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STATUTORY INSTRUMENTS

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**2008 No. 794**

**The Employment and Support Allowance Regulations 2008**

**PART 10**

**INCOME AND CAPITAL**

**CHAPTER 1**

**General**

**Calculation of income and capital of members of claimant's family and of a polygamous marriage**

**83.**—(1) Subject to paragraph (4), the income and capital of a claimant's partner which by virtue of paragraph 6(2) of Schedule 1 to the Act is to be treated as income and capital of the claimant, is to be calculated in accordance with the following provisions of this Part in like manner as for the claimant; and any reference to the “claimant” is, except where the context otherwise requires, to be construed, for the purposes of this Part, as if it were a reference to the claimant's partner.

(2) Subject to the following provisions of this Part, the income paid to, or in respect of, and capital of, a child or young person who is a member of the claimant's family is not to be treated as the income or capital of the claimant.

(3) Subject to paragraph (5), where a claimant or the partner of a claimant is married polygamously to two or more members of the claimant's household—

- (a) the claimant is to be treated as possessing capital and income belonging to each such member; and
- (b) the income and capital of that member is to be calculated in accordance with the following provisions of this Part in like manner as for the claimant.

(4) Where at least one member of a couple is aged less than 18 and the applicable amount of the couple falls to be determined under paragraph 1(3)(e), (f), (g), (h) or (i) of Schedule 4 (amounts), the income of the claimant's partner is not to be treated as the income of the claimant to the extent that—

- (a) in the case of a couple where both members are aged less than 18, the amount specified in paragraph 1(3)(c) of that Schedule exceeds the amount specified in paragraph 1(3)(i) of that Schedule; and
- (b) in the case of a couple where only one member is aged less than 18, the amount specified in paragraph 1(3)(a) of that Schedule exceeds the amount which is specified in paragraph 1(3)(h) of that Schedule.

(5) Where a member of a polygamous marriage is a partner aged less than 18 and the amount which applies in respect of that partner under regulation 68(2) (polygamous marriages) is nil, the claimant is not to be treated as possessing the income of that partner to the extent that an amount in respect of that partner would have been included in the applicable amount if the partner had fallen within the circumstances set out in regulation 68(2)(a) or (b).

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*Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 10. (See end of Document for details)*

**Income of participants in the self-employment route**

84. Chapters 2, 3, 4, 6, 8 and 9 of this Part and regulations 132 to 137, 142 and 143 do not apply to any income which is to be calculated in accordance with Chapter 5 of this Part (participants in the self-employment route).

**<sup>F1</sup>... liable relative payments**

85. Regulations 91 to 109, 111 to 117 and Chapter 10 of this Part do not apply to any payment which is to be calculated in accordance with Chapter 8 of this Part (<sup>F2</sup>... liable relative payments]).

**Textual Amendments**

**F1** Words in reg. 85 heading omitted (for specified purposes and with effect in accordance with reg. 1(6) of the amending S.I.) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(6)(c), **11(4)**

**F2** Words in reg. 85 omitted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(3)**

**Child support**

**<sup>F3</sup>86.** .....

**Textual Amendments**

**F3** Reg. 86 omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(4)(a)**

**Calculation of income and capital of students**

87. The provisions of Chapters 2 to 7 of this Part (income and capital) are to have effect in relation to students and their partners subject to the modifications set out in Chapter 10 of this Part (students).

**Calculation of income which consists of earnings of participants in exempt work**

88. Notwithstanding the other provisions of this Part, regulations 91(2), 92 to 99 and 108(3) and (4) and Schedule 7 (sums to be disregarded in the calculation of earnings) are to apply to any income which consists of earnings which is to be calculated for the purposes of regulations 45(2) to (4) (exempt work – earnings limits).

**Calculation of income where pension payments, PPF periodic payments or councillor's allowance payable**

89. Notwithstanding the other provisions of this Part, regulation 94(1) and (6) is to apply for the purposes of calculating the amount of any pension payments, PPF periodic payments or councillor's allowance to which Chapter 2 of Part 9 (deductions from the contributory allowance) applies.

## CHAPTER 2

### Income

#### Calculation of income

**90.**—(1) For the purposes of paragraph 6(1) of Schedule 1 to the Act (conditions of entitlement to an income-related allowance), the income of a claimant is to be calculated on a weekly basis—

- (a) by determining in accordance with this Part, other than Chapter 7, the weekly amount of the claimant's income; and
- (b) by adding to that amount the weekly income calculated under regulation 118 (calculation of tariff income from capital).

(2) For the purposes of paragraph (1) “income” includes capital treated as income under regulation 105 (capital treated as income) and income which a claimant is treated as possessing under regulations 106 to 109 (notional income).

(3) For the purposes of paragraph 10 of Schedule 2 to the Act (effect of work), the income which consists of earnings of a claimant is to be calculated on a weekly basis by determining the weekly amount of those earnings in accordance with regulations 91(2), 92 to 99 and 108(3) and (4) and Schedule 7.

(4) For the purposes of paragraph (3), “income which consists of earnings” includes income which a claimant is treated as possessing under regulation 108(3) and (4).

(5) For the purposes of pension payments, PPF periodic payments and a councillor's allowance to which section 3 of the Act applies, the income other than earnings of a claimant is to be calculated on a weekly basis by determining in accordance with regulation 94(1), (2), (5) and (6) the weekly amount of the pension payments, PPF periodic payment or a councillor's allowance paid to the claimant.

#### Calculation of earnings derived from employed earner's employment and income other than earnings

**91.**—(1) Earnings derived from employment as an employed earner and income which does not consist of earnings are to be taken into account over a period determined in accordance with the following provisions of this regulation and at a weekly amount determined in accordance with regulation 94 (calculation of weekly amount of income).

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

- (a) where the payment is monthly, a period equal to the number of weeks from the date on which the payment is treated as paid to the date immediately before the date on which the next monthly payment would have been so treated as paid whether or not the next monthly payment is actually paid;
- (b) where the payment is in respect of a period which is not monthly, a period equal to the length of the period for which payment is made;
- (c) in any other case, a period equal to such number of weeks as is equal to the number obtained (and any fraction is to be treated as a corresponding fraction of a week) by dividing—
  - (i) the net earnings; or
  - (ii) in the case of income which does not consist of earnings, the amount of that income less any amount paid by way of tax on that income which is disregarded under paragraph 1 of Schedule 8 (income other than earnings to be disregarded),

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by the amount of an [<sup>F4</sup>employment and support] allowance which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from that payment under Schedule 7 (earnings to be disregarded) or, as the case may be, any paragraph of Schedule 8 other than paragraph 1 of that Schedule, as is appropriate in the claimant's case,

and that period is to begin on the date on which the payment is treated as paid under regulation 93 (date on which income is treated as paid).

(3) The period over which a Career Development Loan, which is paid pursuant to section 2 of the Employment and Training Act 1973 <sup>F5</sup>, is to be taken into account is the period of education and training intended to be supported by that loan.

(4) Where grant income as defined in Chapter 10 of this Part has been paid to a claimant who ceases to be a full-time student before the end of the period in respect of which that income is payable and, as a consequence, the whole or part of that income falls to be repaid by that claimant, that income is to be taken into account over the period beginning on the date on which that income is treated as paid under regulation 93 (date on which income is treated as paid) and ending—

- (a) on the date on which repayment is made in full;
- (b) where the grant is paid in instalments, on the day before the next instalment would have been paid had the claimant remained a full-time student; or
- (c) on the last date of the academic term or vacation during which that claimant ceased to be a full-time student,

whichever is the earlier.

(5) Where, but for this paragraph—

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

those earnings are to be taken into account over a period equal to the aggregate length of those periods and that period is to begin with the earliest date on which any part of those earnings would otherwise be treated as paid under regulation 93.

(6) In a case to which paragraph (5) applies, earnings under regulation 95 (earnings of employed earners) are to be taken into account in the following order of priority—

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

(7) Where earnings to which regulation 95(1)(b) to (d) applies are paid in respect of part of a day, those earnings are to be taken into account over a period equal to a day.

(8) Any earnings to which regulation 95(1)(j) applies which are paid in respect of, or on the termination of, part-time employment, are to be taken into account over a period equal to one week.

(9) In this regulation “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);

(10) For the purposes of this regulation the claimant's earnings and income which does not consist of earnings are to be calculated in accordance with Chapters 3 and 6 respectively of this Part.

### Textual Amendments

- F4** Words in reg. 91(2)(c) substituted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **10(3)**
- F5** 1973 c. 50. Section 2 was substituted by the [Employment Act 1988 \(c. 19\)](#), **section 25(1)** and amended by the [Employment Act 1989 \(c. 38\)](#), **section 29(4)** and Part 1 of Schedule 7 and the [Trade Union Reform and Employment Rights Act 1993 \(c. 19\)](#), **section 47(1)**.

### Calculation of earnings of self-employed earners

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

- (a) over a period of one year; or
- (b) where the claimant has recently become engaged in that employment or there has been a change which is likely to affect the normal pattern of business, over such other period as may, in any particular case, enable the weekly amount of the claimant's earnings to be determined more accurately.
- (a) <sup>[F6(2)</sup> (a) Where the claimant's earnings consist of any items to which this paragraph applies those earnings shall be taken into account over a period equal to such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the earnings by the amount of employment and support allowance which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from the payment under Schedule 7 (earnings to be disregarded) as is appropriate in the claimant's case;
- (b) This paragraph applies to—
- (i) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark; or
- (ii) any payment in respect of any book registered under the Public Lending Right Scheme 1982 or work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982,

where the claimant is the first owner of the copyright, design, patent or trademark, or an original contributor to the book or work concerned.]

(3) For the purposes of this regulation the claimant's earnings are to be calculated in accordance with Chapter 4 of this Part.

