*Draft Regulations laid before Parliament under section 26(1) of the Welfare Reform Act 2007, for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 2013 No.

# SOCIAL SECURITY

## The Employment and Support Allowance Regulations 2013

*Made - - - -*

*Coming into force - - 29th April 2013*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 2(1)(a) and (c) and (4)(a) and (c), 3(1)(c), (2)(b) and (d) and (3), 8(1) to (3), (4)(a) and (b), (5) and (6), 9(1) to (3) and (4)(a) and (b), 11A(5), 11B(2) and (3), 11D(2)(d), 11E(1), 11H(5) and (6), 11J(3), (4) and (8), 17(1), (2) and (3)(a) and (b), 18(1), (2) and (4), 20(2) to (7), 24(1), (2)(b) and (3) and 25(2) to (5) of, and paragraphs 1(3) and (4), 3(2) and 4(1)(a) and (c), (3) and (4) of Schedule 1 and paragraphs 1 to 4A, 5, 6, 9 and 10 of Schedule 2 to, the Welfare Reform Act 2007(**1**), sections 5(1A), 189(4) to (6) and 191 of the Social Security Administration Act 1992(**2**), section 21(1)(a) of the Social Security Act 1998(**3**) and paragraphs 2(3) and 3 of Schedule 5 to the Welfare Reform Act 2012(**4**).

The Social Security Advisory Committee has agreed that the proposals in respect of these Regulations should not be referred to it(**5**).

A draft of these Regulations has been laid before Parliament in accordance with section 26(1) of the Welfare Reform Act 2007(**6**) and approved by a resolution of each House of Parliament.

(**1**) 2007 c.5. Section 2(1) was amended by paragraph 24 of Schedule 3 and paragraph 6(2) of Schedule 5 to the Welfare Reform Act 2012 (c.5). Section 3(2)(d) was amended by paragraph 26(c) of Schedule 3 to the Welfare Reform Act 2012. Sections 11A to 11J were inserted by section 57(2) of the Welfare Reform Act 2012. Section 18(4) was amended by paragraph 26(d) of Schedule 3 to the Welfare Reform Act 2012. Section 20(2) to (7) was amended by paragraph 26(e) of Schedule 3 to the Welfare Reform Act 2012. Paragraph 1(3) of Schedule 1 was substituted by section 13(4) of the Welfare Reform Act 2009 (c.24) and paragraph 1(4) was amended by section 13(5) of that Act. Paragraph 3(2) of Schedule 1 was amended by paragraph 26(f) of Schedule 3 to the Welfare Reform Act 2012. Paragraph 4A of Schedule 2 was inserted by section 54(6) of the Welfare Reform Act 2012 and paragraph 6 was amended by paragraph 26(g) of Schedule 3 to the Welfare Reform Act 2012. Section 24(1) is cited for the meaning it gives to "prescribed" and "regulations".

(**2**) 1992 c.4. Section 5(1A) was inserted by section 99(3) of the Welfare Reform Act 2012.

(**3**) 1998 c.14.

(**4**) 2012 c.5.

(**5**) *See* sections 172(1) and 173(1)(b) of the Social Security Administration Act 1992.

(**6**) Section 26(1) was amended by paragraph 8(4) of Schedule 3 to the Welfare Reform Act 2008 and section 57(6) of, and Schedule 14 to, the Welfare Reform Act 2012.

# PART 1

## General

### Citation, commencement and application

**1.**—(1) These Regulations may be cited as the Employment and Support Allowance Regulations 2013.

(2) They come into force on 29th April 2013.

(3) They apply in relation to a particular case on any day on which section 33(1)(b) of the Welfare Reform Act 2012(**7**) (abolition of income-related employment and support allowance) is in force and applies in relation to that case.

### Interpretation

**2.** In these Regulations—

"the Act" means the Welfare Reform Act 2007;

"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 Technology 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 Technology Education Council or a higher or advanced higher national certificate of the Scottish Qualifications Authority or a general certificate of education (advanced level);

"benefit week" means a period of seven 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 seven days ending on—

(a) the day before the first day of the first period of seven days which—

(i) ends on such day as the Secretary of State may direct; and

(ii) follows the date of claim for an employment and support allowance; or

(b) 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(**8**);

"child" means a person under the age of 16;

"Claims and Payments Regulations 2013" means the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013(**9**);

"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;

(**7**) 2012 c.5.
(**8**) Section 70 was amended by S.I.s 1994/2556, 2002/1457 and 2011/2426.
(**9**) S.I. 2013/XXX.

"confinement" has the meaning given to it by section 171(1) of the Contributions and Benefits Act(**10**);

"councillor" means—

(a) in relation to England and Wales, a member of a London borough council, a county council, a county borough 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(**11**);

"councillor's allowance" means—

(a) in England, an allowance under or by virtue of—

(i) section 173 or 177 of the Local Government Act 1972(**12**); or

(ii) a scheme made by virtue of section 18 of the Local Government and Housing Act 1989(**13**),

other than such an allowance as is mentioned in section 173(4) of the Local Government Act 1972;

(b) in Wales, an allowance under or by virtue of 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

(c) 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) section 11 of the Local Governance (Scotland) Act 2004(**14**);

"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 only if they would be regarded as living together as husband and wife were they instead two people of the opposite sex;

(**10**) The definition of "confinement" in section 171(1) of the Contributions and Benefits Act was amended by section 4(2) of the Still-Birth (Definition) Act 1992.

