

2017 No. 204

SOCIAL SECURITY

**The Employment and Support Allowance and Universal Credit
(Miscellaneous Amendments and Transitional and Savings
Provisions) Regulations 2017**

<i>Made</i> - - - -	<i>23rd February 2017</i>
<i>Laid before Parliament</i>	<i>27th February 2017</i>
<i>Coming into force</i> - -	<i>3rd April 2017</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 12(1), 17(4), 18(3), 19(2)(d), 25(a) and 42(3)(a) of the Welfare Reform Act 2012(a) and sections 15(4) and (5) and 34(1) of the Welfare Reform and Work Act 2016(b).

In accordance with section 173(5)(b) of the Social Security Administration Act 1992(c), this instrument contains only regulations made by virtue of, or consequential upon, sections 15, 16, 17 and 34 of the Welfare Reform and Work Act 2016 and is made before the end of the period of 6 months beginning with the coming into force of those sections.

In accordance with section 176(1) of the Social Security Administration Act 1992(d) the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned.

Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional and Savings Provisions) Regulations 2017 and come into force on 3rd April 2017.

(a) 2012 c. 5.
(b) 2016 c. 7.
(c) 1992 c. 5.
(d) Section 176(1) is amended by paragraph 23 of Schedule 9 to the Local Government Finance Act 1992 (c. 14), paragraph 3(4) of Schedule 13 to the Housing Act 1996 (c. 52) and section 69(6) of the Child Support, Pensions and Social Security Act 2000 (c. 19). Section 176(1) has been repealed by section 147 and Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c.5) in so far as it relates to council tax.

PART 1

Employment and Support Allowance: work-related activity component

Amendments to the Employment and Support Allowance Regulations 2008

2.—(1) The Employment and Support Regulations 2008(a) are amended as follows.

(2) In regulation 7 (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)—

- (a) in the heading, omit “or the work-related activity component”;
- (b) in paragraph (1), for “sections 2(2)(a), 2(3)(a), 4(4)(a) and 4(5)(a)” substitute “sections 2(2)(a) and 4(4)(a)”;
- (c) in paragraph (1B)—
 - (i) in sub-paragraph (a)(i) for “2(2), 2(3), 4(4) or 4(5)” substitute “2(2) or 4(4)”;
 - (ii) in sub-paragraph (d)(i) for “2(2), 2(3), 4(4) or 4(5)” substitute “2(2) or 4(4)”.

(3) In regulation 67 (prescribed amounts), in paragraph (3)—

- (a) omit “work-related activity component and the”;
- (b) for “are” substitute “is”.

(4) In Schedule 4 (amounts)—

- (a) in Part 1 (prescribed amounts), in paragraph 1, in column (1)—
 - (i) in sub-paragraph (1)(a) omit “or (3)” and “or (5)”;
 - (ii) in sub-paragraph (2)(a) omit “or (5)”;
 - (iii) in sub-paragraph (3)(c), (f) and (g) omit “or (5)”;
- (b) in Part 3 (weekly amount of premiums specified in part 2), in paragraph 11(1)—
 - (i) in paragraph (a)—
 - (aa) in columns “Premium” and “Amount” omit sub-paragraph (i);
 - (bb) in column “Premium” for sub-paragraph (iii) substitute—
“(iii) is not entitled to the support component;”;
 - (ii) in paragraph (b)—
 - (aa) in columns “Premium” and “Amount” omit sub-paragraph (i);
 - (bb) in column “Premium” for sub-paragraph (iii) substitute—
“(iii) is not entitled to the support component;”;

(c) in Part 4 (the components)—

- (i) in the heading, for “(the components)” substitute “(the component)”;
- (ii) omit paragraph 12.

(5) In Schedule 6 (housing costs)—

- (a) in paragraph 1, in sub-paragraph (3)(a)(ii) omit “including a work-related activity component under section 2(3) of the Act (amount of contributory allowance: work-related activity component)”;
- (b) in paragraph 19, in sub-paragraph (7)(d) for “which does not include an amount under section 4(2)(b) of the Act” substitute “and they are still in the assessment phase in accordance with regulation 4”.

(a) S.I. 2008/794; relevant amending instruments are S.I. 2008/2428, 2008/3051, 2009/2655, 2009/3228, 2011/2428, 2012/874, 2012/913, 2012/919, 2013/574, 2013/630, 2014/516, 2015/30, 2015/457 and 2016/242.

Amendments to the Employment and Support Allowance Regulations 2013

3.—(1) The Employment and Support Allowance Regulations 2013(a) are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1) in the appropriate place insert—

““member of the work-related activity group” means a claimant who has or is treated as having limited capability for work under either—

(a) Part 5 of the Employment and Support Allowance Regulations 2008 other than by virtue of regulation 30 of those Regulations; or

(b) Part 4 of these Regulations other than by virtue of regulation 26;”.

(3) In regulation 7 (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)—

(a) in the heading, omit “or the work-related activity component”;

(b) in paragraph (1), omit “and (3)(a)”;

(c) in paragraphs (3)(a)(i) and (d)(i)—

(i) omit “or (3)”;

(ii) after “of the Act” insert “or they were a member of the work-related activity group”.

