

**2008 No. 378**

**HOUSING; RATES**

**The Housing Benefit (Employment and Support Allowance  
Consequential Provisions) Regulations (Northern Ireland) 2008**

*Made* - - - - - *15th September 2008*

*Coming into operation* - - - - - *27th October 2008*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by section 28(2) of the Welfare Reform Act (Northern Ireland) 2007(a).

**Citation and commencement**

1. These Regulations may be cited as the Housing Benefit (Employment and Support Allowance Consequential Provisions) Regulations (Northern Ireland) 2008 and shall come into operation on 27th October 2008.

**Amendment of the Housing Benefit (Decisions and Appeals) Regulations**

2.—(1) The Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001(b) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 1(2) (citation, commencement and interpretation) after the definition of “relevant decision” add—

““the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007.”.

(3) In regulation 7(2) (decisions superseding earlier decisions)—

(a) in sub-paragraph (h)(c) at the beginning insert “except where sub-paragraph (j) applies,”; and

(b) after sub-paragraph (i)(d) add—

“(j) where—

- (i) the claimant has been awarded entitlement to housing benefit;
- (ii) the claimant or the claimant’s partner has made a claim for employment and support allowance;
- (iii) subsequent to the first day of the period to which entitlement to housing benefit relates, the Department has decided that the claimant or the claimant’s partner has, or is to be treated as having, limited capability for work within the meaning of section 1(4) of the Welfare Reform Act or limited capability for work-related activity within the meaning of section 2(5) of that Act, and

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(a) 2007 c. 2 (N.I.)  
(b) S.R. 2001 No. 213; relevant amending Regulations are S.R. 2003 No. 418, S.R. 2006 No. 104 and S.R. 2007 No. 266  
(c) Sub-paragraph (h) was added by regulation 4(4) of S.R. 2003 No. 418  
(d) Sub-paragraph (i) was added by regulation 10(3) of S.R. 2006 No. 104

- (iv) either—
  - (aa) the assessment phase as defined in section 24(2) of the Welfare Reform Act has ended; or
  - (bb) regulation 7 of the Employment and Support Allowance Regulations (Northern Ireland) 2008<sup>(a)</sup> (circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work-related activity component arises does not apply) applies.”.

(4) In regulation 8 (date from which a decision superseding an earlier decision takes effect) after paragraph (12)<sup>(b)</sup> add—

“(13) Where the decision is superseded in accordance with regulation 7(2)(j), the decision shall take effect from—

- (a) the first day of entitlement to an amount in consequence of the decision of the Department referred to in regulation 7(2)(j)(iii); or
- (b) the first day that there would have been such entitlement had the claimant or the claimant’s partner been entitled to an employment and support allowance by virtue of section 1 of the Welfare Reform Act,

if that day is the first day of the benefit week but, if it is not, from the next following such day.”.

### **Amendment of the Housing Benefit Regulations**

**3.—**(1) The Housing Benefit Regulations (Northern Ireland) 2006<sup>(c)</sup> are amended in accordance with paragraphs (2) to (21).

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of “the Taxes Act” insert—

““the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007;”;

(ii) in the definition of “appropriate office” after “state pension credit” insert “or employment and support allowance”;

(iii) in the definition of “the benefit Acts” for “and the Jobseekers Order” substitute “, the Jobseekers Order and the Welfare Reform Act”;

(iv) after the definition of “the Consequential Provisions Regulations” insert—

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

(v) after the definition of “employed earner” insert—

““the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations (Northern Ireland) 2008;”;

(vi) after the definition of “an income-based jobseeker’s allowance” insert—

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

(vii) after the definition of “a joint-claim jobseeker’s allowance” insert—

““limited capability for work” has the meaning given in section 1(4) of the Welfare Reform Act;

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(a) S.R. 2008 No. 280

(b) Paragraph (12) was added as paragraph (11) by regulation 4(5) of S.R. 2003 No. 418 and renumbered by regulation 2(3)(b) of S.R. 2007 No. 266