### Textual Amendments

- F6** Reg. 92(2) substituted (for specified purposes and with effect in accordance with reg. 1(4) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), **reg. 10(4)**

### Date on which income is treated as paid

**93.**—(1) Except where paragraph (2) or (3) applies, a payment of income to which regulation 91 (calculation of earnings derived from employed earner's employment and income other than earnings) applies is to be treated as paid—

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- (a) in the case of a payment which is due to be paid before the first benefit week pursuant to the claim, on the date on which it is due to be paid;
  - (b) in any other case, on the first day of the benefit week in which it is due to be paid or the first succeeding benefit week in which it is practicable to take it into account.
- (2) Employment and support allowance, income support, jobseeker's allowance, maternity allowance, short-term or long-term incapacity benefit, or severe disablement allowance is to be treated as paid on the day of the benefit week in respect of which it is payable.
- (3) [<sup>F7</sup>Subject to paragraph (4),] Working tax credit <sup>F8</sup> ... is to be treated as paid—
- (a) where the award of that tax credit begins on the first day of a benefit week, on that day [<sup>F9</sup>or];
  - (b) on the first day of the benefit week that follows the date the award begins; <sup>F10</sup> ...
  - <sup>F11</sup>(c) .....

until the last day of the last benefit week that coincides with or immediately follows the last day for which the award of that tax credit is made.

[<sup>F12</sup>(4) Where working tax credit is paid under regulation 7D (ceasing to undertake work or working less than 16 hours a week) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002, it shall be treated as paid on the first day of the benefit week in which that award of tax credit begins; but this paragraph shall only apply until the last day of the last benefit week that coincides with or precedes the last day for which tax credit is awarded under that regulation.]

Textual Amendments	
<b>F7</b>	Words in reg. 93(3) inserted (6.4.2009) by <a href="#">The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583)</a> , regs. 1(2), <b>10(5)(a)(i)</b>
<b>F8</b>	Words in reg. 93(3) omitted (6.4.2009) by virtue of <a href="#">The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583)</a> , regs. 1(2), <b>10(5)(a)(ii)</b>
<b>F9</b>	Word in reg. 93(3)(a) inserted (6.4.2009) by <a href="#">The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583)</a> , regs. 1(2), <b>10(5)(a)(iii)</b>
<b>F10</b>	Word in reg. 93(3)(b) omitted (6.4.2009) by virtue of <a href="#">The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583)</a> , regs. 1(2), <b>10(5)(a)(iv)</b>
<b>F11</b>	Reg. 93(3)(c) omitted (6.4.2009) by virtue of <a href="#">The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583)</a> , regs. 1(2), <b>10(5)(a)(v)</b>
<b>F12</b>	Reg. 93(4) inserted (6.4.2009) by <a href="#">The Social Security (Miscellaneous Amendments) Regulations 2009 (S.I. 2009/583)</a> , regs. 1(2), <b>10(5)(b)</b>

**Calculation of weekly amount of income**

94.—(1) For the purposes of regulation 91 (calculation of earnings derived from employed earner's employment and income other than earnings) and Chapter 2 of Part 9 (deductions from contributory allowance), subject to paragraphs (2) to (8), where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount is to be the amount of that payment;
- (b) exceeds a week, the weekly amount is to be determined—
  - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
  - (ii) in a case where that period is 3 months, by multiplying the amount of the payment by 4 and dividing the product by 52;

- [<sup>F13</sup>(iii) in a case where that period is a year and the payment is an award of working tax credit, by dividing the payment by the number of days in the year and multiplying the result by 7;]
- [<sup>F13</sup>(iiiia) in a case where that period is a year and the payment is income other than an award of working tax credit, by dividing the amount of the payment by 52;]
- (iv) in any other case by multiplying the amount of the payment by 7 and dividing the product by the number equal to the number of days in the period in respect of which it is made.
- (2) Where a payment for a period not exceeding a week is treated under regulation 93(1)(a) (date on which income is treated as paid) as paid before the first benefit week and a part is to be taken into account for some days only in that week (the relevant days), the amount to be taken into account for the relevant days is to be calculated by multiplying the amount of the payment by the number equal to the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.
- (3) Where a payment is in respect of a period equal to or in excess of a week and a part thereof is to be taken into account for some days only in a benefit week (the relevant days), the amount to be taken into account for the relevant days is, except where paragraph (4) applies, to be calculated by multiplying the amount of the payment by the number equal to the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.
- (4) In the case of a payment of—
- (a) maternity allowance, short-term or long-term incapacity benefit or severe disablement allowance, the amount to be taken into account for the relevant days is to be the amount of benefit payable in respect of those days;
- (b) an employment and support allowance, income support or a jobseeker's allowance, the amount to be taken into account for the relevant days is to be calculated by multiplying the weekly amount of the benefit by the number of relevant days and dividing the product by 7.
- (5) Except in the case of a payment which it has not been practicable to treat under regulation 93(1)(b) (date on which income is treated as paid) as paid on the first day of the benefit week in which it is due to be paid, where a payment of income from a particular source is or has been paid regularly and that payment falls to be taken into account in the same benefit week as a payment of the same kind and from the same source, the amount of that income to be taken into account in any one benefit week is not to exceed the weekly amount determined under paragraph (1)(a) or (b) of the payment which under regulation 93(1)(b) is treated as paid first.
- (6) Where the amount of the claimant's income fluctuates and has changed more than once, or a claimant's regular pattern of work is such that the claimant does not work every week, the foregoing paragraphs may be modified so that the weekly amount of the claimant's income is determined by reference to the claimant's average weekly income—
- (a) if there is a recognisable cycle of work, over the period of one complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences);
- (b) in any other case, over a period of 5 weeks or such other period as may, in the particular case, enable the claimant's average weekly income to be determined more accurately.
- (7) Where income is taken into account under paragraph (4) of regulation 91 over the period specified in that paragraph, the amount of that income to be taken into account in respect of any week in that period is to be an amount equal to the amount of that income which would have been taken into account under regulation 132 (calculation of grant income) had the person to whom that income was paid not ceased to be a full-time student.

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(8) Where any payment of earnings is taken into account under [<sup>F14</sup>paragraph (8)] of regulation 91 (calculation of earnings derived from employed earner's employment and income other than earnings), over the period specified in that paragraph, the amount to be taken into account is to be equal to the amount of the payment.

#### Textual Amendments

- F13** Reg. 94(1)(b)(iii)(iiia) substituted for reg. 94(1)(b)(iii) (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **10(6)**
- F14** Words in reg. 94(8) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(1)**

## CHAPTER 3

### Employed earners

#### Earnings of employed earners

**95.**—(1) Subject to [<sup>F15</sup>paragraphs (2) and (3)], “earnings” means, in the case of employment as an employed earner, any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to a claimant on account of the termination of the claimant's employment by reason of redundancy;
- (c) any payment in lieu of notice;
- (d) any holiday pay except any payable more than 4 weeks after the termination or interruption of employment;
- (e) any payment by way of a retainer;
- (f) any payment made by the claimant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant's employer in respect of—
  - (i) travelling expenses incurred by the claimant between the claimant's home and place of employment;
  - (ii) expenses incurred by the claimant under arrangements made for the care of a member of the claimant's family owing to the claimant's absence from home;
- (g) any award of compensation made under section 112(4) or 117(3)(a) of the Employment Rights Act 1996 <sup>F16</sup> (the remedies: orders and compensation, enforcement of order and compensation);
- (h) any payment or remuneration made under sections 28, 34, 64, 68 and 70 of the Employment Rights Act 1996 <sup>F17</sup> (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to employment tribunals);
- (i) any such sum as is referred to in section 112(3) of the Contributions and Benefits Act <sup>F18</sup> (certain sums to be earnings for social security purposes);
- (j) where a payment of compensation is made in respect of employment which is part-time employment, the amount of the compensation;
- (k) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001 <sup>F19</sup>.



- (2) “Earnings” are not to include—
- (a) subject to paragraph (3), any payment in kind;
  - (b) any remuneration paid by or on behalf of an employer to the claimant in respect of a period throughout which the claimant is on maternity leave, paternity leave or adoption leave or is absent from work because the claimant is ill;
  - (c) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
  - (d) any occupational pension;
  - (e) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme <sup>F20</sup>.
- [<sup>F21</sup>(f) any payment in respect of expenses arising out of the claimant’s participation in a service user group.]
- (3) Paragraph (2)(a) is not to apply in respect of any non-cash voucher referred to in paragraph (1)(k).
- (4) In this regulation—
- “compensation” means any payment made in respect of, or on the termination of, employment in a case where a claimant has not received or received only part of a payment in lieu of notice due or which would have been due to the claimant had that claimant not waived the right to receive it, other than—
- (a) any payment specified in paragraph (1)(a) to (i);
  - (b) any payment specified in paragraph (2)(a) to (e);
  - (c) any redundancy payment within the meaning of section 135(1) of the Employment Rights Act 1996;
  - (d) any refund of contributions to which that person was entitled under an occupational pension scheme; and
  - (e) any compensation payable by virtue of section 173 of the Education Reform Act 1988 <sup>F22</sup>;
- “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).

### Textual Amendments

- F15** Words in reg. 95(1) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(2)**
- F16** 1996 c. 18.
- F17** Sections 34 and 70 were amended by the [Employment Rights \(Dispute Resolution\) Act 1998 \(c. 8\)](#), **section 1(2)(a)** and (b) and section 64 was amended by [S.I. 1999/3232](#), **regulation 41(1)** and paragraph 2 of Schedule 9.
- F18** Section 112(3) was amended by the [Employment Rights Act 1996](#), paragraph 51(4)(a) to (c) of Schedule 1.
- F19** [S.I. 2001/1004](#), the relevant amending instruments are [S.I. 2001/2412](#), [S.I. 2002/307](#), [S.I. 2003/2958](#), [S.I. 2004/770](#), [S.I. 2005/778](#), [S.I. 2006/883](#), [S.I. 2006/2003](#) and [S.I. 2007/2091](#).
- F20** [S.I.1996/3182](#).
- F21** Reg. 95(2)(f) added (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(2)(d), **11(6)**
- F22** 1988 c. 40.