(4) In regulation 62 (prescribed amounts)—

(a) in paragraph (1)(a) and (b), omit “or (3)”;

(b) for paragraph (2) substitute—

“(2) Subject to regulation 63 the amount of the support component is £36.20.”.

PART 2

Universal Credit: limited capability for work element

Amendments to the Universal Credit Regulations 2013

4.—(1) The Universal Credit Regulations 2013(b) are amended as follows.

(2) In regulation 2 (interpretation), for the definition of ““LCW element” and “LCWRA element”” substitute—

““LCWRA element” has the meaning in regulation 27;”.

(3) In regulation 23 (introduction), in paragraph (2)(a) omit “the LCW element and”.

(4) In regulation 27 (award to include LCW and LCWRA elements)—

(a) in the heading, for “LCW and LCWRA elements” substitute “LCWRA element”;

(b) for paragraph (1) substitute—

“(1) An award of universal credit is to include an amount in respect of the fact that a claimant has limited capability for work and work-related activity (“the LCWRA element”).”;

(c) in paragraph (2), for “amounts of those elements are” substitute “amount of that element is”;

(d) in paragraph (3), omit “work or for”;

(e) for paragraph (4), substitute—

(a) S.I. 2013/379; relevant amending instruments are S.I.2015/30 and SI 2015/457.

(b) S.I. 2013/376; relevant amending instruments are S.I. 2015/30, 2015/457 and 2015/1754. Regulation 36 is also amended by section 14(5)(b) of the Welfare Reform and Work Act 2016 from a date to be appointed.

- “(4) In the case of joint claimants, where each of them has limited capability for work and work-related activity, the award is only to include one LCWRA element.”.
- (5) In regulation 28 (period for which the LCW or LCWRA element is not to be included)—
- (a) in the heading and in paragraphs (1), (2)(a) and (3)(a), omit “LCW or”;
 - (b) in paragraph (5)(b)(i), omit “or the work-related activity component”;
 - (c) omit paragraph (6).
- (6) In regulation 29 (award to include the carer element), for paragraph (4) substitute—
- “(4) Where an amount would, apart from this paragraph, be included in an award in relation to a claimant by virtue of paragraphs (1) to (3), and the claimant has limited capability for work and work-related activity (and, in the case of joint claimants, the LCWRA element has not been included in respect of the other claimant), only the LCWRA element may be included in respect of the claimant.”.
- (7) In regulation 36 (table showing amounts of elements)—
- (a) in paragraph (1), for “LCW and LCWRA elements” substitute “LCWRA element”;
 - (b) in the table—
 - (i) for the row “LCW and LCWRA elements” substitute “LCWRA element”;
 - (ii) omit the row under “LCWRA element” (as amended by paragraph (i)) showing the amount for limited capability for work.

Amendments to the Universal Credit (Transitional Provisions) Regulations 2014

5.—(1) The Universal Credit (Transitional Provisions) Regulations 2014(a) are amended as follows.

- (2) In regulation 19 (transition from old style ESA)—
- (a) in paragraph (1), for sub-paragraph (b) substitute—

“(b) on or before the relevant date it had been determined that the claimant had limited capability for work or limited capability for work-related activity (within the meaning of Part 1 of the 2007 Act).”;
 - (b) in paragraph (2)—
 - (i) for “was entitled to the work-related activity component” substitute “had limited capability for work (within the meaning of Part 1 of the 2007 Act)”;
 - (ii) omit sub-paragraph (a);
 - (iii) in sub-paragraph (b) omit “regulation 27(1)(a) of those Regulations and”;
 - (c) omit paragraph (3);
 - (d) in paragraph (4), for “was entitled to the support component” substitute “had limited capability for work-related activity (within the meaning of Part 1 of the 2007 Act) or was treated as having limited capability for work-related activity”;
 - (e) in paragraph (6), for “was entitled to the work-related activity component or, as the case may be, the support component” substitute “had limited capability for work or, as the case may be, limited capability for work-related activity (within the meaning of Part 1 of the 2007 Act)”;
 - (f) in paragraph (8)—
 - (i) for the definition of ““assessment phase”, “support component” and “work-related activity component”” substitute—

““assessment phase” has the same meaning as in the 2007 Act.”;
 - (ii) for the definition of ““LCW element” and “LCWRA element”” substitute—

(a) S.I. 2014/1230; relevant amending instruments are S.I. 2014/1626 and 2015/339.

““LCWRA element” has the same meaning as in the Universal Credit Regulations.”;

(g) in paragraph (9) for “, 2(3)(a), 4(4)(a) and 4(5)(a)” substitute “and 4(4)(a)”;

(h) after paragraph (9) insert—

“(10) For the purposes of this regulation, references to a determination that the claimant had limited capability for work do not include a determination made under regulation 30 of the Employment and Support Allowance Regulations 2008 (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made).”.

(3) In regulation 20 (transition from old style ESA before the end of the assessment phase)—

(a) in paragraph (2), in sub-paragraph (a) omit “LCW or”;

(b) in paragraph (3), omit sub-paragraph (b).