(c) S.R. 2006 No. 405; relevant amending Rules are S.R. 2006 No. 462 and S.R. 2008 Nos. 92, 101, 112, 179, 262 and 285

“limited capability for work-related activity” has the meaning given in section 2(5) of the Welfare Reform Act;”;

(viii) after the definition of “the Macfarlane Trust” insert—

““main phase employment and support allowance” means an employment and support allowance where the calculation of the amount payable in respect of the claimant includes a component under section 2(1)(b) or 4(2)(b) of the Welfare Reform Act;”;

(ix) in the definition of “qualifying contributory benefit”(a) after paragraph (b) add—

“(c) contributory employment and support allowance;”, and

(x) in the definition of “qualifying income-related benefit”(b) after paragraph (b) add—

“(c) income-related employment and support allowance;”, and

(b) after paragraph (3) insert—

“(3A) For the purposes of these Regulations, a person is on an income-related employment and support allowance on any day in respect of which an income-related employment and support allowance is payable to him and on any day—

(a) in respect of which he satisfies the conditions for entitlement to an income-related employment and support allowance but where the allowance is not paid in accordance with section 18 of the Welfare Reform Act (disqualification); or

(b) which is a waiting day for the purposes of paragraph 2 of Schedule 2 to that Act and which falls immediately before a day in respect of which an income-related employment and support allowance is payable to him or would be payable to him but for section 18 of that Act.”.

(3) In regulation 5(1)(b) (persons who have attained the qualifying age for state pension credit) for “or on an income-based jobseeker’s allowance” substitute “, on an income-based jobseeker’s allowance or on an income-related employment and support allowance”.

(4) In—

(a) regulation 6(6) (remunerative work);

(b) regulation 11(2) and (4), in both places where it occurs, (eligible housing costs);

(c) regulation 17(2)(a) (persons of prescribed description);

(d) regulation 23(1) (circumstances in which income and capital of non-dependant is to be treated as claimant’s); and

(e) regulation 84(2)(e) (duty to notify changes of circumstances) in each place where it occurs,

for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”.

(5) In regulation 7(8)(c)(ii)(c) (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) after “Schedule 4” insert “or a component under paragraph 23 or 24 of that Schedule”.

(6) In regulation 10(5)(l) (persons from abroad) for “or a person on an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or on an income-related employment and support allowance”.

(7) In regulation 20 (applicable amounts) after paragraph (d) add—

“(e) the amount of either the—

(i) work-related activity component, or

(ii) support component,

which may be applicable to him in accordance with Part V of Schedule 4.”.

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(a) The definition of “qualifying contributory benefit” was inserted by regulation 2(2)(d) of S.R. 2008 No. 285

(b) The definition of “qualifying income-related benefit” was inserted by regulation 2(2)(d) of S.R. 2008 No. 285