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### Calculation of net earnings of employed earners

**96.**—(1) For the purposes of regulation 91 (calculation of earnings derived from employed earner's employment and income other than earnings) the earnings of a claimant derived from employment as an employed earner to be taken into account, subject to paragraph (2), are the claimant's net earnings.

(2) There is to be disregarded from a claimant's net earnings, any sum, where applicable, specified in paragraphs 1 to 12 of Schedule 7 (sums to be disregarded in the calculation of earnings).

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

- (a) any amount deducted from those earnings by way of—
  - (i) income tax;
  - (ii) primary Class 1 contributions under section 6(1)(a) of the Contributions and Benefits Act <sup>F23</sup>;
- (b) one-half of any sum paid by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

#### Textual Amendments

**F23** Section 6 was substituted by the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), [section 73](#) and paragraph 2 of Schedule 9.

## CHAPTER 4

### Self-employed earners

#### Earnings of self-employed earners

**97.**—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross receipts of the employment and include any allowance paid under section 2 of the Employment and Training Act 1973 <sup>F24</sup> or section 2 of the Enterprise and New Towns (Scotland) Act 1990 <sup>F25</sup> to the claimant for the purpose of assisting the claimant in carrying on the claimant's business.

- (2) “Earnings” do not include—
- (a) where a claimant is involved in providing board and lodging accommodation for which a charge is payable, any payment by way of such a charge;
  - (b) any payment to which paragraph 28 or 29 of Schedule 8 refers (payments in respect of a person accommodated with the claimant under an arrangement made by a local authority or voluntary organisation and payments made to the claimant by a health authority, local authority or voluntary organisation in respect of persons temporarily in the claimant's care);
  - (c) any sports award.

#### Textual Amendments

**F24** 1973 c. 50.

**F25** 1990 c. 35.

### Calculation of net profit of self-employed earners

98.—(1) For the purposes of regulation 92 (calculation of earnings of self-employed earners), the earnings of a claimant to be taken into account are to be—

- (a) in the case of a self-employed earner who is engaged in employment on that self-employed earner's own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations 1975 <sup>F26</sup>, that self-employed earner's share of the net profit derived from that employment less—
  - (i) an amount in respect of income tax and of National Insurance contributions payable under the Contributions and Benefits Act calculated in accordance with regulation 99 (deduction of tax and contributions for self-employed earners); and
  - (ii) one half of any premium paid in the period that is relevant under regulation 92 (calculation of earnings of self-employed earners) in respect of a personal pension scheme.

(2) There is to be disregarded from a claimant's net profit any sum, where applicable, specified in paragraphs 1 to 11 of Schedule 7.

(3) For the purposes of paragraph (1)(a) the net profit of the employment, except where paragraph (9) applies, is to be calculated by taking into account the earnings of the employment over the period determined under regulation 92 less—

- (a) subject to paragraphs (5) to (7), any expenses wholly and exclusively defrayed in that period for the purposes of that employment;
- (b) an amount in respect of—
  - (i) income tax; and
  - (ii) National Insurance contributions payable under the Contributions and Benefits Act, calculated in accordance with regulation 99 (deduction of tax and contributions for self-employed earners); and
- (c) one half of any premium paid in the period that is relevant under regulation 92 in respect of a personal pension scheme.

(4) For the purposes of paragraph (1)(b), the net profit of the employment is to be calculated by taking into account the earnings of the employment over the period determined under regulation 92 less, subject to paragraphs (5) to (7), any expenses wholly and exclusively defrayed in that period for the purpose of that employment.

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

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
- (d) any loss incurred before the beginning of the period determined under regulation 92 (calculation of earnings of self-employed earners);
- (e) the repayment of capital on any loan taken out for the purposes of the employment;
- (f) any expenses incurred in providing business entertainment.

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

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- (a) the replacement in the course of business of equipment or machinery; and
  - (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.
- (7) The Secretary of State will refuse to make a deduction in respect of any expenses under paragraph (3)(a) or (4) where the Secretary of State is not satisfied that the expense has been defrayed or, having regard to the nature of the expense and its amount, that it has been reasonably incurred.
- (8) For the avoidance of doubt—
- (a) a deduction is not to be made under paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business;
  - (b) a deduction is to be made thereunder in respect of—
    - (i) the excess of any VAT paid over VAT received in the period determined under regulation 92;
    - (ii) any income expended in the repair of an existing asset except to the extent that any sum is payable under an insurance policy for its repair;
    - (iii) any payment of interest on a loan taken out for the purposes of the employment.
- (9) Where a claimant is engaged in employment as a child minder the net profit of the employment is to be one-third of the earnings of that employment, less—
- (a) an amount in respect of—
    - (i) income tax; and
    - (ii) National Insurance contributions payable under the Contributions and Benefits Act, calculated in accordance with regulation 99 (deduction of tax and contributions for self-employed earners); and
  - (b) one half of any premium paid in respect of a personal pension scheme.
- (10) Notwithstanding regulation 92 (calculation of earnings of self-employed earners) and the foregoing paragraphs, the Secretary of State may assess any item of a claimant's income or expenditure over a period other than that determined under regulation 92 as may, in the particular case, enable the weekly amount of that item of income or expenditure to be determined more accurately.
- (11) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and that claimant is also engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of the claimant's employments is not to be offset against the claimant's earnings in any other of the claimant's employments.

#### Textual Amendments

F26 S.I. 1975/529.

#### Deduction of tax and contributions for self-employed earners

**99.**—(1) Subject to paragraph (2), the amount to be deducted in respect of income tax under regulation 98(1)(b)(i), (3)(b)(i) or (9)(a)(i) (calculation of net profit of self-employed earners) is to be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at the <sup>F27</sup>... basic rate of tax less only the personal allowance to which the claimant is entitled under sections 35 and 38 to 40 of the Income Tax Act 2007 <sup>F28</sup> (personal reliefs) as is appropriate to the claimant's circumstances.

(2) If the period determined under regulation 92 is less than a year the earnings to which the [<sup>F29</sup>basic rate] of tax is to be applied and the amount of the personal reliefs deductible under paragraph (1) is to be calculated on a pro rata basis.

(3) The amount to be deducted in respect of National Insurance contributions under regulation 98(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) is to be the total of—

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, 11(3) of the Contributions and Benefits Act <sup>F30</sup> at the rate applicable at the date of claim except where the claimant's chargeable income is less than the amount specified in section 11(4) of that Act (small earnings exception) for the tax year in which the date of claim falls; but if the assessment period is less than a year, the amount specified for that tax year is to be reduced pro rata; and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of that Act <sup>F31</sup> (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date of claim on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of claim falls; but if the assessment period is less than a year, those limits are to be reduced pro rata.

(4) In this regulation “chargeable income” means—

- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph (3)(a) or, as the case may be, (4) of regulation 98;
- (b) in the case of employment as a child minder, one-third of the earnings of that employment.

#### Textual Amendments

- F27** Words in reg. 99(1) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(3)(a)**
- F28** 2007 c. 3.
- F29** Words in reg. 99(2) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(3)(b)**
- F30** Section 11 was amended by the [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), **section 2** and paragraph 12 of Schedule 3 and S.I. 2007/1052, **article 2(b)**.
- F31** Section 15 was amended by the [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), **sections 882(1)** and 884 and paragraphs 419 and 420(1), (2)(a), (c) and (d), (3) and (4) of Schedule 1 and Schedule 3, the [National Insurance Contributions Act 2002 \(c. 19\)](#), **section 3(1)**, the [Limited Liability Partnerships Act 2000 \(c. 12\)](#), **section 13** and S.I. 2007/1052, **article 4(a)** and (b).

## CHAPTER 5

### Participants in the self-employment route

#### Interpretation

**100.** In this Chapter “special account” means, where a claimant was carrying on a commercial activity in respect of which assistance is received under the self-employment route, the account into which the gross receipts from that activity were payable during the period in respect of which such assistance was received.

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### **Treatment of gross receipts of participants in the self-employment route**

**101.** The gross receipts of a commercial activity carried on by a claimant in respect of which assistance is received under the self-employment route, are to be taken into account in accordance with the following provisions of this Chapter.

### **Calculation of income of participants in the self-employment route**

**102.**—(1) The income of a claimant who has received assistance under the self-employment route is to be calculated by taking into account the whole of the monies in the special account at the end of the last day on which such assistance was received and deducting from those monies—

- (a) an amount in respect of income tax calculated in accordance with regulation 103 (deduction in respect of tax for participants in the self-employment route); and
- (b) any sum to which paragraph (4) refers.

(2) Income calculated pursuant to paragraph (1) is to be apportioned equally over a period which starts on the date the income is treated as paid under paragraph (3) and is equal in length to the period beginning with the day on which assistance was first received under the self-employment route and ending on the last day on which such assistance was received.

(3) Income calculated pursuant to paragraph (1) is to be treated as paid—

- (a) in the case where it is due to be paid before the first benefit week in respect of which the participant or the participant's partner first claims an income-related allowance following the last day on which assistance was received under the self-employment route, on the day in the week in which it is due to be paid which corresponds to the first day of the benefit week;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid.

(4) This paragraph refers, where applicable in each benefit week in respect of which income calculated pursuant to paragraph (1) is taken into account pursuant to paragraphs (2) and (3), to the sums which would have been disregarded under paragraph 7(1) of Schedule 7 had the income been earnings.

### **Deduction in respect of tax for participants in the self-employment route**

**103.**—(1) The amount to be deducted in respect of income tax under regulation 102(1)(a) (calculation of income of participants in the self-employment route) in respect of the period determined under regulation 102(2) is to be calculated as if—

- (a) the chargeable income is the only income chargeable to tax;
- (b) the personal allowance applicable to the person receiving assistance under the self-employment route by virtue of sections 35 and 45 to 55 of the Income Tax Act 2007 is allowable against that income; and
- (c) the rate at which the chargeable income less the personal allowance is assessable to income tax is the <sup>F32</sup>... basic rate of tax.