(4) In regulation 20A (transition from jobseeker’s allowance following an extended period of sickness), in paragraph (2)(a) omit “LCW or”.

(5) In regulation 21 (other claimants with limited capability for work: credits only cases)—

(a) in paragraph (2)—

(i) omit sub-paragraph (a);

(ii) in sub-paragraph (b) omit “regulation 27(1)(a) of those Regulations and”;

(b) omit paragraph (3);

(c) in paragraph (7), omit sub-paragraph (b);

(d) in paragraph (9), in sub-paragraphs (d) and (e) for “, 2(3)(a), 4(4)(a) and 4(5)(a)” substitute “and 4(4)(a)”.

PART 3

Universal Credit: work-related requirements

Amendments to the Universal Credit Regulations 2013

6. In regulation 88 of the Universal Credit Regulations 2013 (expected hours), in paragraph (2)—

(a) in sub-paragraph (a)(i) after “responsible carer” insert “(subject to the following sub-paragraphs)”;

(b) after sub-paragraph (a) insert—

“(aa) where the claimant is a responsible carer of a child who has not yet reached compulsory school age, the number of hours that the Secretary of State considers is compatible with those caring responsibilities;”;

(c) in sub-paragraph (b) after “a child” insert “who has reached compulsory school age but who is”.

PART 4

Consequential, transitional and savings provisions

Consequential, transitional and savings provisions

7.—(1) Schedule 1 contains amendments to secondary legislation as a consequence of the amendments made by these Regulations.

(2) Schedule 2 contains transitional and savings provisions.

23rd February 2017

Penny Mordaunt
Minister of State,
Department for Work and Pensions

SCHEDULE 1 Regulation 7(1)
Consequential amendments to secondary legislation

PART 1

Employment and Support Allowance: amendments to secondary legislation
consequential on removal of work-related activity component

Amendments to the Income Support (General) Regulations 1987

- 1.**—(1) The Income Support (General) Regulations 1987^(a) are amended as follows.
- (2) In regulation 2 (interpretation), in paragraph (1) in the appropriate place insert—
- ““member of the support group” means a claimant who has or is treated as having limited capability for work-related activity under either—
- (a) Part 6 of the Employment and Support Allowance Regulations 2008; or
- (b) Part 5 of the Employment and Support Allowance Regulations 2013;”;
- ““member of the work-related activity group” means a claimant who has or is treated as having limited capability for work under either—
- (a) Part 5 of the Employment and Support Allowance Regulations 2008 other than by virtue of regulation 30 of those Regulations; or
- (b) Part 4 of the Employment and Support Allowance Regulations 2013 other than by virtue of regulation 26 of those Regulations;”.
- (3) In Schedule 3 (housing costs)—
- (a) in paragraph 1 (housing costs)—
- (i) in sub-paragraph (3)(d)(i)—
- (aa) omit “or (3)”, “or (5)” and “(components)”;
- (bb) after “Welfare Reform Act” insert “(component) or is a member of the work-related activity group”;
- (ii) in sub-paragraph (3)(d)(ii) omit “including an amount of a work-related activity component under section 2(3) of that Act (amount of contributory allowance: work-related activity component)”;
- (b) in paragraph 18 (non-dependant deductions), in sub-paragraph (7)(i) for the words from “which does not include” to the end substitute “and is not a member of the work-related activity group or a member of the support group; or”.

Amendments to the Social Fund (Cold Weather Payments) (General) Regulations 1988

2.—(1) The Social Fund (Cold Weather Payments) (General) Regulations 1988^(b) are amended as follows.

^(a) S.I. 1987/1967; relevant amending instruments are S.I. 1995/1613, 2008/1554, 2008/2428, 2012/913 and 2013/443.
^(b) S.I. 1988/1724; relevant amending instruments are S.I. 1991/2448 and 2013/248.

- (2) In regulation 1 (interpretation), in paragraph (2) in the appropriate place insert—
- ““member of the support group” means a claimant who has or is treated as having limited capability for work-related activity under either—
 - (a) Part 6 of the Employment and Support Allowance Regulations 2008; or
 - (b) Part 5 of the Employment and Support Allowance Regulations 2013;”;
 - ““member of the work-related activity group” means a claimant who has or is treated as having limited capability for work under either—
 - (a) Part 5 of the Employment and Support Allowance Regulations 2008 other than by virtue of regulation 30 of those Regulations; or
 - (b) Part 4 of the Employment and Support Allowance Regulations 2013 other than by virtue of regulation 26 of those Regulations;”.
- (3) In regulation 1A (prescribed description of persons), in paragraph (3)(e)—
- (a) for “, P’s applicable amount includes” substitute “and”;
 - (b) in paragraph (i) before “one or more” insert “P’s applicable amount includes”;
 - (c) for paragraph (ii) substitute—
 - “(ii) P is a member of the work-related activity group or is a member of the support group; or”.