(c) Regulation 7(8)(c)(ii) was amended by regulation 3(2) of S.R. 2008 No. 179

- (8) In regulation 21 (polygamous marriages) after paragraph (e) add—
- “(f) the amount of either the—
    - (i) work-related activity component, or
    - (ii) support component,
 which may be applicable to him in accordance with Part V of Schedule 4.”.
- (9) In regulation 25 (treatment of child care charges)—
- (a) in paragraph (2)—
    - (i) after sub-paragraph (b) insert—
      - “(ba) is paid an employment and support allowance;”, and
    - (ii) in sub-paragraph (d) after “incapacity for work” insert “ or limited capability for work”;
  - (b) in paragraph (3)(a) after “short-term incapacity benefit” insert “, an employment and support allowance”;
  - (c) in paragraph (11)—
    - (i) in sub-paragraph (a)(a) after “incapacity” add “or the support component or the work-related activity component on account of the other member having limited capability for work”;
    - (ii) after sub-paragraph (b)(b) insert—
      - “(ba) the claimant’s applicable amount would include the support component or the work-related activity component on account of the other member having limited capability for work but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations;”;
    - (iii) after sub-paragraph (c) insert—
      - “(ca) the claimant (within the meaning of regulation 2(1)) has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period;”, and
    - (iv) in sub-paragraph (d) after head (vi) add—
      - “(vii) main phase employment and support allowance;”; and
  - (d) after paragraph (12) insert—
    - “(12A) For the purposes of paragraph (11), once paragraph (11)(ca) applies to the claimant, if he then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is, on his again having, or being treated as having, limited capability for work at the end of that period, immediately thereafter to apply to him for so long as he has, or is treated as having, limited capability for work.”.
- (10) In regulation 37(c) (calculation of income other than earnings) after paragraph (3) insert—
- “(3A) Where the claimant or, where the claimant is a member of a couple, his partner is receiving a contributory employment and support allowance and that benefit has been reduced under regulation 63 of the Employment and Support Allowance Regulations the amount of that benefit to be taken into account is the amount as if it had not been reduced.”.
- (11) In regulation 47 (diminishing notional capital rule)—
- (a) in paragraph (3)—

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(a) Sub-paragraph (a) was substituted by regulation 3(3)(a) of S.R. 2008 No. 179  
 (b) Sub-paragraph (b) was amended by regulation 3(3)(b) of S.R. 2008 No. 179  
 (c) Regulation 37 was amended by regulation 5(2) of S.R. 2008 No. 262

- (i) at the end of sub-paragraph (b) omit “and”, and
- (ii) after sub-paragraph (c) add—
  - “and
  - (d) where the claimant has also claimed an employment and support allowance, the amount of an income-related employment and support allowance to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations (notional capital).”;
- (b) in paragraph (4) after sub-paragraph (c) add—
  - “(d) if the claimant would, but for regulation 115 of the Employment and Support Allowance Regulations, have been entitled to an income-related employment and support allowance in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount must be determined by dividing the amount of the income-related employment and support allowance to which he would have been so entitled by the number equal to the number of days in that part-week and multiplying the quotient so obtained by 7.”; and
  - (c) in paragraph (8) in the definition of “part-week”—
    - (i) for “and (c)” substitute “, (c) and (d)”, and
    - (ii) in paragraph (a) after “income support” insert “, an income-related employment and support allowance”.
- (12) In regulation 53(2)(a) (full-time students to be treated as not liable to make payments in respect of a dwelling)—
  - (a) in sub-paragraph (a) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”; and
  - (b) after sub-paragraph (e) insert—
    - “(ea) who has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period.”;
- (13) In regulation 72(8)(a) and (b) (non-dependant deductions) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance which does not include an amount under section 4(2)(b) of the Welfare Reform Act (the support component and the work-related activity component)”.
- (14) In regulation 81 (time and manner in which claims are to be made)—
  - (a) in paragraph (4)(a)(b) for “or a jobseeker’s allowance” substitute “, a jobseeker’s allowance or an employment and support allowance”;
  - (b) in paragraph (5)
    - (i) in sub-paragraph (a)—
      - (aa) for “, or an income-based jobseeker’s allowance” and “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”;
      - (bb) for “or jobseeker’s allowance” substitute “, jobseeker’s allowance or employment and support allowance”; and

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(a) Regulation 53(2) was amended by regulation 3(6) of S.R. 2008 No. 179  
 (b) Paragraph (4) was amended by regulation 2(2)(b) of S.R. 2006 No. 462

- (cc) omit “and for the purposes of” to the end, and
- (ii) in sub-paragraph (b) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”; and

(c) after paragraph (5) insert—

“(5A) For the purposes only of sub-paragraph (5)(a) a person who has been awarded an income-based jobseeker’s allowance or an income-related employment and support allowance is to be treated as entitled to that allowance for any days which immediately precede the first day in that award and on which he would have been entitled to that allowance but for regulations made under—

- (a) in the case of income-based jobseeker’s allowance, paragraph 4 of Schedule 1 to the Jobseekers Order (waiting days); or
- (b) in the case of income-related employment and support allowance, paragraph 2 of Schedule 2 to the Welfare Reform Act (waiting days).”.

