—

- (a) in the case of a payment which is due to be paid before the first benefit week pursuant to the claim, on the date on which it is due to be paid;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid or the first succeeding benefit week in which it is practicable to take it into account.

(2) Employment and support allowance, income support, jobseeker's allowance, maternity allowance, short-term or long-term incapacity benefit, or severe disablement allowance is to be treated as paid on the day of the benefit week in respect of which it is payable.

Calculation of weekly amount of income {reg 94}

79.—(1) For the purposes of regulation 76 (calculation of earnings derived from employed earner's employment and income which consists of earnings) and [Part XXX] (deductions from employment and support allowance), subject to paragraphs (2) to (8), where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount is to be the amount of that payment;
- (b) exceeds a week, the weekly amount is to be determined—
 - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;

- (ii) in a case where that period is 3 months, by multiplying the amount of the payment by 4 and dividing the product by 52;
- (iii) in a case where that period is a year and the payment is an award of working tax credit, by dividing the payment by the number of days in the year and multiplying the result by 7;
- (iv) in a case where that period is a year and the payment is income other than an award of working tax credit, by dividing the amount of the payment by 52;
- (v) in any other case by multiplying the amount of the payment by 7 and dividing the product by the number equal to the number of days in the period in respect of which it is made.

(2) Where a payment for a period not exceeding a week is treated under regulation 78(1)(a) (date on which income is treated as paid) as paid before the first benefit week and a part is to be taken into account for some days only in that week (the relevant days), the amount to be taken into account for the relevant days is to be calculated by multiplying the amount of the payment by the number equal to the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.

(3) Where a payment is in respect of a period equal to or in excess of a week and a part thereof is to be taken into account for some days only in a benefit week (the relevant days), the amount to be taken into account for the relevant days is, except where paragraph (4) applies, to be calculated by multiplying the amount of the payment by the number equal to the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.

(4) In the case of a payment of—

- (a) maternity allowance, short-term or long-term incapacity benefit or severe disablement allowance, the amount to be taken into account for the relevant days is to be the amount of benefit payable in respect of those days;
- (b) an employment and support allowance, income support or a jobseeker's allowance, the amount to be taken into account for the relevant days is to be calculated by multiplying the weekly amount of the benefit by the number of relevant days and dividing the product by 7.

(5) Except in the case of a payment which it has not been practicable to treat under regulation 78(1)(b) (date on which income is treated as paid) as paid on the first day of the benefit week in which it is due to be paid, where a payment of income from a particular source is or has been paid regularly and that payment falls to be taken into account in the same benefit week as a payment of the same kind and from the same source, the amount of that income to be taken into account in any one benefit week is not to exceed the weekly amount determined under paragraph (1)(a) or (b) of the payment which under regulation 78(1)(b) is treated as paid first.

(6) Where the amount of the claimant's income fluctuates and has changed more than once, or a claimant's regular pattern of work is such that the claimant does not work every week, the foregoing paragraphs may be modified so that the weekly amount of the claimant's income is determined by reference to the claimant's average weekly income—

- (a) if there is a recognisable cycle of work, over the period of one complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences);
- (b) in any other case, over a period of 5 weeks or such other period as may, in the particular case, enable the claimant's average weekly income to be determined more accurately.

Earnings of employed earners {reg 95}

80.—(1) Subject to paragraphs (2) and (3), “earnings” means, in the case of employment as an employed earner, any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to a claimant on account of the termination of the claimant's employment by reason of redundancy;

- (c) any payment in lieu of notice;
 - (d) any holiday pay except any payable more than 4 weeks after the termination or interruption of employment;
 - (e) any payment by way of a retainer;
 - (f) any payment made by the claimant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant's employer in respect of—
 - (i) travelling expenses incurred by the claimant between the claimant's home and place of employment;
 - (ii) expenses incurred by the claimant under arrangements made for the care of a member of the claimant's family owing to the claimant's absence from home;
 - (g) any award of compensation made under section 112(4) or 117(3)(a) of the Employment Rights Act 1996 (the remedies: orders and compensation, enforcement of order and compensation);
 - (h) any payment or remuneration made under sections 28, 34, 64, 68 and 70 of the Employment Rights Act 1996 (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to employment tribunals);
 - (i) any such sum as is referred to in section 112(3) of the Contributions and Benefits Act (certain sums to be earnings for social security purposes);
 - (j) where a payment of compensation is made in respect of employment which is part-time employment, the amount of the compensation;
 - (k) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001.
- (2) "Earnings" are not to include—
- (a) subject to paragraph (3), any payment in kind;
 - (b) any remuneration paid by or on behalf of an employer to the claimant in respect of a period throughout which the claimant is on maternity leave, paternity leave or adoption leave (which means a period of absence from work on ordinary or additional adoption leave under section 75A or 75B of the Employment Rights Act 1996) or is absent from work because the claimant is ill;
 - (c) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
 - (d) any occupational pension (which means any pension or other periodical payment under an occupational pension scheme but does not include any discretionary payment out of a fund established for relieving hardship in particular cases);
 - (e) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme;
 - (f) any payment in respect of expenses arising out of the claimant's participation in a service user group.
- (3) Paragraph (2)(a) is not to apply in respect of any non-cash voucher referred to in paragraph (1)(k).
- (4) In this regulation—
- "compensation" means any payment made in respect of, or on the termination of, employment in a case where a claimant has not received or received only part of a payment in lieu of notice due or which would have been due to the claimant had that claimant not waived the right to receive it, other than—
- (a) any payment specified in paragraph (1)(a) to (i);
 - (b) any payment specified in paragraph (2)(a) to (e);
 - (c) any redundancy payment within the meaning of section 135(1) of the Employment Rights Act 1996;