(2) For the purpose of paragraph (1), the [<sup>F33</sup>basic rate] of tax to be applied and the amount of the personal allowance deductible is, where the period determined under regulation 102(2) is less than a year, to be calculated on a pro rata basis.

(3) In this regulation, “chargeable income” means the monies in the special account at the end of the last day upon which assistance was received under the self-employment route.

### Textual Amendments

- F32** Words in reg. 103(1)(c) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(4)(a)**
- F33** Words in reg. 103(2) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(4)(b)**

## CHAPTER 6

### Other income

#### Calculation of income other than earnings

**104.**—(1) For the purposes of regulation 91 (calculation of earnings derived from employed earner's employment and income other than earnings) [<sup>F34</sup>and regulation 93(3) and (4) (date on which income is treated as paid)] the income of a claimant which does not consist of earnings to be taken into account will, subject to paragraphs (2) to (7), be the claimant's gross income and any capital treated as income under regulation 105 (capital treated as income).

(2) There is to be disregarded from the calculation of a claimant's gross income under paragraph (1), any sum, where applicable, specified in Schedule 8.

(3) Where the payment of any benefit under the benefit Acts is subject to any deduction by way of recovery the amount to be taken into account under paragraph (1) is to be the gross amount payable.

(4) [<sup>F35</sup>Paragraphs (5) and (5A) apply] where—

- (a) a relevant payment has been made to a claimant in an academic year; and
- (b) that claimant abandons, or is dismissed from, that claimant's course of study before the payment to the claimant of the final instalment of the relevant payment.

(5) [<sup>F36</sup>Where a relevant payment is made quarterly, the] amount of a relevant payment to be taken into account for the assessment period for the purposes of paragraph (1) in respect of a claimant to whom paragraph (4) applies, is to be calculated by applying the formula—

$$\frac{A - (B \times C)}{D}$$

where—

A = the total amount of the relevant payment which that claimant would have received had that claimant remained a student until the last day of the academic term in which the person abandoned, or was dismissed from, the course, less any deduction under regulation 137(6) (treatment of student loans);

B = the number of benefit weeks from the benefit week immediately following that which includes the first day of that academic year to the benefit week immediately before that which includes the day on which the claimant abandoned, or was dismissed from, that claimant's course;

C = the weekly amount of the relevant payment, before the application of the £10 disregard, which would have been taken into account as income under regulation 137(3) had the claimant not abandoned or been dismissed from, the course and, in the case of a claimant who was not entitled to an income-related allowance immediately before that claimant abandoned or was dismissed from the course, had that claimant, at that time, been entitled to an income-related allowance;

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D = the number of benefit weeks in the assessment period.

[<sup>F37</sup>(5A) Where a relevant payment is made by two or more instalments in a quarter, the amount of a relevant payment to be taken into account for the assessment period for the purposes of paragraph (1) in respect of a person to whom paragraph (4) applies, shall be calculated by applying the formula in paragraph (5) but as if—

A = the total amount of relevant payments which that person received, or would have received, from the first day of the academic year to the day the person abandoned the course, or was dismissed from it, less any deduction under regulation 137(6).]

(6) [<sup>F38</sup>In this regulation]—

“academic year” and “student loan” have the same meanings as for the purposes of Chapter 10 of this Part;

[<sup>F39</sup>“assessment period” means—

- (a) in a case where a relevant payment is made quarterly, the period beginning with the benefit week which includes the day on which the claimant abandoned, or was dismissed from, the course and ending with the benefit week which includes the last day of the last quarter for which an instalment of the relevant payment was payable to that claimant;
- (b) in a case where the relevant payment is made by two or more instalments in a quarter, the period beginning with the benefit week which includes the day on which the claimant abandoned, or was dismissed from, the course and ending with the benefit week which includes—
  - (i) the day immediately before the day on which the next instalment of the relevant payment would have been due had the payments continued; or
  - (ii) the last day of the last quarter for which an instalment of the relevant payment was payable to that claimant,

whichever of those dates is earlier;]

“quarter” for the purposes of the definition of “assessment period” in relation to an academic year means a period in that year—

- (a) beginning on 1st January and ending on 31st March;
- (b) beginning on 1st April and ending on 30th June;
- (c) beginning on 1st July and ending on 31st August; or
- (d) beginning on 1st September and ending on 31st December;

“relevant payment” means either a student loan or an amount intended for the maintenance of dependants referred to in regulation 132(6) (calculation of grant income) or both.

(7) In the case of income to which regulation 91(4) (calculation of income of former students) applies, the amount of income to be taken into account for the purposes of paragraph (1) is to be the amount of that income calculated in accordance with regulation 94(7) (calculation of weekly amount of income) and on the basis that none of that income has been repaid.

(8) Subject to paragraph (9), for the avoidance of doubt there is to be included as income to be taken into account under paragraph (1)—

- (a) any payment to which regulation 95(2) or 97(2) (payments not earnings) applies; or
- (b) in the case of a claimant who is receiving support provided under section 95 or 98 of the Immigration and Asylum Act <sup>F40</sup> including support provided by virtue of regulations made under Schedule 9 to that Act, the amount of such support provided in respect of essential living needs of the claimant and the claimant's partner (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to that Act.



(9) In the case of a claimant who is the partner of a person subject to immigration control and whose partner is receiving support provided under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act, there is not to be included as income to be taken into account under paragraph (1) the amount of support provided in respect of essential living needs of the partner of the claimant and the claimant's dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.

#### Textual Amendments

- F34** Words in reg. 104(1) inserted (26.10.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(1), **11(7)**
- F35** Words in reg. 104(4) substituted (27.10.2008) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), regs. 1(5), **7(2)(a)**
- F36** Words in reg. 104(5) substituted (27.10.2008) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), regs. 1(5), **7(2)(b)**
- F37** Words in reg. 104(5A) substituted (27.10.2008) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), regs. 1(5), **7(2)(c)**
- F38** Words in reg. 104(6) substituted (27.10.2008) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), regs. 1(5), **7(2)(d)(i)**
- F39** Words in reg. 104(6) substituted (27.10.2008) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), regs. 1(5), **7(2)(d)(ii)**
- F40** Sections 95 and 98 and Schedule 9 were amended by the [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), **sections 44(1)** and (6), 45(4)(a) and (b) and 50(1) and (2).

#### Capital treated as income

**105.**—(1) Capital which is payable by instalments which are outstanding on—

- (a) the first day in respect of which an income-related allowance is payable or the date of the determination of the claim, whichever is earlier; or
- (b) in the case of a supersession, the date of that supersession,

is to be treated as income if the aggregate of the instalments outstanding and the amount of the claimant's capital otherwise calculated in accordance with Chapter 7 of this Part exceeds £16,000.

(2) Any payment received under an annuity is to be treated as income.

(3) Any earnings to the extent that they are not a payment of income are to be treated as income.

(4) Any Career Development Loan paid pursuant to section 2 of the Employment and Training Act 1973 <sup>F41</sup> is to be treated as income.

(5) Where an agreement or court order provides that payments are to be made to the claimant in consequence of any personal injury to the claimant and that such payments are to be made, wholly or in part, by way of periodical payments, any such periodical payments received by the claimant (but not a payment which is treated as capital by virtue of this Part), are to be treated as income.

#### Textual Amendments

- F41** [1973 c. 50](#).

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### **Notional income – deprivation and income on application**

**106.**—(1) A claimant is to be treated as possessing income of which the claimant has deprived himself or herself for the purpose of securing entitlement to an employment and support allowance or increasing the amount of that allowance, or for the purpose of securing entitlement to, or increasing the amount of, income support or a jobseeker's allowance.

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury;
- (c) an employment and support allowance;
- (d) a jobseeker's allowance;
- (e) working tax credit;
- (f) child tax credit;
- (g) a personal pension scheme, occupational pension scheme or a payment made by the Board of the Pension Protection Fund where the claimant [<sup>F42</sup>has not attained the qualifying age for state pension credit];

[<sup>F43</sup>(ga) any sum to which paragraph (9) applies;]

- (h) any sum to which paragraph 43(2)(a) of Schedule 9 (capital to be disregarded) applies which is administered in the way referred to in paragraph 43(1)(a) of that Schedule;
- (i) any sum to which paragraph 44(a) of Schedule 9 refers; or
- (j) rehabilitation allowance made under section 2 of the Employment and Training Act 1973,

income which would become available to the claimant upon application being made but which has not been acquired by the claimant is to be treated as possessed by the claimant but only from the date on which it could be expected to be acquired were an application made.

(3) A claimant who has attained the [<sup>F44</sup>qualifying age for state pension credit] is to be treated as possessing—

- (a) the amount of any income from an occupational pension scheme, a personal pension scheme or the Board of the Pension Protection Fund—
  - (i) for which no claim has been made; and
  - (ii) to which the claimant might expect to be entitled if a claim for it were made;
- (b) income from an occupational pension scheme which the claimant elected to defer,

but only from the date on which it could be expected to be acquired were an application for it to be made.

(4) This paragraph applies where a claimant [<sup>F45</sup>who has attained the qualifying age for state pension credit]—

- (a) is entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme;
- (b) fails to purchase an annuity with the funds available in that scheme; and
- (c) either—
  - (i) defers in whole or in part the payment of any income which would have been payable to the claimant by that claimant's pension fund holder; or
  - (ii) fails to take any necessary action to secure that the whole of any income which would be payable to the person by that claimant's pension fund holder upon the person applying for it, is so paid; or

(iii) income withdrawal is not available to the claimant under that scheme.

(5) Where paragraph (4) applies, the amount of any income foregone is to be treated as possessed by that claimant, but only from the date on which it could be expected to be acquired were an application for it to be made.