(15) In regulation 92(1)(a) (circumstances in which payment is to be made to a landlord or the Department of Finance and Personnel) for “or a jobseeker’s allowance” substitute “, a jobseeker’s allowance or an employment and support allowance”.

(16) In regulation 102(1) (recovery of overpayments from prescribed benefits) after sub-paragraph (e) add—

“(f) an employment and support allowance.”.

(17) In Schedule 4 (applicable amounts)—

- (a) in paragraph 1(a) (personal allowances) for sub-paragraphs (1) to (3) substitute—

<i>“Column (1) Person or couple</i>	<i>Column (2) Amount</i>
(1) Single claimant who—	(1)
(a) is entitled to main phase employment and support allowance;	(a) £60.50;
(b) is aged not less than 25;	(b) £60.50;
(c) is aged less than 25.	(c) £47.95.
(2) Lone parent who—	(2)
(a) is entitled to main phase employment and support allowance;	(a) £60.50;
(b) is aged not less than 18;	(b) £60.50;
(c) is aged less than 18.	(c) £47.95.
(3) Couple where—	(3)
(a) the claimant is entitled to main phase employment and support allowance;	(a) £94.95;
(b) at least one member is aged not less than 18;	(b) £94.95;
(c) both members are aged less than 18.	(c) £72.35.”;

- (b) in paragraph 13(b) (additional condition for the disability premium) after sub-paragraph (8) add—

“(9) The claimant is not entitled to the disability premium if the claimant has, or is treated as having, limited capability for work.”;

- (c) in paragraph 15 (enhanced disability premium) for sub-paragraph (1) substitute—

(a) Paragraph 1 was amended by Schedule 6 to S.R. 2008 No. 92  
(b) Paragraph 13 was amended by regulation 3(8)(d) of S.R. 2008 No. 179

- “(1) Subject to sub-paragraph (2), the condition is that—
- (a) the Department has decided that the claimant has, or is to be treated as having, limited capability for work-related activity; or
  - (b) the care component of disability living allowance is, or would, but for a suspension of benefit in accordance with regulations made under section 113(2) of the Act or but for an abatement as a consequence of hospitalisation be payable at the highest rate prescribed under section 72(3) of the Act in respect of—
    - (i) the claimant, or
    - (ii) a member of the claimant’s family, who is aged less than 60.”; and
- (d) after Part IV (amounts of premiums specified in Part III) add—

## “PART V

### The components

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

- (a) the claimant or the claimant’s partner has made a claim for employment and support allowance;
- (b) the Department has decided that the claimant or the claimant’s partner has, or is to be treated as having, limited capability for work or limited capability for work-related activity; and
- (c) either—
  - (i) the assessment phase as defined in section 24(2) of the Welfare Reform Act has ended; or
  - (ii) regulation 7 of the Employment and Support Allowance Regulations (circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work-related activity component arises does not apply) applies.

**22.—**(1) The claimant has no entitlement under paragraph 23 or 24 if the claimant is entitled to the disability premium under paragraphs 12 and 13.

(2) Where the claimant and the claimant’s partner each satisfies paragraph 23 or 24, the component to be included in the claimant’s applicable amount is that which relates to the claimant.

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

**23.** The claimant is entitled to the work-related activity component if the Department has decided that the claimant or the claimant’s partner has, or is to be treated as having, limited capability for work.

#### **The support component**

**24.** The claimant is entitled to the support component if the Department has decided that the claimant or the claimant’s partner has, or is to be treated as having, limited capability for work-related activity.