Amendments to the Jobseeker’s Allowance Regulations 1996

- 3.—**(1) The Jobseeker’s Allowance Regulations 1996(a) are amended as follows.
- (2) In regulation 1 (interpretation), in paragraph (3) in the appropriate place insert—
- ““member of the work-related activity group” means a claimant who has or is treated as having limited capability for work under either—
 - (a) Part 5 of the Employment and Support Allowance Regulations 2008 other than by virtue of regulation 30 of those Regulations; or
 - (b) Part 4 of the Employment and Support Allowance Regulations 2013 other than by virtue of regulation 26 of those Regulations;”.
- (3) In Schedule 2 (housing costs)—
- (a) in paragraph 1 (housing costs), in sub-paragraph (3)(e) —
 - (i) in sub-paragraph (i)—
 - (aa) omit “or (3)” and “or (5)”;
 - (bb) for “(components)” substitute “(component)”;
 - (ii) in sub-paragraph (ii) omit “including an amount of a work-related activity component under section 2(3) of that Act (amount of contributory allowance: work-related activity component)”;
 - (b) in paragraph 17 (non-dependant deductions), in sub-paragraph (7)(i)—
 - (i) omit “or (5)” and “(components)”;
 - (ii) after “Welfare Reform Act” insert “(component) and is not a member of the work-related activity group”.

(a) S.I. 1996/207; relevant amending instruments are S.I. 2008/1554, 2008/2428, 2012/913 and 2013/443.

Amendment to the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001

4. In regulation 7 (decisions superseding earlier decisions) of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001(a), in paragraph (2)(o)(iv)(bb) omit “or the work-related activity component”.

Amendments to the State Pension Credit Regulations 2002

5.—(1) The State Pension Credit Regulations 2002(b) are amended as follows.

(2) In regulation 1 (interpretation), in paragraph (2) in the appropriate place insert—

““member of the work-related activity group” means a claimant who has or is treated as having limited capability for work under either—

- (a) Part 5 of the Employment and Support Allowance Regulations 2008 other than by virtue of regulation 30 of those Regulations; or
- (b) Part 4 of the Employment and Support Allowance Regulations 2013 other than by virtue of regulation 26 of those Regulations;”.

(3) In Schedule 2 (housing costs)—

- (a) in paragraph 1 (housing costs), in sub-paragraph (2)(a)(iii)(dd) for “or (3) or 4(4) or (5) of the Welfare Reform Act (components) [or would be entitled to an employment and support allowance including an amount of a work-related activity component under section 2(3) of that Act (amount of contributory allowance: work-related activity component)” substitute “or 4(4) of the Welfare Reform Act “(component) or is a member of the work-related activity group or they would have been a member of the work-related activity group”;
- (b) in paragraph 14 (persons residing with the claimant), in sub-paragraph (7)(g)—
 - (i) omit “or (5)”;
 - (ii) for “(components)” substitute “(component) or is not a member of the work-related activity group”.

Amendments to the Housing Benefit Regulations 2006

6.—(1) The Housing Benefit Regulations 2006(c) are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1) in the appropriate place insert—

““member of the work-related activity group” means a claimant who has or is treated as having limited capability for work under either—

- (a) Part 5 of the Employment and Support Allowance Regulations 2008 other than by virtue of regulation 30 of those Regulations; or
- (b) Part 4 of the Employment and Support Allowance Regulations 2013 other than by virtue of regulation 26 of those Regulations;”.

(3) In regulation 22 (applicable amounts) for paragraph (e) substitute—

“(e) the amount of the support component which may be applicable to him in accordance with Part 5 of Schedule 3 (the component);”.

(4) In regulation 23 (polygamous marriages) for paragraph (f) substitute—

“(f) the amount of the support component which may be applicable to him in accordance with Part 5 of Schedule 3 (the component);”.

(a) S.I. 2001/1002; relevant amending instruments are S.I. 2008/1082 and 2008/2428.

(b) S.I. 2002/1792; relevant amending instruments are S.I. 2008/1554, 2008/2428, 2012/913 and 2013/443.

(c) S.I. 2006/213; relevant amending instruments are S.I. 2008/1042, 2008/1082, 2008/2428, 2013/443, 2013/630 and 2015/457.

- (5) In regulation 28 (treatment of child care charges), in paragraph (11)—
- (a) in sub-paragraph (a)—
 - (i) omit “the work-related activity component”;
 - (ii) after “support component or” insert “the other member is a member of the work-related activity group”;
 - (b) in sub-paragraph (ba)—
 - (i) omit “the work-related activity component”;
 - (ii) after “support component or” insert “the other member would be a member of the work-related activity group”.
- (6) In regulation 74 (non-dependant deductions) in paragraph (8)(a)—
- (a) omit “and the work-related activity component”;
 - (b) after “(the support component)” insert “or where the non-dependant is not a member of the work-related activity group”.
- (7) In Schedule 3 (applicable amounts)—
- (a) in Part 5 (the components)—
 - (i) in the heading, for “components” substitute “component”;
 - (ii) in paragraph 21, in sub-paragraph (1)—
 - (aa) for “one, but not both, of the components in paragraph 23 or” substitute “the component in paragraph”;
 - (bb) for paragraph (b) substitute—