(d) any refund of contributions to which that person was entitled under an occupational pension scheme; and

(e) any compensation payable by virtue of section 173 of the Education Reform Act 1988;

“part-time employment” means, if the claimant were entitled to income support, employment in which the claimant is not to be treated as engaged in remunerative work under regulation 5 or 6(1) and (4) of the Income Support Regulations (persons treated, or not treated, as engaged in remunerative work);

“service user group” means a group of individuals that is consulted by or on behalf of—

(a) a Health Board, Special Health Board or the Agency in consequence of a function under section 2B of the National Health Service (Scotland) Act 1978,

(b) a landlord authority in consequence of a function under section 105 of the Housing Act 1985,

(c) a public authority (which includes any person certain of whose functions are functions of a public nature) in consequence of a function under section 49A of the Disability Discrimination Act 1995,

(d) a best value authority in consequence of a function under section 3 of the Local Government Act 1999,

(e) a local authority landlord or registered social landlord in consequence of a function under section 53 of the Housing (Scotland) Act 2001,

(f) a relevant English body or a relevant Welsh body in consequence of a function under section 242 of the Health Service Act,

(g) a Local Health Board in consequence of a function under section 183 of the Health Service (Wales) Act,

(h) the Commission or the Office of the Health Professions Adjudicator in consequence of a function under sections 4, 5, or 108 of the Health and Social Care Act 2008,

(i) the regulator or a private registered provider of social housing in consequence of a function under sections 98, 193 or 196 of the Housing and Regeneration Act 2008, or

(j) a public or local authority in Great Britain in consequence of a function conferred under any other enactment,

for the purposes of monitoring and advising on a policy of that body or authority which affects or may affect persons in the group, or of monitoring or advising on services provided by that body or authority which are used (or may potentially be used) by those persons.

Calculation of net earnings of employed earners {reg 96}

81.—(1) For the purposes of regulation 76 (calculation of earnings derived from employed earner’s employment and income which consists of earnings) the earnings of a claimant derived from employment as an employed earner to be taken into account, subject to paragraph (2), are the claimant’s net earnings.

(2) There is to be disregarded from a claimant’s net earnings, any sum, where applicable, specified in Schedule 4 (sums to be disregarded in the calculation of earnings).

(3) For the purposes of paragraph (1) net earnings are to be calculated by taking into account the gross earnings of the claimant from that employment less—

(a) any amount deducted from those earnings by way of—

(i) income tax;

(ii) primary Class 1 contributions under section 6(1)(a) of the Contributions and Benefits Act;

(b) one-half of any sum paid by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

Earnings of self-employed earners {reg 97}

82.—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross receipts of the employment and include any allowance paid under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990 to the claimant for the purpose of assisting the claimant in carrying on the claimant’s business.

(2) “Earnings” do not include—

- (a) where a claimant is involved in providing board and lodging accommodation for which a charge is payable, any payment by way of such a charge;
- (b) any sports award (which means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc Act 1993 out of sums allocated to it for distribution under that section).

(3) In this regulation, “board and lodging” means—

- (a) accommodation provided to a person or, if the person is a member of a family, to that person or any other member of that person’s family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of that person’s family) and are consumed in that accommodation or associated premises; or
- (b) accommodation provided to a person in a hotel, guest house, lodging house or some similar establishment,

except accommodation provided by a close relative of the person or any other member of the person’s family, or other than on a commercial basis.

Calculation of net profit of self-employed earners {reg 98}

83.—(1) For the purposes of regulation 77 (calculation of earnings of self-employed earners), the earnings of a claimant to be taken into account are to be—

- (a) in the case of a self-employed earner who is engaged in employment on that self-employed earner’s own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners’ Benefits) Regulations 1975, that self-employed earner’s share of the net profit derived from that employment less—
 - (i) an amount in respect of income tax and of National Insurance contributions payable under the Contributions and Benefits Act calculated in accordance with regulation 84 (deduction of tax and contributions for self-employed earners); and
 - (ii) one half of any premium paid in the period that is relevant under regulation 77 (calculation of earnings of self-employed earners) in respect of a personal pension scheme.

(2) There is to be disregarded from a claimant’s net profit any sum, where applicable, specified in Schedule 4.

(3) For the purposes of paragraph (1)(a) the net profit of the employment, except where paragraph (9) applies, is to be calculated by taking into account the earnings of the employment over the period determined under regulation 77 less—

- (a) subject to paragraphs (5) to (7), any expenses wholly and exclusively defrayed in that period for the purposes of that employment;
- (b) an amount in respect of—
 - (i) income tax; and
 - (ii) National Insurance contributions payable under the Contributions and Benefits Act,

calculated in accordance with regulation 84 (deduction of tax and contributions for self-employed earners); and

- (c) one half of any premium paid in the period that is relevant under regulation 77 in respect of a personal pension scheme.

(4) For the purposes of paragraph (1)(b), the net profit of the employment is to be calculated by taking into account the earnings of the employment over the period determined under regulation 77 less, subject to paragraphs (5) to (7), any expenses wholly and exclusively defrayed in that period for the purpose of that employment.

(5) Subject to paragraph (6), a deduction is not to be made under paragraph (3)(a) or (4) in respect of—

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
- (d) any loss incurred before the beginning of the period determined under regulation 77 (calculation of earnings of self-employed earners);
- (e) the repayment of capital on any loan taken out for the purposes of the employment;
- (f) any expenses incurred in providing business entertainment.

(6) A deduction is to be made under paragraph (3)(a) or (4) in respect of the repayment of capital on any loan used for—

- (a) the replacement in the course of business of equipment or machinery; and
- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.