## Part VI

### Amount of components

**25.** The amount of the work-related activity component is £24.00.

**26.** The amount of the support component is £29.00.”.

(18) In Schedule 5 (sums to be disregarded in the calculation of earnings)—

- (a) in paragraph 3(2) for “or severe disability premium” substitute “, severe disability premium, work-related activity component or support component”;
- (b) in paragraph 12 for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”;  
and
- (c) in paragraph 17(2)(b)(iv)(a)—
  - (i) for paragraph (aa) substitute—

“(aa) the claimant’s applicable amount includes a disability premium under paragraph 12, the work-related activity component under paragraph 23 or the support component under paragraph 24 of Schedule 4;”, and
  - (ii) in paragraph (bb) for “disability premium referred to in sub-head (aa)” substitute “, a disability premium, the work-related activity component or the support component referred to in paragraph (aa)”.

(19) In Schedule 6 (sums to be disregarded in the calculation of income other than earnings)—

- (a) in paragraph 4 for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”;  
and
- (b) in paragraph 8 after sub-paragraph (c) add—

“(d) an income-related employment and support allowance.”.

(20) In Schedule 7 (capital to be disregarded)—

- (a) in paragraph 5 for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”;  
and
- (b) in paragraph 9(1)(b) after head (e) add—

“(f) an income-related employment and support allowance.”.

(21) In Schedule 10 (matters to be included in decision notice)—

- (a) in the heading to Part II(c) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance, an income-related employment and support allowance”;
- (b) in paragraph 9(d), the heading to Part III and paragraph 14(a)(ii) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”;  
and
- (c) in paragraph 10 for “or on an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or on an income-related employment and support allowance”.

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(a) Paragraph 17(2)(b)(iv) was amended by regulation 3(9)(b) of S.R. 2008 No. 179  
(b) Paragraph 9(1) was amended by regulation 6(7)(a) of S.R. 2008 No. 112  
(c) The heading to Part II was amended by regulation 2(7)(a) of S.R. 2008 No. 285  
(d) Paragraph 9 was amended by regulation 2(7)(b) of S.R. 2008 No. 285



## **Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations**

4.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(a) are amended in accordance paragraphs (2) to (13).

(2) In regulation 2 (interpretation)—

(a) In paragraph (1)—

(i) after the definition of “the Taxes Act” insert—

““the Welfare Reform Act” means the Welfare Reform Act (Northern Ireland) 2007;”;

(ii) in the definition of “appropriate office” after “state pension credit” insert “or employment and support allowance”;

(iii) in the definition of “the benefit Acts” for “and the State Pension Credit Act” substitute “, the State Pension Credit Act and the Welfare Reform Act”;

(iv) after the definition of “the Consequential Provisions Regulations” insert—

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

(v) after the definition of “employed earner” insert—

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

(vi) after the definition of “an income-based jobseeker’s allowance” insert—

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

(vii) after the definition of “the Macfarlane (Special Payments) (No. 2) Trust” insert—

““main phase employment and support allowance” means an employment and support allowance where the calculation of the amount payable in respect of the claimant includes a component under section 2(1)(b) or 4(2)(b) of the Welfare Reform Act;”;

(viii) in the definition of “qualifying contributory benefit”(c) after paragraph (b) add—

“(c) contributory employment and support allowance;” and

(ix) in the definition of “qualifying income-related benefit”(d) after paragraph (b) add—

“(c) income-related employment and support allowance;” and

(b) After paragraph (3) insert—

“(3A) For the purposes of these Regulations, a person is on an income-related employment and support allowance on any day in respect of which an income-related employment and support allowance is payable to him and on any day—

(a) in respect of which he satisfies the conditions for entitlement to an income-related employment and support allowance but where the allowance is not paid in accordance with section 18 of the Welfare Reform Act (disqualification); or

(b) which is a waiting day for the purposes of paragraph 2 of Schedule 2 to that Act and which falls immediately before a day in respect of which an income-related employment and support allowance is payable to him or would be payable to him but for section 18 of that Act.”.

(3) In regulation 5(2) (persons who have attained the qualifying age for state pension credit) for “or on an income-based jobseeker’s allowance” substitute “, on an income-based jobseeker’s allowance or on an income-related employment and support allowance”.