“(b) the Secretary of State has determined that the claimant or the claimant’s partner has or is treated as having limited capability for work-related activity; and”;
 - (cc) in paragraph (c)(ii) omit “or the work-related activity component”;
 - (iii) in paragraph 22 in sub-paragraphs (1) and (2) omit “23 or”;
 - (iv) omit paragraph 23;
 - (b) in Part 6 (amount of components)—
 - (i) in the heading, for “components” substitute “component”;
 - (ii) omit paragraph 25.
- (8) In Schedule 4 (sums to be disregarded in the calculation of earnings)—
- (a) in paragraph 3(2)—
 - (i) omit “, work-related activity component”;
 - (ii) after “Schedule 3 (applicable amounts)” insert “or where the claimant or the claimant’s partner is a member of the work-related activity group”;
 - (b) in paragraph 17, in sub-paragraph (2)(b)(iv)—
 - (i) in paragraph (aa)—
 - (aa) omit “, the work-related activity component under paragraph 23 or”;
 - (bb) after “of Schedule 3” insert “or the claimant or the claimant’s partner is a member of the work-related activity group”;
 - (ii) in paragraph (bb)—
 - (aa) omit “, the work-related activity component”;
 - (bb) after “sub-head (aa) above,” insert “or at least one of the couple is a member of the work-related activity group”.

Amendments to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

7.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(a) are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1) in the appropriate place insert—

““member of the work-related activity group” means a claimant who has or is treated as having limited capability for work under either—

(a) Part 5 of the Employment and Support Allowance Regulations 2008 other than by virtue of regulation 30 of those Regulations; or

(b) Part 4 of the Employment and Support Allowance Regulations 2013 other than by virtue of regulation 26 of those Regulations;”.

(3) In regulation 31 (treatment of child care charges), in paragraph (11)(ba)—

(a) omit “or the work-related activity component”;

(b) after “limited capability for work” insert “or the other member of the couple would be a member of the work-related activity group”.

(4) In regulation 55 (non-dependant deductions), in paragraph (8)—

(a) omit “and the work-related activity component”;

(b) after “(the support component)” insert “or where the non-dependant is not a member of the work-related activity group”.

(5) In Schedule 4 (sums disregarded from claimant’s earnings), in paragraph 5(1)(d)(ii) omit “or the work-related activity component”.

Amendments to the Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012

8.—(1) The Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012(b) are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1) after the definition of “member of a couple” insert—

““member of the work-related activity group” means a claimant who has or is treated as having limited capability for work under either—

(a) Part 5 of the Employment and Support Allowance Regulations 2008 other than by virtue of regulation 30 of those Regulations; or

(b) Part 4 of the Employment and Support Allowance Regulations 2013 other than by virtue of regulation 26 of those Regulations;”.

(3) In Schedule 1 (pensioners: matters that must be included in an authority’s scheme), in paragraph 25 (treatment of child care charges), in sub-paragraph (10)(c)—

(a) omit “or the work-related activity component”;

(b) after “limited capability for work” insert “or the other member of the couple would be a member of the work-related activity group”.

(4) In Schedule 4 (sums disregarded from the applicant’s earnings), in paragraph 5, in sub-paragraph (1)(d)(ii) omit the words “or the work-related activity component”.

(a) S.I. 2006/214; relevant amending instruments are S.I. 2007/2869, 2008/1082, 2009/583 and 2013/630.

(b) S.I. 2012/2885, amended by S.I. 2014/3312.

Amendments to the Welfare Reform Act 2012 (Commencement No. 9 and Transitional and Transitory Provisions and Commencement No. 8 and Savings and Transitional Provisions (Amendment)) Order 2013

9.—(1) The Welfare Reform Act 2012 (Commencement No. 9 and Transitional and Transitory Provisions and Commencement No. 8 and Savings and Transitional Provisions (Amendment)) Order 2013(a) is amended as follows.

(2) In article 10 (limited capability for work or work-related activity: transition from old style ESA), in paragraph (2)(c) omit “or the work-related activity component”.

(3) In article 11 (limited capability for work or work-related activity: transition from new style ESA), in paragraph (2)(c) omit “or the work-related activity component”.

PART 2

Universal Credit: amendments to secondary legislation consequential on removal of limited capability for work element

Amendment to the Income Support (General) Regulations 1987

10. In Schedule 3 (housing costs) to the Income Support (General) Regulations 1987(b), in paragraph 1 (housing costs), in sub-paragraph (3)(e) for the words from “the calculation of which” to the end substitute “and has limited capability for work or limited capability for work and work-related activity as construed in accordance with regulations 39 and 40 of the Universal Credit Regulations 2013(c).”.

Amendment to the Social Fund Cold Weather Payments (General) Regulations 1988

11. In regulation 1A (prescribed description of persons) of the Social Fund Cold Weather Payments (General) Regulations 1988(d), for paragraph (3)(f)(ii) substitute—

“(ii) P has limited capability for work or limited capability for work and work-related activity as construed in accordance with regulations 39 and 40 of the Universal Credit Regulations 2013.”.