(6) The amount of any income foregone in a case where paragraph (4)(c)(i) or (ii) applies is to be the maximum amount of income which may be withdrawn from the fund and is to be determined by the Secretary of State who will take account of information provided by the pension fund holder in accordance with regulation 7(5) of the Social Security (Claims and Payments) Regulations 1987<sup>F46</sup>.

(7) The amount of any income foregone in a case where paragraph (4)(c)(iii) applies is to be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant occupational or personal pension scheme been held under a scheme where income withdrawal was available and is to be determined in the manner specified in paragraph (6).

(8) In paragraph (4), “money purchase benefits” has the meaning it has in section 181 of the Pension Schemes Act 1993<sup>F47</sup>.

[<sup>F48</sup>(9) Paragraphs (1) and (2) do not apply in respect of any amount of income other than earnings, or earnings derived from employment as an employed earner, arising out of the claimant’s participation in a service user group.]

#### Textual Amendments

- F42** Words in reg. 106(2)(g) substituted (6.4.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(1), **12(4)(a)**
- F43** Reg. 106(2)(ga) inserted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(2)(d), **11(8)(a)**
- F44** Words in reg. 106(3) substituted (6.4.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(1), **12(4)(b)**
- F45** Words in reg. 106(4) substituted (6.4.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(1), **12(4)(c)**
- F46** S.I. 1987/1967, relevant amending instruments are S.I. 1999/2572 and S.I. 2003/492.
- F47** 1993 c. 48. The definition in section 181 was amended by S.I. 2005/2053.
- F48** Reg. 106(9) added (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(2)(d), **11(8)(b)**

#### Notional income – income due to be paid or income paid to or in respect of a third party

**107.**—(1) Except in the case of a discretionary trust, or a trust derived from a payment made in consequence of a personal injury, any income which is due to be paid to the claimant but—

- (a) has not been paid to the claimant;
- (b) is not a payment prescribed in regulation 8 or 9 of the Social Security (Payments on Account, Overpayment and Recovery) Regulations 1988<sup>F49</sup> (duplication and prescribed payments or maintenance payments) and not made on or before the date prescribed in relation to it,

is, except for any amount to which paragraph (2) applies, to be treated as possessed by the claimant.

(2) This paragraph applies to—

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- (a) an amount which is due to be paid to the claimant under an occupational pension scheme but which is not paid because the trustees or managers of the scheme have suspended or ceased payments due to an insufficiency of resources;
  - (b) any amount by which a payment made to the claimant from an occupational pension scheme falls short of the payment to which the claimant was due under the scheme where the shortfall arises because the trustees or managers of the scheme have insufficient resources available to them to meet in full the scheme's liabilities; or
  - (c) any earnings which are due to an employed earner on the termination of that employed earner's employment by reason of redundancy but which have not been paid to that employed earner.
- (3) Any payment of income, other than a payment of income specified in paragraph (5), made to a third party in respect of a single claimant or the claimant's partner (but not a member of the third party's family) is to be treated—
- (a) in a case where that payment is derived from—
    - (i) a payment of any benefit under the benefit Acts;
    - (ii) a payment from the Armed Forces and Reserve Forces Compensation Scheme;
    - (iii) a war disablement pension, war widow's pension or war widower's pension; or
    - (iv) a pension payable to a person as a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown,
 as possessed by that single claimant, if it is paid to the claimant or by the claimant's partner, if it is paid to the claimant's partner;
  - (b) in a case where that payment is a payment of an occupational pension, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund, as possessed by that single claimant or, as the case may be, by the claimant's partner;
  - (c) in any other case, as possessed by that single claimant or the claimant's partner to the extent that it is used for the food, ordinary clothing or footwear, household fuel, rent for which housing benefit is payable, or any housing costs to the extent that they are met under regulations 67(1)(c) or 68(1)(d) (housing costs), of that single claimant or, as the case may be, of the claimant's partner, or is used for any council tax or water charges for which that claimant or that partner is liable,

but, except where sub-paragraph (a) applies, this paragraph does not apply to any payment in kind to the third party.

(4) Any payment of income, other than a payment of income specified in paragraph (5), made to a single claimant or the claimant's partner in respect of a third party (but not in respect of another member of the claimant's family) is to be treated as possessed by that single claimant or, as the case may be, the claimant's partner, to the extent that it is kept or used by that claimant or used by or on behalf of the claimant's partner but, except where paragraph (3)(a) applies, this paragraph does not apply to any payment in kind to the third party.

(5) Paragraphs (3) and (4) do not apply in respect of a payment of income made—

- (a) under [<sup>F50</sup>or by] the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust[<sup>F51</sup>, MFET Limited] or [<sup>F52</sup>the Independent Living Fund (2006)];
- (b) pursuant to section 19(1)(a) of the Coal Industry Act 1994 <sup>F53</sup> (concessionary coal); or

- (c) pursuant to section 2 of the Employment and Training Act 1973 in respect of a person's participation—
- (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations <sup>F54</sup>;
  - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
  - (iii) in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations <sup>F55</sup>;
  - (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations <sup>F56</sup>; or
- (d) under an occupational pension scheme, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund where—
- (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980 <sup>F57</sup>;
  - (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
  - (iii) the person referred to in paragraph (i) and that person's partner (if any) does not possess, or is not treated as possessing, any other income apart from that payment.

(6) Where the claimant resides in a care home, an Abbeyfield Home or an independent hospital, or is temporarily absent from such a home or hospital, any payment made by a person other than the claimant or a member of the claimant's family in respect of some or all of the cost of maintaining the claimant or the claimant's partner in that home or hospital is to be treated as possessed by the claimant or the claimant's partner.

(7) In paragraph (2)(a) and (b) “resources” has the same meaning as in section 181(1) of the Pension Schemes Act 1993.

[<sup>F58</sup>(8) Paragraphs (1), (3) and (4) do not apply in respect of any amount of income other than earnings, or earnings derived from employment as an employed earner, arising out of the claimant's participation in a service user group.]

#### Textual Amendments

- F49** S.I. 1988/664, the relevant amending instruments are S.I. 1991/387, S.I. 1991/2742, S.I. 1996/1345, S.I. 1999/2571, S.I. 1999/3178, S.I. 2000/1483, S.I. 2002/3019, S.I. 2003/492, S.I. 2005/337 and S.I. 2005/3476.
- F50** Words in reg. 107(5)(a) inserted (6.4.2010) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(1), **12(5)(a)**
- F51** Words in reg. 107(5)(a) inserted (6.4.2010) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(1), **12(3)(b)**
- F52** Words in reg. 107(5)(a) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **8(5)**
- F53** 1994 c. 27.
- F54** The relevant amending instrument is S.I. 2002/2314.
- F55** The relevant amending instruments are S.I. 2001/1029 and S.I. 2007/1316.
- F56** Regulation 17A was inserted by S.I. 1998/1274, **regulation 4**.
- F57** 1980 c. 46.

*Status: Point in time view as at 01/09/2010.*

*Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 10. (See end of Document for details)*

**F58** Reg. 107(8) added (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(2)(d), **11(9)**

### Notional income – other income

**108.**—(1) Where a claimant's earnings are not ascertainable at the time of the determination of the claim or of any revision or supersession the Secretary of State will treat the claimant as possessing such earnings as is reasonable in the circumstances of the case having regard to the number of hours worked and the earnings paid for comparable employment in the area.

(2) Where the amount of a subsistence allowance paid to a claimant in a benefit week is less than the amount of income-based jobseeker's allowance that claimant would have received in that benefit week had it been payable to the claimant, less 50p, the claimant is to be treated as possessing the amount which is equal to the amount of income-based jobseeker's allowance which the claimant would have received in that week, less 50p.

(3) Subject to paragraph (4), where—

- (a) a claimant performs a service for another person; and
- (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area,

the Secretary of State is to treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies the Secretary of State that the means of that person are insufficient for the person to pay, or to pay more, for the service.

(4) Paragraph (3) will not apply—

- (a) to a claimant who is engaged by a charitable or voluntary organisation or who is a volunteer if the Secretary of State is satisfied in any of those cases that it is reasonable for the claimant to provide the service free of charge;
- (b) in a case where the service is performed in connection with—
  - (i) the claimant's participation in an employment or training programme in accordance with regulation 19(1)(q) of the Jobseeker's Allowance Regulations, other than where the service is performed in connection with the claimant's participation in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations <sup>F59</sup>; or
  - (ii) the claimant's or the claimant's partner's participation in an employment or training programme as defined in regulation 19(3) of those Regulations for which a training allowance is not payable or, where such an allowance is payable, it is payable for the sole purpose of reimbursement of travelling or meal expenses to the claimant or the claimant's partner participating in that programme;
- (c) to a claimant who is engaged in work experience whilst participating in—
  - (i) the New Deal for Lone Parents; or
  - (ii) a scheme which has been approved by the Secretary of State as supporting the objectives of the New Deal for Lone Parents; or
- (d) to a claimant who is participating in a work placement approved in writing by the Secretary of State before the placement starts;
- (e) in sub-paragraph (d) “work placement” means practical work experience with an employer, which is neither paid nor undertaken in expectation of payment.

[<sup>F60</sup>(5) Paragraphs (1) and (3) do not apply in respect of any amount of income other than earnings, or earnings derived from employment as an employed earner, arising out of the claimant's participation in a service user group.]

#### Textual Amendments

- F59** Regulation 75 was substituted by [S.I. 1997/2863](#).
- F60** Reg. 108(5) added (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(2)(d), **11(10)**

### Notional income – calculation and interpretation

**109.**—(1) Where a claimant is treated as possessing any income under regulation 106 or 107 the foregoing provisions of this Part are to apply for the purposes of calculating the amount of that income as if a payment had actually been made and as if it were actual income which the claimant does possess.