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(a) S.R. 2006 No. 406; relevant amending Regulations are S.R. 2006 No. 462 and S.R. 2008 No. 285

(b) S.R. 2008 No. 280

(c) The definition of “qualifying contributory benefit” was inserted by regulation 3(2)(b) of S.R. 2008 No. 285

(d) The definition of “qualifying income-related benefit” was inserted by regulation 3(2)(c) of S.R. 2008 No. 285

(4) In regulations 6(6) (remunerative work) and 17(2)(a) (persons of prescribed description) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance”.

(5) In regulation 27(4) (meaning of “income”) after sub-paragraph (c) add—

“(d) section 3 of the Welfare Reform Act (deductions from contributory employment and support allowance in respect of pensions and councillor’s allowances).”.

(6) In regulation 29 (treatment of child care charges)—

(a) in paragraph (2)—

(i) after sub-paragraph (b) insert—

“(ba) is paid an employment and support allowance;”, and

(ii) in sub-paragraph (d) after “incapacity for work” insert “or limited capability for work”;

(b) in paragraph (3)(a) after “short-term incapacity benefit” insert “, an employment and support allowance”;

(c) in paragraph (11)—

(i) after sub-paragraph (b) insert—

“(ba) the claimant’s applicable amount would include the support component or the work-related activity component on account of the other member having limited capability for work but for that other member being treated as not having limited capability for work by virtue of a determination made in accordance with the Employment and Support Allowance Regulations;”;

(ii) after sub-paragraph (c) insert—

“(ca) the claimant (within the meaning of regulation 2(1)) has, or is treated as having, limited capability for work and has had, or been treated as having, limited capability for work in accordance with the Employment and Support Allowance Regulations for a continuous period of not less than 196 days; and for this purpose any two or more separate periods separated by a break of not more than 84 days must be treated as one continuous period;”, and

(iii) in sub-paragraph (d) after head (vi) add—

“(vii) main phase employment and support allowance;”; and

(d) after paragraph (12) insert—

“(12A) For the purposes of paragraph (11), once paragraph (11)(ca) applies to the claimant, if he then ceases, for a period of 84 days or less, to have, or to be treated as having, limited capability for work, that paragraph is, on his again having, or being treated as having, limited capability for work at the end of that period, immediately thereafter to apply to him for so long as he has, or is treated as having, limited capability for work.”.

(7) In regulation 46 (diminishing notional capital rule)—

(a) in paragraph (3) after sub-paragraph (c) add—

“and

(d) where the claimant has also claimed an employment and support allowance, the amount of an income-related employment and support allowance to which he would have been entitled in respect of the benefit week to which paragraph (2) refers but for the application of regulation 115 of the Employment and Support Allowance Regulations (notional capital).”;

(b) in paragraph (4) after sub-paragraph (c) add—

“(d) if the claimant would, but for regulation 115 of the Employment and Support Allowance Regulations, have been entitled to an income-related employment and support allowance in respect of the benefit week, within the meaning of regulation 2(1) of those Regulations (interpretation), which includes the last day of the relevant week, the amount to which he would have been entitled and, for the

purposes of this sub-paragraph, if the amount is in respect of a part-week, that amount must be determined by dividing the amount of the income-related employment and support allowance to which he would have been so entitled by the number equal to the number of days in that part-week and multiplying the quotient so obtained by 7.”; and

- (c) in paragraph (8) in the definition of “part week”—
  - (i) for “and (c)” substitute “, (c) and (d)”, and
  - (ii) in paragraph (a) after “state pension credit” insert “, an income-related employment and support allowance”.

(8) In regulation 52 (continuing payments where state pension credit claimed)—

- (a) in paragraphs (1)(c)(i) and (2)(a)(ii) after “income-based jobseeker’s allowance” insert “or income-related employment and support allowance”; and
- (b) in paragraph (3) after “income support” insert “, income-related employment and support allowance”.