(7) The Secretary of State will refuse to make a deduction in respect of any expenses under paragraph (3)(a) or (4) where the Secretary of State is not satisfied that the expense has been defrayed or, having regard to the nature of the expense and its amount, that it has been reasonably incurred.

(8) For the avoidance of doubt—

- (a) a deduction is not to be made under paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business;
- (b) a deduction is to be made thereunder in respect of—
 - (i) the excess of any VAT paid over VAT received in the period determined under regulation 77;
 - (ii) any income expended in the repair of an existing asset except to the extent that any sum is payable under an insurance policy for its repair;
 - (iii) any payment of interest on a loan taken out for the purposes of the employment.

(9) Where a claimant is engaged in employment as a child minder the net profit of the employment is to be one-third of the earnings of that employment, less—

- (a) an amount in respect of—
 - (i) income tax; and
 - (ii) National Insurance contributions payable under the Contributions and Benefits Act, calculated in accordance with regulation 84 (deduction of tax and contributions for self-employed earners); and
- (b) one half of any premium paid in respect of a personal pension scheme.

(10) Notwithstanding regulation 77 (calculation of earnings of self-employed earners) and the foregoing paragraphs, the Secretary of State may assess any item of a claimant's income or expenditure over a period other than that determined under regulation 77 as may, in the particular case, enable the weekly amount of that item of income or expenditure to be determined more accurately.

(11) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and that claimant is also engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of the claimant's employments is not to be offset against the claimant's earnings in any other of the claimant's employments.

Deduction of tax and contributions for self-employed earners {reg 99}

84.—(1) Subject to paragraph (2), the amount to be deducted in respect of income tax under regulation 83(1)(b)(i), (3)(b)(i) or (9)(a)(i) (calculation of net profit of self-employed earners) is to be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at the basic rate of tax less only the personal allowance to which the claimant is entitled under sections 35 and 38 to 40 of the Income Tax Act 2007 (personal reliefs) as is appropriate to the claimant's circumstances.

(2) If the period determined under regulation 77 is less than a year the earnings to which the basic rate of tax is to be applied and the amount of the personal reliefs deductible under paragraph (1) is to be calculated on a pro rata basis.

(3) The amount to be deducted in respect of National Insurance contributions under regulation 83(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) is to be the total of—

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, 11(3) of the Contributions and Benefits Act at the rate applicable at the date of claim except where the claimant's chargeable income is less than the amount specified in section 11(4) of that Act (small earnings exception) for the tax year in which the date of claim falls; but if the assessment period is less than a year, the amount specified for that tax year is to be reduced pro rata; and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of that Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date of claim on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of claim falls; but if the assessment period is less than a year, those limits are to be reduced pro rata.

(4) In this regulation "chargeable income" means—

- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph (3)(a) or, as the case may be, (4) of regulation 83;
- (b) in the case of employment as a child minder, one-third of the earnings of that employment.

PART 10

Supplementary provisions

Waiting days {reg 144}

85.—(1) A claimant is not entitled to an employment and support allowance in respect of 3 days at the beginning of a period of limited capability for work.

(2) Paragraph (1) does not apply where—

- (a) the claimant's entitlement to an employment and support allowance commences within 12 weeks of the claimant's entitlement to income support, incapacity benefit, severe disablement allowance, state pension credit, a jobseeker's allowance, a carer's allowance, statutory sick pay or a maternity allowance coming to an end;
- (b) the claimant is terminally ill and has—
 - (i) made a claim expressly on the ground of being terminally ill; or

- (ii) made an application for supersession or revision in accordance with the Social Security and Child Support (Decisions and Appeals) Regulations 1999 which contains an express statement of being terminally ill;
- (c) the claimant has been discharged from being a member of Her Majesty's forces and 3 or more days immediately before that discharge were days of sickness absence from duty, which are recorded by the Secretary of State for Defence; or
- (d) the claimant is entitled to an employment and support allowance by virtue of section 1B of the Act (further entitlement after time-limiting).

Linking rules {reg 145}

86. Any period of limited capability for work which is separated from another such period by not more than 12 weeks is to be treated as a continuation of the earlier period.

Claimants appealing a decision {reg 147A}

87.—(1) This regulation applies where a claimant has made and is pursuing an appeal against a decision of the Secretary of State that embodies a determination that the claimant does not have limited capability for work.

(2) Subject to paragraph (3), where this regulation applies, a determination of limited capability for work by the Secretary of State under regulation 15 shall not be made until the appeal is determined by the First-tier Tribunal.

(3) Paragraph (2) does not apply where either—

- (a) the claimant suffers from some specific disease or bodily or mental disablement from which the claimant was not suffering when entitlement began; or
- (b) a disease or bodily or mental disablement from which the claimant was suffering at that date has significantly worsened.

(4) Where this regulation applies and the Secretary of State makes a determination—

- (a) in a case to which paragraph (3) applies (including where the determination is not the first such determination) that the claimant does not have or, by virtue of regulation 18 or 19, is to be treated as not having limited capability for work; or
- (b) subsequent to a determination that the claimant is to be treated as having limited capability for work by virtue of a provision of these Regulations other than regulation 26, that the claimant is no longer to be so treated,

this regulation and regulation 26 apply as if that determination had not been made.

(5) Where this regulation applies and—

- (a) the claimant is entitled to an employment and support allowance by virtue of being treated as having limited capability for work in accordance with regulation 26;
- (b) neither of the circumstances in paragraph (3) applies, or, subsequent to the application of either of those circumstances, the claimant has been determined not to have limited capability for work; and
- (c) the claimant's appeal is dismissed, withdrawn, struck out or has been discontinued in accordance with the provisions of regulation 33(10) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (notice of appeal),

the claimant is to be treated as not having limited capability for work with effect from the day specified in paragraph (6).