(2) Where a claimant is treated as possessing any earnings under regulation 108(1) or (3) the foregoing provisions of this Part are to apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which the claimant does possess except that paragraph (3) of regulation 96 (calculation of net earnings of employed earners) does not apply and the claimant's net earnings are to be calculated by taking into account the earnings which the claimant is treated as possessing, less—

- (a) where the period over which those earnings are to be taken into account is a year or more, an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the <sup>F61</sup>... basic rate of tax in the year of assessment less only the personal allowance to which the claimant is entitled under section 257(1) of the Income and Corporation Taxes Act 1988 <sup>F62</sup> (personal allowance) as is appropriate to the claimant's circumstances;
- (b) where if the period over which those earnings are to be taken into account is less than a year, the earnings to which the [<sup>F63</sup>basic rate] of tax is to be applied and the amount of the personal allowance deductible under this paragraph is to be calculated on a pro rata basis;
- (c) where the weekly amount of those earnings equals or exceeds the lower earnings limit, an amount representing primary Class 1 contributions under section 6(1)(a) of the Contributions and Benefits Act <sup>F64</sup>, calculated by applying to those earnings the initial and main primary percentages in accordance with section 8(1)(a) and (b) of that Act <sup>F65</sup>; and
- (d) one-half of any sum payable by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

#### Textual Amendments

- F61** Words in reg. 109(2)(a) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(6)(a)**
- F62** 1988 c. 1. Section 257 was substituted by the [Finance Act 1988 \(c. 39\)](#), **section 33** and amended by the [Income Tax Act 2007 \(c. 3\)](#), **section 1027** and Schedule 1, Part 1, paragraphs 1 and 29(1) and (2) and [S.I. 2006/3241](#).
- F63** Words in reg. 109(2)(b) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(6)(b)**
- F64** Section 6 was substituted by the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), **section 73** and paragraph 2 of Schedule 9.

*Status: Point in time view as at 01/09/2010.*

*Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 10. (See end of Document for details)*

**F65** Section 8 was substituted by the [National Insurance Contributions Act 2002 \(c. 19\), section 1\(1\)](#).

## CHAPTER 7

### Capital

#### Capital limit

**110.** For the purposes of paragraph 6(1)(b) of Schedule 1 to the Act as it applies to an income-related allowance (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is £16,000.

#### Calculation of capital

**111.**—(1) For the purposes of [<sup>F66</sup>sections 1(2)] and 4 of, and Part 2 of Schedule 1 to, the Act as it applies to an income-related allowance, the capital of a claimant to be taken into account is, subject to paragraph (2), to be the whole of the claimant's capital calculated in accordance with this Part and any income treated as capital under regulation 112 (income treated as capital).

(2) There is to be disregarded from the calculation of a claimant's capital under paragraph (1) any capital, where applicable, specified in Schedule 9.

#### Textual Amendments

**F66** Words in reg. 111(1) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(7)**

#### Income treated as capital

**112.**—(1) Any bounty derived from employment to which regulation 43(1)(e) and paragraph 12 of Schedule 7 apply and paid at intervals of at least one year is to be treated as capital.

(2) Any amount by way of a refund of income tax paid in respect of, or deducted from, profits or income chargeable to tax under the provisions in Part 2 of the Income Tax (Trading and Other Income) Act 2005 <sup>F67</sup> or Part 2 of the Income Tax (Earnings and Pensions) Act 2003 <sup>F68</sup> is to be treated as capital.

(3) Any holiday pay which is not earnings under regulation 95(1)(d) (earnings of employed earners) is to be treated as capital.

(4) Except any income derived from capital disregarded under paragraph 1, 2, 4 to 8, 10, 16, 43 or 44 of Schedule 9, any income derived from capital is to be treated as capital but only from the date it is normally due to be credited to the claimant's account.

(5) In the case of employment as an employed earner, any advance of earnings or any loan made by the claimant's employer is to be treated as capital.

(6) Any payment under section 30 of the Prison Act 1952 <sup>F69</sup> (payments for discharged prisoners) or allowance under section 17 of the Prisons (Scotland) Act 1989 <sup>F70</sup> (allowances to prisoners on discharge) is to be treated as capital.

(7) Any charitable or voluntary payment which is not made or not due to be made at regular intervals, other than one to which paragraph (8) applies, is to be treated as capital.

(8) This paragraph applies to a payment which is made under [<sup>F71</sup>or by] the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust [<sup>F72</sup>, MFET Limited] or [<sup>F73</sup>the Independent Living Fund (2006)].



(9) Any arrears of subsistence allowance which are paid to a claimant as a lump sum are to be treated as capital.

#### Textual Amendments

- F67 2005 c. 5.
- F68 2003 c. 1.
- F69 1952 c. 52. Section 30 was substituted by the [Criminal Justice Act 1967 \(c. 80\)](#), [section 66\(3\)](#).
- F70 1989 c. 45.
- F71 Words in reg. 112(8) inserted (6.4.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(1), [12\(5\)\(b\)](#)
- F72 Words in reg. 112(8) inserted (6.4.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(1), [12\(3\)\(e\)](#)
- F73 Words in reg. 112(8) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), [8\(5\)](#)

#### Calculation of capital in the United Kingdom

**113.** Capital which a claimant possesses in the United Kingdom is to be calculated at its current market or surrender value less—

- (a) where there would be expenses attributable to sale, 10%; and
- (b) the amount of any incumbrance secured on it.

#### Calculation of capital outside the United Kingdom

**114.** Capital which a claimant possesses in a country outside the United Kingdom is to be calculated—

- (a) in a case in which there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value;
- (b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer,

less, where there would be expenses attributable to sale, 10% and the amount of any incumbrance secured on it.

#### Notional capital

**115.—**(1) A claimant is to be treated as possessing capital of which the claimant has deprived himself or herself for the purpose of securing entitlement to an employment and support allowance or increasing the amount of that allowance, or for the purpose of securing entitlement to, or increasing the amount of, income support or a jobseeker's allowance except—

- (a) where that capital is derived from a payment made in consequence of any personal injury and is placed on trust for the benefit of the claimant;
- (b) to the extent that the capital which the claimant is treated as possessing is reduced in accordance with regulation 116 (diminishing notional capital rule);
- (c) any sum to which paragraph 43(2)(a) of Schedule 9 (capital to be disregarded) applies which is administered in the way referred to in paragraph 43(1)(a); or
- (d) any sum to which paragraph 44(a) of Schedule 9 refers.

(2) Except in the case of—

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- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury;
- (c) any loan which would be obtainable only if secured against capital disregarded under Schedule 9;
- (d) a personal pension scheme;
- (e) an occupational pension scheme or a payment made by the Board of the Pension Protection Fund where the claimant [<sup>F74</sup>has not attained the qualifying age for state pension credit]; or
- (f) any sum to which paragraph 43(2)(a) of Schedule 9 (capital to be disregarded) applies which is administered in a way referred to in paragraph 43(1)(a); or
- (g) any sum to which paragraph 44(a) of Schedule 9 refers,

any capital which would become available to the claimant upon application being made but which has not been acquired by the claimant is to be treated as possessed by the claimant but only from the date on which it could be expected to be acquired were an application made.

(3) Any payment of capital, other than a payment of capital specified in paragraph (5), made to a third party in respect of a single claimant or the claimant's partner (but not a member of the third party's family) is to be treated—

- (a) in a case where that payment is derived from—
  - (i) a payment of any benefit under the benefit Acts;
  - (ii) a payment from the Armed Forces and Reserve Forces Compensation Scheme;
  - (iii) a war disablement pension, war widow's pension or war widower's pension; or
  - (iv) a pension payable to a person as a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or who have died in consequence of service as members of the armed forces of the Crown,
 as possessed by that single claimant, if it is paid to that claimant, or by the claimant's partner, if it is paid to that partner;
- (b) in a case where that payment is a payment of an occupational pension, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund, as possessed by that single claimant or, as the case may be, by the claimant's partner;
- (c) in any other case, as possessed by that single claimant or the claimant's partner to the extent that it is used for the food, ordinary clothing or footwear, household fuel, rent for which housing benefit is payable or any housing costs to the extent that they are met under regulation 67(1)(c) and 68(1)(d) (housing costs) of that single claimant or, as the case may be, of the claimant's partner, or is used for any council tax or water charges for which that claimant or partner is liable.

(4) Any payment of capital, other than a payment of capital specified in paragraph (5) made to a single claimant or the claimant's partner in respect of a third party (but not in respect of another member of the claimant's family) is to be treated as possessed by that single claimant or, as the case may be, the claimant's partner, to the extent that it is kept or used by that claimant or used by or on behalf of the claimant's partner.

(5) Paragraphs (3) and (4) will not apply in respect of a payment of capital made—

- (a) under [<sup>F75</sup>or by] the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust [<sup>F76</sup>, MFET Limited] [<sup>F77</sup>, the Independent Living Fund (2006)], the Skipton Fund or the London Bombings Relief Charitable Fund;

- (b) pursuant to section 2 of the Employment and Training Act 1973 in respect of a claimant's participation—
- (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations;
  - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations; or
  - (iii) in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations; or
  - (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations;
- (c) under an occupational pension scheme, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund where—
- (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980;
  - (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
  - (iii) the person referred to in paragraph (i) and that person's partner (if any) does not possess, or is not treated as possessing, any other income apart from that payment.
- (6) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, the claimant is to be treated as if that claimant were such sole owner or partner and in such a case—
- (a) the value of the claimant's holding in that company, notwithstanding regulation 111 (calculation of capital), is to be disregarded; and
  - (b) the claimant will, subject to paragraph (7), be treated as possessing an amount of capital equal to the value or, as the case may be, the claimant's share of the value of the capital of that company and the foregoing provisions of this Chapter are to apply for the purposes of calculating that amount as if it were actual capital which the claimant does possess.
- (7) For so long as the claimant undertakes activities in the course of the business of the company, the amount which the claimant is treated as possessing under paragraph (6) is to be disregarded.
- (8) Where a claimant is treated as possessing capital under any of paragraphs (1) to (6), the foregoing provisions of this Chapter are to apply for the purposes of calculating its amount as if it were actual capital which the claimant does possess.
- (9) For the avoidance of doubt a claimant is to be treated as possessing capital under paragraph (1) only if the capital of which the claimant has deprived himself or herself is actual capital.