Amendment to the Jobseeker’s Allowance Regulations 1996

12. In Schedule 2 (housing costs) to the Jobseeker’s Allowance Regulations 1996(e), in paragraph 1 (housing costs), in sub-paragraph (3)(f) for the words from “the calculation of which” to the end substitute “and has limited capability for work or limited capability for work and work-related activity as construed in accordance with regulations 39 and 40 of the Universal Credit Regulations 2013.”.

Amendment to the Education (Student Loans) Regulations 1998

13. In Schedule 2 (terms of loans) to the Education (Student Loans) Regulations 1998(f), in paragraph 1, in sub-paragraph (e) of the definition of “disability related benefits” omit “limited capability for work or”.

(a) S.I. 2013/983, relevant amending instruments are S.I. 2013/1511 and S.I. 2014/1452.

(b) S.I. 1987/1967, amended by S.I. 2013/630.

(c) S.I. 2013/376.

(d) S.I. 1988/1724, relevant amending instruments are S.I. 1991/2448, 2010/2442 and 2013/248.

(e) S.I. 1996/207, amended by S.I. 2013/630.

(f) S.I. 1998/211, amended by S.I. 2013/630.

Amendment to the State Pension Credit Regulations 2002

14. In Schedule 2 (housing costs) to the State Pension Credit Regulations 2002(a), in paragraph 1 (housing costs), in sub-paragraph (2)(a)(iii)(ff) for the words from “the calculation of which” to the end substitute “and has limited capability for work or limited capability for work and work-related activity as construed in accordance with regulations 39 and 40 of the Universal Credit Regulations 2013;”.

Amendment to the Employment and Support Allowance Regulations 2008

15. In Schedule 6 (housing costs) to the Employment and Support Allowance Regulations 2008(b), in paragraph 1 (housing costs), in sub-paragraph (3)(e) for the words from “the calculation of which” to the end substitute “and has limited capability for work or limited capability for work and work-related activity as construed in accordance with regulations 39 and 40 of the Universal Credit Regulations 2013.”.

Amendment to the Education (Student Support) (European University Institute) Regulations 2010

16. In regulation 27 (interpretation) of the Education (Student Support) (European University Institute) Regulations 2010(c), in paragraph (2)(h)(i) omit “limited capability for work or”.

Amendment to the Education (Student Support) Regulations 2011

17. In regulation 42 (interpretation) of the Education (Student Support) Regulations 2011(d), in paragraph (2)(i)(i) omit “limited capability for work or”.

SCHEDULE 2

Regulation 7(2)

Transitional and savings provisions

PART 1

Employment and Support Allowance: transitional and savings provisions

Transitional and savings provisions: General

1.—(1) The amendments made by regulations 2 and 3, paragraphs 1 to 9 of Schedule 1 and by section 15(1) to (3) of the Welfare Reform and Work Act 2016 (which amend sections 2 and 4 of the Welfare Reform Act 2007) do not apply where any of the circumstances in paragraphs 2 to 7 apply.

(2) In this Part—

“assessment phase” has the same meaning as in the Welfare Reform Act 2007(e);

“a claim” means making a claim for an employment and support allowance in accordance with regulations 4ZC, 4G, 4H and 4I of the Social Security (Claims and Payments) Regulations 1987(f) or regulations 13 to 17 of the Universal Credit, Personal Independence Payment,

(a) S.I. 2002/1792, amended by S.I. 2013/630.

(b) S.I. 2008/794, amended by S.I. 2013/630.

(c) S.I. 2010/447, amended by S.I. 2013/630.

(d) S.I. 2011/1986; relevant amending instruments are S.I. 2009/2655, 2013/458, 2013/630 and 2016/544.

(e) 2007 c.5.

(f) S.I. 1987/1968; relevant amending instruments are S.I. 1997/793, 2003/492, 2003/2800 and 2008/1554.

Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013(a);

“employment and support allowance” means an allowance under Part 1 of the Welfare Reform Act 2007;

“ESA Regulations 2008” means the Employment and Support Allowance Regulations 2008(b);

“ESA Regulations 2013” means the Employment and Support Allowance Regulations 2013(c).

Claimants who have made a claim for employment and support allowance before 3rd April 2017

2. The first circumstance is where the claimant has made or is treated as having made a claim for an employment and support allowance before 3rd April 2017 and that claim results in an award of employment and support allowance.

Claimants who had been found to have limited capability for work before 3rd April 2017

3. The second circumstance is where the claimant's period of limited capability for work began on or after 3rd April 2017 and is treated as a continuation of an earlier period of limited capability for work which began before 3rd April 2017 by virtue of—

- (a) regulation 145 of the ESA Regulations 2008; or
- (b) regulation 86 of the ESA Regulations 2013.

Claimants on Incapacity Benefits who have or will become notified persons

4. The third circumstance is where the claimant is or becomes a notified person within the meaning of regulation 4 of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010(d) and a determination is effective as to whether that person—

- (a) has or is to be treated as having limited capability for work under Part 5 of the ESA Regulations 2008;
- (b) has or is to be treated as having limited capability for work under Part 5 of the ESA Regulations 2013;
- (c) has or is to be treated as having limited capability for work-related activity under Part 6 of the ESA Regulations 2008; or
- (d) has or is to be treated as having limited capability for work-related activity under Part 6 of the ESA Regulations 2013.