(6) The day specified for the purposes of paragraph (5) is the first day of the benefit week following the date on which the Secretary of State either—

- (a) receives the First-tier Tribunal's notification that the appeal is dismissed, withdrawn or struck out, or

- (b) discontinues action on an appeal in the circumstances to which regulation 33(10) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (notice of appeal) applies.

(7) Where a claimant's appeal is successful, subject to paragraph (8), any finding of fact or other determination embodied in or necessary to the decision of the First-tier Tribunal or on which the First-tier Tribunal's decision is based shall be conclusive for the purposes of the decision of the Secretary of State, in relation to an award made in a case to which this regulation applies, as to whether the claimant has limited capability for work or limited capability for work-related activity.

(8) Paragraph (7) does not apply where, due to a change of circumstances after entitlement to which this regulation applies began, the Secretary of State is satisfied that it is no longer appropriate to rely on such finding or determination.

Absence from Great Britain {reg 151}

88.—(1) A claimant who is entitled to an employment and support allowance is to continue to be so entitled during a period of temporary absence from Great Britain only in accordance with this Chapter.

(2) A claimant who continues to be entitled to an employment and support allowance during a period of temporary absence will not be disqualified for receiving that allowance during that period under section 18(4) of the Act.

Short absence {reg 152}

89. A claimant is to continue to be entitled to an employment and support allowance during the first 4 weeks of a temporary absence from Great Britain if—

- (a) the period of absence is unlikely to exceed 52 weeks; and
- (b) while absent from Great Britain, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance.

Absence to receive medical treatment {reg 153}

90.—(1) A claimant is to continue to be entitled to an employment and support allowance during the first 26 weeks of a temporary absence from Great Britain if—

- (a) the period of absence is unlikely to exceed 52 weeks;
- (b) while absent from Great Britain, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance;
- (c) the claimant is absent from Great Britain solely—
 - (i) in connection with arrangements made for the treatment of the claimant for a disease or bodily or mental disablement directly related to the claimant's limited capability for work which commenced before leaving Great Britain; or
 - (ii) because the claimant is accompanying a dependent child (which means any child or qualifying young person who is treated as the responsibility of the claimant or the claimant's partner, where that child or young person is a member of the claimant's household) in connection with arrangements made for the treatment of that child for a disease or bodily or mental disablement; and
- (d) those arrangements relate to treatment—
 - (i) outside Great Britain;
 - (ii) during the period whilst the claimant is temporarily absent from Great Britain; and
 - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.

(2) In paragraph (1)(d)(iii), “appropriately qualified” means qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

Absence in order to receive NHS treatment {reg 154}

91. A claimant is to continue to be entitled to an employment and support allowance during any period of temporary absence from Great Britain if—

- (a) while absent from Great Britain, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance;
- (b) that period of temporary absence is for the purpose of the claimant receiving treatment at a hospital or other institution outside Great Britain where the treatment is being provided—
 - (i) under section 6(2) of the Health Service Act (Performance of functions outside England) or section 6(2) of the Health Service (Wales) Act (Performance of functions outside Wales);
 - (ii) pursuant to arrangements made under section 12(1) of the Health Service Act (Secretary of State’s arrangements with other bodies), section 10(1) of the Health Service (Wales) Act (Welsh Ministers’ arrangements with other bodies), paragraph 18 of Schedule 4 to the Health Service Act (Joint exercise of functions) or paragraph 18 of Schedule 3 to the Health Service (Wales) Act (Joint exercise of functions); or
 - (iii) under any equivalent provision in Scotland or pursuant to arrangements made under such provision.

Absence of member of family of member of Her Majesty’s forces {reg 155}

92.—(1) A claimant is to continue to be entitled to an employment and support allowance during any period of temporary absence from Great Britain if the claimant is a member of the family of a member of Her Majesty’s forces and temporarily absent from Great Britain by reason only of the fact that the claimant is living with that member.

(2) In this regulation “member of the family of a member of Her Majesty’s forces” means the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of such a member.

PART 11

Disqualification

Disqualification for misconduct etc {reg 157}

93.—(1) Subject to paragraph (3), paragraph (2) applies where a claimant—

- (a) has limited capability for work through the claimant’s own misconduct, except in a case where the limited capability is due to pregnancy or a sexually transmitted disease; or
- (b) fails without good cause to attend for or submit to medical or other treatment (excluding vaccination, inoculation or major surgery) recommended by a doctor with whom, or a hospital or similar institution with which, the claimant is undergoing medical treatment, which would be likely to remove the limitation on the claimant’s capability for work;
- (c) fails without good cause to refrain from behaviour calculated to retard the claimant’s recovery; or
- (d) is, without good cause, absent from the claimant’s place of residence without leaving word with the Secretary of State where the claimant may be found.

(2) A claimant referred to in paragraph (1) is to be disqualified for receiving an employment and support allowance for such period not exceeding 6 weeks as the Secretary of State may determine.

- (3) Paragraph (1) does not apply where the claimant—
- (a) is disqualified for receiving an employment and support allowance by virtue of regulations made under section 6B or 7 of the Social Security Fraud Act 2001; or
 - (b) is a person in hardship.