#### Textual Amendments

- F74** Words in reg. 115(2)(e) substituted (6.4.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(1), **12(6)**
- F75** Words in reg. 115(5)(a) inserted (6.4.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(1), **12(5)(c)**
- F76** Words in reg. 115(5)(a) inserted (6.4.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(1), **12(3)(d)**
- F77** Words in reg. 115(5)(a) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(8)**

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*Status: Point in time view as at 01/09/2010.*

*Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 10. (See end of Document for details)*

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### **Diminishing notional capital rule**

**116.**—(1) Where a claimant is treated as possessing capital under regulation 115(1) (notional capital), the amount which the claimant is treated as possessing—

- (a) in the case of a week that is subsequent to—
  - (i) the relevant week in respect of which the conditions set out in paragraph (2) are satisfied; or
  - (ii) a week which follows that relevant week and which satisfies those conditions, is to be reduced by an amount determined under paragraph (2);
- (b) in the case of a week in respect of which paragraph (1)(a) does not apply but where—
  - (i) that week is a week subsequent to the relevant week; and
  - (ii) that relevant week is a week in which the condition in paragraph (3) is satisfied, is to be reduced by the amount determined under paragraph (3).

(2) This paragraph applies to a benefit week or part-week where the claimant satisfies the conditions that—

- (a) the claimant is in receipt of an income-related allowance; and
- (b) but for regulation 115(1), the claimant would have received an additional amount of an income-related allowance in that benefit week or, as the case may be, that part-week,

and in such a case, the amount of the reduction for the purposes of paragraph (1)(a) is to be equal to that additional amount.

(3) Subject to paragraph (4), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to an income-related allowance in the relevant week, but for regulation 115(1), and in such a case the amount of the reduction is to be equal to the aggregate of—

- (a) the amount of an income-related allowance to which the claimant would have been entitled in the relevant week but for regulation 115(1); and for the purposes of this sub-paragraph if the relevant week is a part-week that amount is to be determined by dividing the amount of an income-related allowance to which the claimant would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;
- (b) the amount of housing benefit (if any) equal to the difference between the claimant's maximum housing benefit and the amount (if any) of housing benefit which the claimant is awarded in respect of the benefit week, within the meaning of regulation 2(1) of the Housing Benefit Regulations 2006 <sup>F78</sup> (interpretation), which includes the last day of the relevant week;
- (c) the amount of council tax benefit (if any) equal to the difference between the claimant's maximum council tax benefit and the amount (if any) of council tax benefit which the claimant is awarded in respect of the benefit week which includes the last day of the relevant week, and for this purpose “benefit week” has the same meaning as in regulation 2(1) of the Council Tax Benefit Regulations 2006 <sup>F79</sup> (interpretation).

(4) The amount determined under paragraph (3) is to be re-determined under that paragraph if the claimant makes a further claim for an income-related allowance and the conditions in paragraph (5) are satisfied, and in such a case—

- (a) sub-paragraphs (a) to (c) of paragraph (3) will apply as if for the words “relevant week” there were substituted the words “relevant subsequent week”; and
- (b) subject to paragraph (6), the amount as re-determined is to have effect from the first week following the relevant subsequent week in question.

(5) The conditions are that—

- (a) a further claim is made 26 or more weeks after—
- (i) the date on which the claimant made a claim for an income-related allowance in respect of which the claimant was first treated as possessing the capital in question under regulation 115(1);
  - (ii) in a case where there has been at least one re-determination in accordance with paragraph (4), the date on which the claimant last made a claim for an income-related allowance which resulted in the weekly amount being re-determined; or
  - (iii) the date on which the claimant last ceased to be in receipt of an income-related allowance;
- whichever last occurred; and
- (b) the claimant would have been entitled to an income-related allowance but for regulation 115(1).
- (6) The amount as re-determined pursuant to paragraph (4) is not to have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount is to continue to have effect.
- (7) For the purposes of this regulation—
- “part-week” means a period to which Part 14 (periods of less than a week) applies;
- “relevant week” means the benefit week or part-week in which the capital in question of which the claimant has deprived himself or herself within the meaning of regulation 115(1)—
- (a) was first taken into account for the purpose of determining the claimant's entitlement to an income-related allowance, a jobseeker's allowance or income support; or
  - (b) was taken into account on a subsequent occasion for the purpose of determining or re-determining the claimant's entitlement to an income-related allowance, a jobseeker's allowance or income support on that subsequent occasion and that determination or re-determination resulted in the claimant's beginning to receive, or ceasing to receive, an income-related allowance, a jobseeker's allowance or income support;
- and where more than one benefit week or part-week is identified by reference to paragraphs (a) and (b) of this definition the later or latest such benefit week or, as the case may be, the later or latest such part-week;
- “relevant subsequent week” means the benefit week or part-week which includes the day on which the further claim or, if more than one further claim has been made, the last such claim was made.

**Textual Amendments**

**F78** [S.I. 2006/213](#).

**F79** [S.I. 2006/215](#).

**Capital jointly held**

**117.** Except where a claimant possesses capital which is disregarded under regulation 115(6) (notional capital), where a claimant and one or more persons are beneficially entitled in possession to any capital asset they are to be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Chapter are to apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.

**Calculation of tariff income from capital**

**118.**—(1) Except where the circumstances prescribed in paragraph (3) apply to the claimant, where the claimant's capital calculated in accordance with this Part exceeds £6,000 it is to be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £6,000 but not exceeding £16,000.

(2) Where the circumstances prescribed in paragraph (3) apply to the claimant and that claimant's capital calculated in accordance with this Part exceeds £10,000, it is to be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £10,000 but not exceeding £16,000.

(3) For the purposes of paragraph (2) the prescribed circumstances are that the claimant lives permanently in—

- (a) a care home or an independent hospital;
- (b) an Abbeyfield Home; or
- (c) accommodation provided under section 3 of, and Part 2 of the Schedule to, the Polish Resettlement Act 1947 <sup>F80</sup> (provision of accommodation in camps) where the claimant requires personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, past or present mental disorder or a terminal illness and the care is provided in the home.

(4) For the purposes of paragraph (3), a claimant is to be treated as living permanently in such home, hospital or accommodation where the claimant is absent—

- (a) from a home, hospital or accommodation referred to in sub-paragraph (a) or (b) of paragraph (3)—
  - (i) in the case of a claimant over pensionable age, for a period not exceeding 52 weeks; and
  - (ii) in any other case, for a period not exceeding 13 weeks;
- (b) from accommodation referred to in sub-paragraph (c) of paragraph (3), where the claimant, with the agreement of the manager of the accommodation, intends to return to the accommodation in due course.

(5) Notwithstanding paragraphs (1) and (2), where any part of the excess is not a complete £250 that part is to be treated as equivalent to a weekly income of £1.

(6) For the purposes of paragraphs (1) and (2), capital includes any income treated as capital under [<sup>F81</sup>regulation 112 (income treated as capital)].

**Textual Amendments**

**F80** 1947 c. 19. Section 3 of and Part 2 of the Schedule to, the 1947 Act have been amended by S.I. 1968/1699, the Supplementary Benefit Act 1966 (c. 20), **section 39(1)** and paragraph 3 of Schedule 6, Supplementary Benefits Act 1976 (c. 71), **section 35(1)** and (2) and paragraph 4 of Schedule 6 and paragraph 1 of Schedule 7, the Social Security Act 1980 (c. 30), **sections 20** and 21(4) and paragraph 1 of Schedule 4 and Part 2 of Schedule 5 and the Criminal Justice Act 2003 (c. 44), **section 304** and paragraph 154 of Schedule 32.

**F81** Words in reg. 118(6) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **20(6)**

## CHAPTER 8

### <sup>F82</sup> ... liable relative payments

#### Textual Amendments

**F82** Words in Pt. 10 Ch. 8 heading omitted (for specified purposes and with effect in accordance with reg. 1(6) of the amending S.I.) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(6)(c), **11(5)**

#### Interpretation

**119.** In this Chapter—

<sup>F83</sup> ...

“claimant” includes a young claimant;

[<sup>F84c</sup>“claimant’s family” shall be construed in accordance with section 137 of the Contributions and Benefits Act (interpretation of part 7 and supplementary provisions);]

[<sup>F84c</sup>“housing costs” means those costs which may be met under paragraph 1(2) of Schedule 6;]

“liable relative” means—

- (a) a spouse, former spouse, civil partner or former civil partner of a claimant or of a member of the claimant's family;
- (b) a parent of a child or young person who is a member of the claimant's family or of a young claimant;
- (c) a person who has not been adjudged to be the father of a child or young person who is a member of the claimant's family or of a young claimant where that person is contributing towards the maintenance of that child, young person or young claimant and by reason of that contribution the claimant may reasonably be treated as the father of that child, young person or young claimant;
- (d) a person liable to maintain another person by virtue of section 78(6)(c) of the Administration Act (liability to maintain) where the latter is the claimant or a member of the claimant's family,

and, in this definition, a reference to a child's, young person's or young claimant's parent includes any person in relation to whom the child, young person or young claimant was treated as a child or a member of the family;

[<sup>F85c</sup>“ordinary clothing and footwear” means clothing and footwear for normal daily use but does not include school uniforms;]

“payment” means a periodical payment or any other payment made by or derived from a liable relative <sup>F86</sup>... but it does not include any payment—