(**11**) 1994 c.39. Section 2 was amended by section 232(1) of the Environment Act 1995 (c.25).

(**12**) 1972 c.70. Section 173 and 177 were repealed by the Local Government (Wales) Measure 2011. Section 173 was amended by paragraph 26 of Schedule 11 to the Local Government and Housing Act 1989 (c.42), section 24 of the Local Government, Planning and Land Act 1980 (c.42) and S.I. 1977/1710. Section 173 was modified by S.I. 2002/2899. Section 177 was amended by paragraph 28 of Schedule 11 to the Local Government and Housing Act 1989, paragraph 3 of Schedule 30 to the School Standards and Framework Act 1998 (c.31), paragraph 1 of Schedule 21 to the Education Act 2002 (c.32), paragraph 1 of Schedule 3 to the Education and Inspections Act 2006 (c.40), paragraph 42 of Schedule 1 and Schedule 2 to the Education and Skills Act 2002 (c.25) and paragraph 1 of Schedule 1 to the Education Act 2011 (c.21). Section 177 was modified by S.I.s 1985/1884, 1996/1243 and 2005/421.

(**13**) 1989 c.42. Parts of section 18 were repealed and amended by the Local Government (Wales) Measure 2011. Section 18 was amended by section 99 of the Local Government Act 2000 (c.22), paragraph 37 of Schedule 4 to the Police and Magistrates' Court Act 1994 (c.29) and paragraph 97 of Schedule 37 to the Education Act 1996 (c.56). Section 18 was modified by paragraph 11 of Schedule 7 to the Environment Act 1995 (c.25).

(**14**) 2004 asp 9.

"Decisions and Appeals Regulations 1999" means the Social Security and Child Support (Decisions and Appeals) Regulations 1999(**15**);

"Decisions and Appeals Regulations 2013" means the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013(**16**);

"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;

"employed earner" is to be construed in accordance with section 2(1)(a) of the Contributions and Benefits Act(**17**);

"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 or the National Assembly of Wales;

"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(**18**);

"First-tier Tribunal" has the meaning given by section 3(1) of the Tribunals, Courts and Enforcement Act 2007(**19**);

"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(**20**);

"Health Service Act" means the National Health Service Act 2006(**21**);

"Health Service (Wales) Act" means the National Health Service (Wales) Act 2006(**22**);

"Income Support Regulations" means the Income Support (General) Regulations 1987(**23**);

"limited capability for work assessment" means the assessment described in regulation 15(2) and in Schedule 2;

"Medical Evidence Regulations" means the Social Security (Medical Evidence) Regulations 1976(**24**);

(**15**) S.I. 1999/991.
(**16**) S.I. 2013/XXX.
(**17**) Section 2(1) was amended by paragraph 171 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1).
(**18**) Paragraph 1(1) of Schedule 1 was amended by section 13(1) of the Welfare Reform Act 2009 (c.24)
(**19**) 2007 c.15.
(**20**) 1998 c.8. Section 60 was amended by section 26(9) of the National Health Service Reform and Health Care Professions Act 2002 (c.17), paragraph 1 of Schedule 8 and paragraph 10 of Schedule 10 to the Health and Social Care Act 2008 (c.14), sections 209, 210 and 213 of, and paragraphs 60 and 72 of Schedule 15 to, the Health and Social Care Act 2012 (c.7) and S.I.s 2002/253 and 243 and 2010/231.
(**21**) 2006 c.41.
(**22**) 2006 c.42.
(**23**) S.I. 1987/1967.
(**24**) S.I. 1976/615.

"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,

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(**25**) (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(**26**);

"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)(**27**);

"partner" means—

(a) where a claimant is a member of a couple, the other member of that couple; or

(b) where a claimant 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;

"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(2), a period throughout which a person has, or is treated as having, limited capability for work under these Regulations, and does not include a period which is outside the prescribed time for claiming as specified in regulation 28 of the Claims and Payments Regulations 2013;

"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;

"personal pension scheme" means—

(a) a personal pension scheme as defined by section 1 of the Pension Schemes Act 1993(**28**);

(b) an annuity contract, trust scheme or substituted contract 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(**29**);

(**25**) S.I. 1999/584. Relevant amendments were made by S.I. 2012/2397.
(**26**) 1993 c.48. Relevant amendments were made by section 239 of the Pensions Act 2004 and S.I. 2007/3014.
(**27**) Regulation 5 was amended by S.I.s 1988/1445 and 2022, 1989/1323, 1990/547, 1991/1559, 1993/2119, 1995/516, 1996/1944, 1998/663, 1999/2556 and 3178, 2000/681, 2001/488, 2002/2689 and 2007/2618. Regulation 6(1) and (4) was amended by S.I.s 1988/1445, 1991/1559, 1992/468 and 2155, 1994/2139, 1995/516, 1999/2165, 2556 and 3156, 2000/681, 2004/963, 2009/3228 and 2010/641.
(**28**) Relevant amendments were made by section 239 of the Pensions Act 2004 and paragraph 23 of Schedule 20 to the Finance Act 2007 (c.11).
(**29**) 2007 c.11.