Meaning of “person in hardship” {reg 158}

- 94.**—(1) A claimant is a “person in hardship” if the claimant—
- (a) has informed the Secretary of State of the circumstances on which the claimant relies to establish that fact; and
 - (b) falls within paragraph (2), (3) or (5).
- (2) A claimant falls within this paragraph if—
- (a) she is pregnant;
 - (b) a member of the claimant’s family is pregnant;
 - (c) the claimant is a single claimant aged less than 18; or
 - (d) the claimant is a member of a couple and both members are aged less than 18.
- (3) Subject to paragraph (4), the claimant falls within this paragraph if the claimant or the claimant’s partner—
- (a) has been awarded an attendance allowance or the care component;
 - (b) has claimed either attendance allowance or [disability living allowance / personal independence payment] and the claim has not been determined;
 - (c) devotes a considerable portion of each week to caring for another person who—
 - (i) has been awarded an attendance allowance or the care component; or
 - (ii) has claimed either attendance allowance or [disability living allowance / personal independence payment] and the claim has not been determined; or
 - (d) has attained the qualifying age for state pension credit (which means, in the case of a woman, pensionable age (which has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995) and in the case of a man, the age which is pensionable age (which has that same meaning) in the case of a woman born on the same day as the man.
- (4) A claimant to whom paragraph (3)(c) or (3)(d)(ii) applies is a person in hardship only for 26 weeks from the date of the claim unless the claimant is a person in hardship under another provision of this regulation.
- (5) The claimant falls within this paragraph where the Secretary of State is satisfied, having regard to all the circumstances and, in particular, the matters set out in paragraph (6), that unless an employment and support allowance is paid, the claimant, or a member of the claimant’s family, will suffer hardship.
- (6) The matters referred to in paragraph (5) are—
- (a) the resources which are likely to be available to the claimant and the claimant’s family and the length of time for which they might be available; and
 - (b) whether there is a substantial risk that essential items, including food, clothing and heating, will cease to be available to the claimant or a member of the claimant’s family, or will be available at considerably reduced levels and the length of time for which this might be so.
- (7) In this regulation—
- “care component” means the care component of [disability living allowance / personal independence payment] at the highest or middle rate prescribed under section 72(3) of the Contributions and Benefits Act;

“disability living allowance” means a disability living allowance under section 71 of the Contributions and Benefits Act.

Treating a claimant as not having limited capability for work {reg 159}

95.—(1) Subject to paragraph (2), the claimant is to be treated as not having limited capability for work if the claimant is disqualified for receiving an employment and support allowance during a period of imprisonment or detention in legal custody if that disqualification is for more than 6 weeks.

(2) Where the claimant is entitled to an amount under [Schedule XXX] (special cases: prisoners) during a period of imprisonment or detention in legal custody, the claimant is to be treated as not having limited capability for work from the day after the day on which entitlement ended.

Exceptions from disqualification for imprisonment {reg 160}

96.—(1) Notwithstanding section 18(4)(b) of the Act, a claimant is not disqualified for receiving an employment and support allowance for any period during which that claimant is undergoing imprisonment or detention in legal custody—

- (a) in connection with a charge brought or intended to be brought against the claimant in criminal proceedings;
- (b) pursuant to any sentence; or
- (c) pursuant to any order for detention,

made by a court in such proceedings, unless paragraph (2) applies.

(2) This paragraph applies where—

- (a) a penalty is imposed on the claimant at the conclusion of the proceedings referred to in paragraph (1); or
- (b) in the case of default of payment of a sum adjudged to be paid on conviction a penalty is imposed in respect of such default.

(3) Notwithstanding section 18(4)(b) of the Act, a claimant (“C”) is not to be disqualified for receiving an employment and support allowance, for any period during which C is undergoing detention in legal custody after the conclusion of criminal proceedings if it is a period during which C is detained in a hospital or similar institution in Great Britain as a person suffering from mental disorder unless C satisfies either of the following conditions.

(4) The first condition is that—

- (a) C is being detained under section 45A or 47 of the Mental Health Act 1983 (power of higher courts to direct hospital admission; removal to hospital of persons serving sentences of imprisonment etc); and
- (b) in any case where there is in relation to C a release date within the meaning of section 50(3) of that Act, C is being detained on or before the day which the Secretary of State certifies to be that release date.

(5) The second condition is that C is being detained under—

- (a) section 59A of the Criminal Procedure (Scotland) Act 1995 (hospital direction); or
- (b) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment of mental disorder).

(6) For the purposes of this regulation—

- (a) “court” means any court in the United Kingdom, the Channel Islands or the Isle of Man or in any place to which the Colonial Prisoners Removal Act 1884 applies or any naval court-martial, army court-martial or air force court-martial within the meaning of the Courts-Martial (Appeals) Act 1968 or the Courts-Martial Appeal Court;
- (b) “hospital or similar institution” means any place (not being a prison, a young offender institution, a secure training centre, secure accommodation in a children’s home or a

remand centre, and not being at or in any such place) in which persons suffering from mental disorder are or may be received for care or treatment;

- (c) “penalty” means a sentence of imprisonment or detention under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000, a detention and training order under section 100 of that Act, a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003 or an extended sentence under section 228 of that Act or, in Scotland, under section 205, 207 or 208 of the Criminal Procedure (Scotland) Act 1995;
- (d) in relation to a person who is liable to be detained in Great Britain as a result of any order made under the Colonial Prisoners Removal Act 1884, references to a prison must be construed as including references to a prison within the meaning of that Act;
- (e) criminal proceedings against any person must be deemed to be concluded upon that person being found insane in those proceedings so that the person cannot be tried or that person’s trial cannot proceed.

(7) Where a claimant outside Great Britain is undergoing imprisonment or detention in legal custody and, in similar circumstances in Great Britain, the claimant would, by virtue of this regulation, not have been disqualified for receiving an employment and support allowance, the claimant is not disqualified for receiving that allowance by reason only of the imprisonment or detention.