Claimants where their award becomes payable before 3rd April 2017

5. The fourth circumstance is where the claimant becomes entitled to an employment and support allowance before 3rd April 2017 by virtue of—

- (a) regulation 19(1) and paragraph 16 of Schedule 4 to the Social Security (Claims and Payments) Regulations 1987; or
- (b) regulation 28 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013(e).

(a) S.I. 2013/380.

(b) S.I. 2008/794; relevant amending instruments are S.I. 2010/840, 2012/919, 2013/2536 and 2015/339.

(c) S.I. 2013/379, amended by S.I. 2015/339.

(d) S.I. 2010/1907.

(e) S.I. 2013/380.

Claimants where their assessment phase begins before 3rd April 2017

6. The fifth circumstance is where the first day of the claimant's assessment phase began before 3rd April 2017 by virtue of—

- (a) regulation 5 of the ESA Regulations 2008; or
- (b) regulation 6 of the ESA Regulations 2013.

Claimants where they have been entitled to maternity allowance

7. The sixth circumstance is where—

- (a) a claimant was entitled to a maternity allowance under section 35 of the Social Security Contributions and Benefits Act 1992(a) and the end of that award is within 12 weeks beginning with the date that the claim for an employment and support allowance is made; and
- (b) immediately prior to their entitlement to a maternity allowance beginning the claimant was previously entitled to an employment and support allowance before 3rd April 2017.

PART 2

Universal Credit: transitional and savings provisions

Transitional and savings provisions: General

8.—(1) The amendments made by regulations 4 and 5 and paragraphs 13, 16 and 17 of Schedule 1 do not apply—

- (a) where a claimant has an award of universal credit in any of the circumstances in the following paragraphs; and
- (b) for so long as the claimant continues to be entitled to universal credit and to have limited capability for work.

(2) For the purposes of sub-paragraph (1)(b), the reference to continuous entitlement to universal credit includes where an award has terminated and a further award is made and—

- (a) immediately before the further award commences, the previous award has terminated because the claimant ceased to be a member of a couple or became a member of a couple; or
- (b) within the six months beginning with the date that the further award commences, the previous award has terminated because the financial condition in section 5(1)(b) or, if it was a joint claim, section 5(2)(b), of the Welfare Reform Act 2012 was not met.

(3) In this Part—

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

“LCW element” and “LCWRA element” have the meanings in regulation 27 of the Universal Credit Regulations 2013(c) as it has effect apart from the amendments made by regulation 4(4) (which remove references to the LCW element);

“limited capability for work” has the meaning given in section 37(1) of the Welfare Reform Act 2012(d).

(a) 1992 c.4; amended by S.I. 2014/606, section 53(1) of the Welfare Reform and Pensions Act 1999 (c. 30), paragraphs 4(1) and (2) of Schedule 7 to the Employment Act 2002 (c. 22), section 63(2) of the Welfare Reform Act 2012 (c. 5), paragraph 6 of Schedule 1 to the Work and Families Act 2006 (c. 18), section 120(2) and (3) of the Children and Families Act 2014 (c. 6), and section 2(1) of the Still-Birth (Definition) Act 1992 (c. 29).

(b) 2007 c. 5.

(c) S.I. 2013/376.

(d) 2012 c. 5.

(4) The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013(a) apply for the purpose of deciding the date on which a claim for universal credit is made or is to be treated as made.

Claimants entitled to the LCW element before 3rd April 2017

9. The first circumstance is where immediately before 3rd April 2017 the award included the LCW element, or would have but for regulation 28(1) of the Universal Credit Regulations 2013, as it has effect apart from the amendments made by regulation 4(5)(a) (which removes the reference to the LCW element).

Claimants entitled to the LCWRA element before 3rd April 2017

10. The second circumstance is where—

- (a) immediately before 3rd April 2017 the award included the LCWRA element;
- (b) on or after 3rd April 2017 a determination that the claimant has limited capability for work is made; and
- (c) the claimant had limited capability for work and work-related activity throughout the period beginning immediately before 3rd April 2017 and ending with the date on which the determination that the claimant has limited capability for work is made.

Claimants who are providing evidence of having limited capability for work before 3rd April 2017

11. The third circumstance is where—

- (a) before 3rd April 2017—
 - (i) it falls to be determined whether the claimant has limited capability for work; and
 - (ii) the claimant has provided evidence of having limited capability for work in accordance with the Social Security (Medical Evidence) Regulations 1976(b); and
- (b) on or after 3rd April 2017 a determination that the claimant has limited capability for work is made on the basis of an assessment under Part 5 of the Universal Credit Regulations 2013, on revision under section 9 of the Social Security Act 1998(c) or on appeal.

Claimants who appeal or seek revision of a decision relating to employment and support allowance

12. The fourth circumstance is where—

- (a) the claimant appeals or seeks revision under section 9 of the Social Security Act 1998 of a decision relating to the entitlement of the claimant to an employment and support allowance, where the claim for employment and support allowance was made or treated as made before 3rd April 2017; and
- (b) on or after 3rd April 2017, in accordance with article 24 of the Welfare Reform Act 2012 (Commencement No 9 and Transitional and Transitory Provisions and Commencement No 8 and Savings and Transitional Provisions (Amendment)) Order 2013(d), the Secretary of State considers it appropriate to revise under section 9 of the Social Security Act 1998 an award of universal credit so as to include the LCW element.