(9) In regulation 53(8)(a) and (b) (non-dependant deductions) for “or an income-based jobseeker’s allowance” substitute “, an income-based jobseeker’s allowance or an income-related employment and support allowance which does not include an amount under section 4(2)(b) of the Welfare Reform Act (the support component and the work-related activity component)”.

(10) In regulation 62(5)(a)(a) (time and manner in which claims are to be made) for “or a jobseeker’s allowance” substitute “, a jobseeker’s allowance or an employment and support allowance”.

(11) In regulation 83(1) (recovery of overpayments from prescribed benefits) after sub-paragraph (e) add—

“(f) an employment and support allowance.”.

(12) In Schedule 5 (sums disregarded from claimant’s earnings) in paragraph 5(1)(a) after sub-head (vi) add—

“(vii) main phase employment and support allowance;”.

(13) In Schedule 7 (capital to be disregarded)—

- (a) in paragraph 21(2)—
  - (i) in head (j) omit “or”, and
  - (ii) after head (k) add—
    - “or
    - (l) income-related employment and support allowance.”; and
- (b) in paragraph 22(2) after head (d) add—
  - “(e) paragraph 11(2) of Schedule 9 to the Employment and Support Allowance Regulations.”.

### **Amendment of the Housing Benefit (Consequential Provisions) Regulations**

**5.** In Schedule 3 to the Housing Benefit (Consequential Provisions) Regulations (Northern Ireland) 2006(b) (transitional and savings provisions) in paragraph 5(2) in regulation 14(3) as set out in that paragraph—

- (a) in sub-paragraph (c) omit “or”; and
- (b) after sub-paragraph (c) insert—
  - “(ca) has limited capability for work within the meaning of section 1(4) of the Welfare Reform Act (Northern Ireland) 2007;

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(a) Regulation 62(5) was amended by regulation 3(2)(b) of S.R. 2006 No. 462

(b) S.R. 2006 No. 407; regulation 14(3), as set out in paragraph 5(2), was amended by regulation 5 of S.R. 2008 No. 179

(cb) is treated as not having limited capability for work in accordance with regulations made under paragraph 1(a) of Schedule 2 to that Act (employment and support allowance: supplementary provisions); or”.

Sealed with the Official Seal of the Department for Social Development on 15th September 2008

(L.S.)

*John O'Neill*

A senior officer of the Department for Social Development

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend various sets of Regulations relating to housing benefit in connection with the introduction of employment and support allowance from 27th October 2008.

Regulation 1 provides for the citation and commencement of the Regulations.

Regulation 2 amends the Housing Benefit (Decisions and Appeals) Regulations (Northern Ireland) 2001 in consequence of the introduction of employment and support allowance.

Regulation 3 amends the Housing Benefit Regulations (Northern Ireland) 2006 in order to:

- add references to employment and support allowance;
- provide that the claimant's applicable amount can include the work-related activity component or the support component;
- provide for the personal allowance of a claimant;
- provide for the amount of the claimant's personal allowance;
- provide further conditions for receipt of the disability premium and the enhanced disability premium;
- provide for the conditions of entitlement for the work-related activity component and the support component and for the amount of those components.

Regulation 4 makes similar amendments to the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006.

Regulation 5 amends the Housing Benefit (Consequential Provisions) Regulations (Northern Ireland) 2006 in consequence of the introduction of employment and support allowance.

Section 28(2) of the Welfare Reform Act (Northern Ireland) 2007, the enabling provision under which these Regulations are made, was brought into operation, for the purpose only of authorising the making of regulations, on 1st July 2008 and, for all other purposes, on 27th July 2008 by virtue of the Welfare Reform (2007 Act) (Commencement No. 5) Order (Northern Ireland) 2008 (S.R. 2008 No. 276 (C. 14)).

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**2008 No. 378**

**HOUSING; RATES**

The Housing Benefit (Employment and Support Allowance  
Consequential Provisions) Regulations (Northern Ireland) 2008