Suspension of payment of an employment and support allowance during imprisonment {reg 161}

97.—(1) Subject to the following provisions of this regulation, the payment of an employment and support allowance to any claimant—

- (a) which is excepted from the operation of section 18(4)(b) of the Act by virtue of the provisions of regulation 96(1), (3) or (7); or
- (b) which is payable otherwise than in respect of a period during which the claimant is undergoing imprisonment or detention in legal custody,

is suspended while that claimant is undergoing imprisonment or detention in legal custody.

(2) An employment and support allowance is not to be suspended while the claimant is liable to be detained in a hospital or similar institution, as defined in regulation 96(6), during a period for which in the claimant’s case, the allowance is or would be excepted from the operation of section 18(4)(b) by virtue of the provisions of regulation 96(3).

(3) Where, by virtue of this regulation, payment of an employment and support allowance is suspended for any period, the period of suspension is not to be taken into account in calculating any period under the provisions of regulation 38 of the Social Security (Claims and Payments) Regulations 1987 (extinguishment of right to sums payable by way of benefit which are not obtained within the prescribed time).

PART 12

Periods of less than a week

Entitlement for less than a week – amount of an employment and support allowance payable {reg 165}

98.—(1) This regulation applies where the claimant is entitled to an employment and support allowance for a part-week and is subject to the following provisions of this Part.

(2) The amount payable by way of an employment and support allowance in respect of a part-week is to be calculated by applying the formula—

$$((N \times X) - Y) / 7$$

where—

X is the amount calculated in accordance with section 2(1) of the Act;

Y is the amount of any widow's benefit, widowed parent's allowance, bereavement allowance, training allowance, carer's allowance and any increase in disablement pension payable in accordance with Part 1 of Schedule 7 to the Contributions and Benefits Act (Unemployability Supplement) payable in respect of any day in the part-week;

N is the number of days in the part-week.

(3) In this Part, "part-week" means an entitlement to an employment and support allowance in respect of any period of less than a week.

Relevant week {reg 166}

99.—(1) Where a part-week—

- (a) is the whole period for which an employment and support allowance is payable, or occurs at the beginning of an award, the relevant week is the period of 7 days ending on the last day of that part-week; or
- (b) occurs at the end of an award, the relevant week is the period of 7 days beginning on the first day of the part-week.

(2) Where a claimant has an award of an employment and support allowance and that claimant's benefit week changes, for the purpose of calculating the amounts of an employment and support allowance payable for the part-week beginning on the day after the last complete benefit week before the change and ending immediately before the change, the relevant week is the period of 7 days beginning on the day after the last complete benefit week.

Modification in the calculation of income {reg 167}

100. For the purposes of regulation 93 (entitlement for less than a week – amount of an employment and support allowance payable), a claimant's income is to be calculated in accordance with [Parts XXX] (income and capital and urgent cases) subject to the following changes—

- (a) any income which is due to be paid in the relevant week is to be treated as paid on the first day of that week;
- (b) any widow's benefit, training allowance, widowed parent's allowance, bereavement allowance, carer's allowance and any increase in disablement pension payable in accordance with Part 1 of Schedule 7 to the Contributions and Benefits Act (unemployability supplement) which is payable in the relevant week but not in respect of any day in the part-week is to be disregarded;
- (c) where the part-week occurs at the end of the claim—
 - (i) any income; or
 - (ii) any change in the amount of income of the same kind, which is first payable within the relevant week but not on any day in the part-week is to be disregarded;
- (d) where only part of the weekly balance of income is taken into account in the relevant week, the balance is to be disregarded.

Reduction in certain cases {reg 168}

101. The reduction to be made in accordance with regulations 93 and 94 is an amount equal to one seventh of the reduction which would be made under those regulations for a week, multiplied by the number of days in a part-week.

Payment of an employment and support allowance for days of certain regular treatment {reg 169}

102.—(1) Where a claimant is entitled to an employment and support allowance as a result of being treated as having limited capability for work in accordance with regulation 22 the amount payable is to be equal to one seventh of the amount of the employment and support allowance which would be payable in respect of a week in accordance with section 2(1) of the Act multiplied by N.

(2) In paragraph (1), N is the number of days in that week on which the claimant was receiving treatment referred to in regulation 22 or recovering from that treatment, but does not include any day during which the claimant does work.

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

	<i>Name</i>
	Minister of State,
Date	Department for Work and Pensions

SCHEDULE 1

Regulation 2(2)

Her Majesty's Forces {sch 1}

PART 1

Prescribed establishments and organisations

1. Any of the regular naval, military or air forces of the Crown.
2. Royal Fleet Reserve.
3. Royal Navy Reserve.
4. Royal Marines Reserve.
5. Army Reserve.
6. Territorial Army.
7. Royal Air Force Reserve.
8. Royal Auxiliary Air Force.
9. The Royal Irish Regiment, to the extent that its members are not members of any force falling within paragraph 1.

PART 2

Establishments and organisations of which Her Majesty's forces do not consist

10. Her Majesty's forces are not to be taken to consist of any of the establishments or organisations specified in Part 1 of this Schedule by virtue only of the employment in such establishment or organisation of the following persons—

- (a) any person who is serving as a member of any naval force of Her Majesty's forces and who (not having been an insured person under the National Insurance Act 1965 and not having been a contributor under the Social Security Act 1975 or not being a contributor under the Contributions and Benefits Act) locally entered that force at an overseas base;
- (b) any person who is serving as a member of any military force of Her Majesty's forces and who entered that force, or was recruited for that force outside the United Kingdom, and the depot of whose unit is situated outside the United Kingdom;
- (c) any person who is serving as a member of any air force of Her Majesty's forces and who entered that force, or was recruited for that force, outside the United Kingdom, and is liable under the terms of engagement to serve only in a specified part of the world outside the United Kingdom.