(a) S.I. 2013/380.

(b) S.I. 1976/615.

(c) 1998 c. 14. Section 9 is amended by Part 8 of Schedule 14 to the Welfare Reform Act 2012 (c. 5).

(d) S.I. 2013/983, amended by S.I. 2014/1452.

Claimants entitled to employment and support allowance before 3rd April 2017

13. The fifth circumstance is where immediately before 3rd April 2017 the claimant was entitled to employment and support allowance and remains so entitled throughout the period beginning with 3rd April 2017 and ending with the date on which the claim for universal credit is made or treated as made.

Claimants entitled to be credited with earnings under the Social Security (Credits) Regulations 1975 before 3rd April 2017

14. The sixth circumstance is where—

- (a) immediately before 3rd April 2017—
 - (i) the claimant entitled to the award was entitled to be credited with earnings equal to the lower earnings limit then in force in respect of a week to which regulation 8B(2)(a)(iv), (iva) or (v) of the Social Security (Credits) Regulations 1975(a) applies; and
 - (ii) paragraph 13 does not apply to that claimant; and
- (b) the claimant is so entitled in respect of each week that falls in the period beginning with 3rd April 2017 and ending with the date on which the claim for universal credit is made or treated as made.

Claimants entitled to income support or other incapacity benefits before 3rd April 2017

15. The seventh circumstance is where regulation 22, 23, 24, 26 or 27 of the Universal Credit (Transitional Provisions) Regulations 2014(b) applies to the claimant throughout the period beginning immediately before 3rd April 2017 and ending with the date on which the claim for universal credit is made or treated as made.

(a) S.I. 1975/556; relevant amending instruments are S.I. 1996/2367, 2010/385 and 2012/913.
(b) S.I. 2014/1230, amended by S.I. 2014/1626.

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

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

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

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

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

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

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

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

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

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

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

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

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

The circumstances are –

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

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

The circumstances are –

- (a) where the award of universal credit included the LCW element immediately before 3rd April 2017 or would have but for regulation 28(1) of the Universal Credit Regulations 2013;
- (b) where the award of universal credit includes an amount in respect of the fact that the claimant has limited capability for work and work-related activity immediately before 3rd April 2017 and it is determined, on or after that date, that the claimant has limited capability for work (provided the claimant had limited capability for work and work-related activity for the period beginning before 3rd April 2017 until the date of the determination that the claimant has limited capability for work);
- (c) where before 3rd April 2017 it has yet to be determined whether the claimant has limited capability for work and the claimant has provided evidence of having limited capability for work in accordance with the Social Security (Medical Evidence) Regulations 1976 (S.I. 1976/615) and where it is determined on or after 3rd April 2017 that the claimant has limited capability for work, including on appeal or revision;
- (d) where the award of universal credit is revised under section 9 of the Social Security Act 1998 to include the LCW element, in accordance with article 24 of the Welfare Reform Act 2012 (Commencement No 9 and Transitional and Transitory Provisions and

Commencement No 8 and Savings and Transitional Provisions (Amendment)) Order 2013 following an appeal or revision of a decision not to award employment and support allowance under Part 1 of the Welfare Reform Act 2007 (where the claim was made before 3rd April 2017);

- (e) where the claimant was entitled to employment and support allowance immediately before 3rd April 2017 (provided the claimant was continuously entitled to employment and support allowance from 3rd April 2017 to the date on which the claim for universal credit is made);
- (f) where the claimant entitled to the award was entitled to be credited with earnings equal to the lower earnings limit then in force in respect of a week to which regulation 8B(2)(a)(iv), (iva) or (v) of the Social Security (Credits) Regulations 1975 (S.I. 1975/556) applies, and the claimant was not entitled to employment and support allowance, immediately before 3rd April 2017 (provided the claimant is entitled to be so credited in respect of each week that falls in the period beginning with 3rd April 2017 to the date on which the claim for universal credit is made or treated as made);
- (g) where regulation 22, 23, 24, 26 or 27 of the Universal Credit (Transitional Provisions) Regulations 2014 applies to the claimant throughout the period beginning immediately before the 3rd April 2017 and ending with the date on which the claim for universal credit is made or treated as made.

The regulations contained in this instrument are either made by virtue of, or are consequential upon, sections 15, 16 and 17 of the 2016 Act. This instrument is made before the expiry of the period of 6 months beginning with the coming into force of those provisions. The regulations in it are therefore exempt in accordance with section 173(5) of the Social Security Administration Act 1992 from the requirement in section 172(1) of that Act to refer proposals to make Regulations to the Social Security Advisory Committee and are made without reference to that Committee.

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

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£6.00

UK2017022312 03/2017 19585

<http://www.legislation.gov.uk/id/uksi/2017/204>

ISBN 978-0-11-115487-8



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