SCHEDULE 2

Regulation 15(2) and (3)

Assessment of Whether a Claimant has Limited Capability for Work

PART 1

Physical Disabilities {sch 2}

<i>(1) Activity</i>	<i>(2) Descriptors</i>	<i>(3) Points</i>
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.	1(a) Cannot either: (i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.	15
	(b) Cannot mount or descend two steps unaided by another person even with the support of a handrail.	9
	(c) Cannot either: (i) mobilise more than 100 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 100 metres within a reasonable timescale because of significant discomfort or exhaustion.	9
	(d) Cannot either: (i) mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 200 metres within a reasonable timescale because of significant discomfort or exhaustion.	6
	(e) None of the above apply.	0
2. Standing and sitting.	2(a) Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.	15
	(b) Cannot, for the majority of the time, remain at a work station, either: (i) standing unassisted by another person (even if free to move around); or (ii) sitting (even in an adjustable chair) for more than 30 minutes, before needing to move away in order to avoid significant discomfort or exhaustion.	9

	(c) Cannot, for the majority of the time, remain at a work station, either:	6
	(i) standing unassisted by another person (even if free to move around); or	
	(ii) sitting (even in an adjustable chair) for more than an hour before needing to move away in order to avoid significant discomfort or exhaustion.	0
	(d) None of the above apply.	
3. Reaching.	3(a) Cannot raise either arm as if to put something in the top pocket of a coat or jacket.	15
	(b) Cannot raise either arm to top of head as if to put on a hat.	9
	(c) Cannot raise either arm above head height as if to reach for something.	6
	(d) None of the above apply.	0
4. Picking up and moving or transferring by the use of the upper body and arms.	4(a) Cannot pick up and move a 0.5 litre carton full of liquid.	15
	(b) Cannot pick up and move a one litre carton full of liquid.	9
	(c) Cannot transfer a light but bulky object such as an empty cardboard box.	6
	(d) None of the above apply.	0
5. Manual dexterity.	5(a) Cannot either:	15
	(i) press a button, such as a telephone keypad; or	
	(ii) turn the pages of a book with either hand.	
	(b) Cannot pick up a £1 coin or equivalent with either hand.	15
	(c) Cannot use a pen or pencil to make a meaningful mark.	9
	(d) Cannot use a suitable keyboard or mouse.	9
	(e) None of the above apply.	0
6. Making self understood through speaking, writing, typing, or other means normally used, unaided by another person.	6(a) Cannot convey a simple message, such as the presence of a hazard.	15
	(b) Has significant difficulty conveying a simple message to strangers.	15
	(c) Has some difficulty conveying a simple message to strangers.	6
	(d) None of the above apply.	0
7. Understanding communication by both verbal means (such as hearing or lip reading) and non-verbal means (such as reading 16 point print) using any aid it is reasonable to expect them to use, unaided by another person.	7(a) Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.	15
	(b) Has significant difficulty understanding a simple message from a stranger due to sensory impairment.	15
	(c) Has some difficulty understanding a simple message from a stranger due to sensory impairment.	6
	(d) None of the above apply.	0
8. Navigation and maintaining safety, using a guide dog or other aid if normally used.	8(a) Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment.	15
	(b) Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment.	15

	(c) Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment.	9
	(d) None of the above apply.	0
9. Absence or loss of control leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bed-wetting) despite the presence of any aids or adaptations normally used.	9(a) At least once a month experiences: (i) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or (ii) substantial leakage of the contents of a collecting device sufficient to require cleaning and a change in clothing.	15
	(b) At risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, sufficient to require cleaning and a change in clothing, if not able to reach a toilet quickly.	6
	(c) None of the above apply.	0
10. Consciousness during waking moments.	10(a) At least once a week, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	15
	(b) At least once a month, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	6
	(c) None of the above apply.	0

PART 2

Mental, cognitive and intellectual function assessment

<i>(1) Activity</i>	<i>(2) Descriptors</i>	<i>(3) Points</i>
11. Learning tasks.	11(a) Cannot learn how to complete a simple task, such as setting an alarm clock.	15
	(b) Cannot learn anything beyond a simple task, such as setting an alarm clock.	9
	(c) Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine to clean clothes.	6
	(d) None of the above apply.	0
12. Awareness of everyday hazards (such as boiling water or sharp objects).	12(a) Reduced awareness of everyday hazards leads to a significant risk of: (i) injury to self or others; or (ii) damage to property or possessions such that they require supervision for the majority of the time to maintain safety.	15
	(b) Reduced awareness of everyday hazards leads to a significant risk of: (i) injury to self or others; or (ii) damage to property or possessions such that they frequently require supervision to maintain safety.	9
	(c) Reduced awareness of everyday hazards leads to a significant risk of: (i) injury to self or others; or (ii) damage to property or possessions such that they occasionally require supervision to maintain safety.	6

	(d) None of the above apply.	0
13. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	13(a) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.	15
	(b) Cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions for the majority of the time.	9
	(c) Frequently cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions.	6
	(d) None of the above apply.	0
14. Coping with change.	14(a) Cannot cope with any change to the extent that day to day life cannot be managed.	15
	(b) Cannot cope with minor planned change (such as a pre-arranged change to the routine time scheduled for a lunch break), to the extent that overall day to day life is made significantly more difficult.	9
	(c) Cannot cope with minor unplanned change (such as the timing of an appointment on the day it is due to occur), to the extent that overall, day to day life is made significantly more difficult.	6
	(d) None of the above apply.	0
15. Getting about.	15(a) Cannot get to any specified place with which the claimant is familiar.	15
	(b) Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person.	9
	(c) Is unable to get to a specified place with which the claimant is unfamiliar without being accompanied by another person.	6
	(d) None of the above apply.	0
16. Coping with social engagement due to cognitive impairment or mental disorder.	16(a) Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.	15
	(b) Engagement in social contact with someone unfamiliar to the claimant is always precluded due to difficulty relating to others or significant distress experienced by the individual.	9
	(c) Engagement in social contact with someone unfamiliar to the claimant is not possible for the majority of the time due to difficulty relating to others or significant distress experienced by the individual.	6
	(d) None of the above apply.	0
17. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.	17(a) Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
	(b) Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
	(c) Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	9
	(d) None of the above apply.	0

SCHEDULE 3

Regulation 30(1)

Assessment of whether a claimant has limited capability for work-related activity {sch 3}

<i>Activity</i>	<i>Descriptors</i>
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.	1 Cannot either: (a) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (b) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.
2. Transferring from one seated position to another.	2 Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.
3. Reaching.	3 Cannot raise either arm as if to put something in the top pocket of a coat or jacket.
4. Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting, bending or kneeling and all other activities specified in this Schedule).	4 Cannot pick up and move a 0.5 litre carton full of liquid.
5. Manual dexterity.	5 Cannot either: (a) press a button, such as a telephone keypad; or (b) turn the pages of a book with either hand.
6. Making self understood through speaking, writing, typing, or other means normally used.	6 Cannot convey a simple message, such as the presence of a hazard.
7. Understanding communication by hearing, lip reading, reading 16 point print or using any aid if reasonably used.	7 Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.
8. Absence or loss of control over extensive evacuation of the bowel and/or voiding of the bladder, other than enuresis (bed-wetting), despite the presence of any aids or adaptations normally used.	8 At least once a week experiences: (a) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or (b) substantial leakage of the contents of a collecting device sufficient to require the individual to clean themselves and change clothing.
9. Learning tasks.	9 Cannot learn how to complete a simple task, such as setting an alarm clock, due to cognitive impairment or mental disorder.
10. Awareness of hazard.	10 Reduced awareness of everyday hazards, due to cognitive impairment or mental disorder, leads to a significant risk of: (a) injury to self or others; or (b) damage to property or possessions such that they require supervision for the majority of the time to maintain safety.
11. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising	11 Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.

or switching tasks).

12. Coping with change.

12 Cannot cope with any change, due to cognitive impairment or mental disorder, to the extent that day to day life cannot be managed.

13. Coping with social engagement, due to cognitive impairment or mental disorder.

13 Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.

14. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.

14 Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.

15. Conveying food or drink to the mouth.

15(a) Cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else;
(b) Cannot convey food or drink to the claimant's own mouth without repeatedly stopping, experiencing breathlessness or severe discomfort;
(c) Cannot convey food or drink to the claimant's own mouth without receiving regular prompting given by someone else in the claimant's physical presence; or
(d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimant's own mouth without receiving:
(i) physical assistance from someone else; or
(ii) regular prompting given by someone else in the claimant's presence.

16. Chewing or swallowing food or drink.

16(a) Cannot chew or swallow food or drink;
(b) Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort;
(c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's presence; or
(d) Owing to a severe disorder of mood or behaviour, fails to:
(i) chew or swallow food or drink; or
(ii) chew or swallow food or drink without regular prompting given by someone else in the claimant's presence.

SCHEDULE 4

Regulations 81(2) and 83(2)

Sums to be disregarded in the calculation of earnings {sch 7}

1. In the case of a claimant who has been engaged in remunerative work or part-time employment as a self-employed earner or, had the employment been in Great Britain, would have been so engaged and who has ceased to be so employed, from the date of the cessation of the claimant's employment any earnings derived from that employment except earnings to which regulation 77(2) (royalties etc) applies.

2. In the case of a claimant who is undertaking work which falls within one of the categories in regulation 39(2) to (4) any earnings derived from that work which do not exceed the limits specified for that work of £20 in regulation 39(2) or, as the case may be, 16 x National Minimum Wage in regulation 39(3) or (4).

3. In the case of a claimant who receives a payment to which regulation 77(2) applies, £20, except where regulation 39(2) to (4) applies to the claimant, in which case the amounts specified in paragraph 7 shall apply, but only up to a maximum of £20.

4.—(1) In a case to which this paragraph applies, £20.

(2) Subject to sub-paragraph (3), this paragraph applies in the case of a claimant to whom regulation 37(2)(a), (b) or (e) or 39(5) applies.

(3) Where a claimant is doing the work set out in regulation 37(2)(b) and is also undertaking any of the categories of work set out in regulation 39(2) to (4), this paragraph applies only to the extent that the claimant's earnings are less than the limit of—

(a) £20 set out in regulation 39(2); or

(b) 16 x National Minimum Wage set out in regulation 39(3) and (4),

as the case may be.

5. In this Schedule—

“part-time employment” means, if the person were entitled to income support, employment in which the person is not to be treated as engaged in remunerative work under regulation 5 or 6(1) and (4) of the Income Support Regulations (persons treated, or not treated, as engaged in remunerative work);

“remunerative work”, for the purposes of this paragraph and paragraph 1, has the meaning prescribed in regulation 5, except for paragraphs (3B) and (4) of that regulation, of the Income Support Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations

[to be completed]

A full impact assessment has not been published for these Regulations as they have no impact on the private sector and civil society organisations.