- (a) arising from a disposition of property made in contemplation of, or as a consequence of—
  - (i) an agreement to separate;
  - (ii) any proceedings for judicial separation, divorce or nullity of marriage; or
  - (iii) any proceedings for separation, dissolution or nullity in relation to a civil partnership;
- (b) made after the death of the liable relative;
- (c) made by way of a gift but not in aggregate or otherwise exceeding £250 in the period of 52 weeks beginning with the date on which the payment, or if there is more than one

*Status: Point in time view as at 01/09/2010.*

*Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 10. (See end of Document for details)*

such payment the first payment, is made; and, in the case of a claimant who continues to be in receipt of an income-related allowance at the end of the period of 52 weeks, this provision is to continue to apply thereafter with the modification that any subsequent period of 52 weeks is to begin with the first day of the benefit week in which the first payment is made after the end of the previous period of 52 weeks;

- (d) [<sup>F87</sup>made to a third party, or in respect of a third party, unless the payment is—
  - (i) in relation to the claimant or the claimant's [<sup>F88</sup>partner or is made or derived from a person falling within sub-paragraph (d) of the definition of liable relative]; and
  - (ii) the payment is in respect of food, ordinary clothing or footwear, fuel, rent, housing costs, council tax or water charges;]
- (e) in kind;
- (f) to, or in respect of, a child or young person who is to be treated as not being a member of the claimant's household under regulation 156 (circumstances in which a person is to be treated as being or not being a member of the same household);
- (g) which is not a periodical payment, to the extent that any amount of that payment—
  - (i) has already been taken into account under this Part by virtue of a previous claim or determination;
  - (ii) has been recovered under section 74 of the Administration Act <sup>F89</sup> (income support and other payments) or is currently being recovered; or
  - (iii) at the time the determination is made, has been used by the claimant except where the claimant has deprived himself or herself of that amount for the purpose of securing entitlement to an income-related allowance or increasing the amount of that allowance;
- (h) [<sup>F90</sup>to which paragraph 60 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) applies.]

“periodical payment” means—

- (a) a payment which is made or is due to be made at regular intervals <sup>F91</sup> ...;
- (b) in a case where the liable relative has established a pattern of making payments at regular intervals, any such payment;
- (c) any payment<sup>F92</sup>[<sup>F93</sup>...that does not exceed] the amount of an income-related allowance payable had that payment not been made;
- (d) any payment representing a commutation of payments to which paragraph (a) or (b) of this definition applies whether made in arrears or in advance,

but does not include a payment due to be made before the first benefit week pursuant to the claim which is not so made;

“young claimant” means a person aged 16 or over but under 20 who makes a claim for an income-related allowance.

#### Textual Amendments

**F83** Words in reg. 119 omitted (for specified purposes and with effect in accordance with reg. 1(6) of the amending S.I.) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(6)(c), **11(11)(a)**

**F84** Words in reg. 119 inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(7)(b)**



- F85** Words in reg. 119 inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(7)(c)**
- F86** Words in reg. 119 omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(7)(d)(i)**
- F87** Words in reg. 119 substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(7)(d)(ii)**
- F88** Words in reg. 119 substituted (for specified purposes and with effect in accordance with reg. 1(6) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(6)(c), **11(11)(b)(i)**
- F89** Section 74 has been amended by the [Jobseekers Act 1995 \(c. 18\)](#), **paragraph 5** of the Schedule and the Act, paragraph 10(8) of Schedule 3.
- F90** Words in reg. 119 added (for specified purposes and with effect in accordance with reg. 1(6) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(6)(c), **11(11)(b)(ii)**
- F91** Words in reg. 119 omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(7)(e)(i)**
- F92** Words in reg. 119 omitted (for specified purposes and with effect in accordance with reg. 1(6) of the amending S.I.) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(6)(c), **11(11)(c)**
- F93** Words in reg. 119 substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(7)(e)(ii)**

### Treatment of <sup>F94</sup> ... liable relative payments

**120.** Subject to regulation 121(disregard of payments treated as not relevant income) <sup>F95</sup> ... a payment—

- (a) to the extent that it is not a payment of income, is to be treated as income;
- (b) is to be taken into account in accordance with the following provisions of this Chapter.

#### Textual Amendments

- F94** Words in reg. 120 heading omitted (for specified purposes and with effect in accordance with reg. 1(6) of the amending S.I.) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(6)(c), **11(4)**
- F95** Words in reg. 120 omitted (for specified purposes and with effect in accordance with reg. 1(6) of the amending S.I.) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(6)(c), **11(12)**

### Disregard of payments treated as not relevant income

**121.** Where the Secretary of State treats any payment as not being relevant income for the purposes of section 74A of the Administration Act <sup>F96</sup> (payment of benefit where maintenance payments collected by Secretary of State), that payment is to be disregarded in calculating a claimant's income.

#### Textual Amendments

- F96** Section 74A was inserted by the [Child Support Act 1995 \(c. 34\)](#), **section 25** and amended by the [Civil Partnership Act 2004 \(c. 33\)](#), **sections 254(1)** and 261(4), Part 4 of Schedule 24 and paragraph 60(a) to (c) of Schedule 30 and the Act, section 28(1) and paragraph 10(1) and (9) of Schedule 3.

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Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 10. (See end of Document for details)

**Period over which periodical payments are to be taken into account**

122.—(1) The period over which a periodical payment is to be taken into account is to be—

- (a) in a case where the payment is made at regular intervals, a period equal to the length of that interval;
- (b) in a case where the payment is due to be made at regular intervals but is not so made, such number of weeks as is equal to the number (and any fraction is to be treated as a corresponding fraction of a week) obtained by dividing the amount of that payment by the weekly amount of that periodical payment as calculated in accordance with regulation 124(4) (calculation of the weekly amount of a liable relative payment);
- (c) in any other case, a period equal to a week.

(2) The period under paragraph (1) is to begin on the date on which the payment is treated as paid under regulation 125 (date on which a liable relative payment is to be treated as paid).

**Period over which payments other than periodical payments are to be taken into account**

<sup>F97</sup>123.—(1) The period over which a payment other than a periodical payment (a “non-periodical payment”) is to be taken into account shall be determined as follows.

(2) Except in a case where paragraph (4) applies, the number of weeks over which a non-periodical payment is to be taken into account shall be equal to the number obtained by dividing that payment by the amount referred to in paragraph (3).

(3) The amount is the aggregate of £2 and—

- (a) the amount of employment and support allowance that would be payable had no payment been made. <sup>F98</sup> ...

<sup>F98</sup>(b) .....

(4) This paragraph applies in a case where a liable relative makes a periodical payment and a non-periodical payment concurrently and the weekly amount of the periodical payment (as calculated in accordance with regulation 124) is less than B.

(5) In a case where paragraph (4) applies, the non-periodical payment shall, subject to paragraphs (6) and (7), be taken into account over a period of the number of weeks equal to the number obtained by applying the formula—

$$\frac{A}{B - C}$$

(6) If the liable relative ceases to make periodical payments, the balance (if any) of the non-periodical payment shall be taken into account over the number of weeks equal to the number obtained by dividing that balance by the amount referred to in paragraph (3).

(7) If the amount of any subsequent periodical payment varies, the balance (if any) of the non-periodical payment shall be taken into account over a period of the number of weeks equal to the number obtained by applying the formula—

$$\frac{D}{B - E}$$

(8) The period under paragraph (2) or (4) shall begin on the date on which the payment is treated as paid under regulation 125 (date on which a liable relative payment is to be treated as paid) and the period under paragraph (6) or (7) shall begin on the first day of the benefit week in which the cessation or variation of the periodical payment occurred.

(9) Any fraction which arises by applying a calculation or formula referred to in this regulation shall be treated as a corresponding fraction of a week.

(10) In paragraphs (4) to (7)—

- A = the amount of the non-periodical payment;
- B = the aggregate of £2 and the amount of employment and support allowance that would be payable had the periodical payment not been made<sup>F99</sup> ...;
- C = the weekly amount of the periodical payment;
- D = the balance (if any) of the non-periodical payment;
- E = the weekly amount of any subsequent periodical payment.]

#### Textual Amendments

- F97** Reg. 123 substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(9)**
- F98** Reg. 123(3)(b) and word omitted (for specified purposes and with effect in accordance with reg. 1(6) of the amending S.I.) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(6)(c), **11(13)(a)**
- F99** Words in reg. 123(10) omitted (for specified purposes and with effect in accordance with reg. 1(6) of the amending S.I.) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(6)(c), **11(13)(b)**

#### Calculation of the weekly amount of a<sup>F100</sup> ... liable relative payment

**124.**—(1) Where a periodical payment is made or is due to be made at intervals of one week, the weekly amount is to be the amount of that payment.

(2) Where a periodical payment is made or is due to be made at intervals greater than one week and those intervals are monthly, the weekly amount is to be determined by multiplying the amount of the payment by 12 and dividing the product by 52.

(3) Where a periodical payment is made or is due to be made at intervals and those intervals are neither weekly nor monthly, the weekly amount is to be determined by dividing that payment by the number equal to the number of weeks (including any part of a week) in that interval.

(4) Where a payment is made and that payment represents a commutation of periodical payments whether in arrears or in advance, the weekly amount is to be the weekly amount of the individual periodical payments so commuted as calculated under paragraphs (1) to (3) as is appropriate.

(5) The weekly amount of a payment to which regulation 123 (period over which payments other than periodical payments are to be taken into account) applies, is to be equal to the amount of the divisor used in calculating the period over which the payment or, as the case may be, the balance is to be taken into account.

#### Textual Amendments

- F100** Words in reg. 124 heading omitted (for specified purposes and with effect in accordance with reg. 1(6) of the amending S.I.) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(6)(c), **11(4)**

#### Date on which a<sup>F101</sup> ... liable relative payment is to be treated as paid

**125.**—(1) A periodical payment is to be treated as paid—

- (a) in the case of a payment which is due to be made before the first benefit week pursuant to the claim, on the day in the week in which it is due to be paid which corresponds to the first day of the benefit week;

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- (b) in any other case, on the first day of the benefit week in which it is due to be paid unless, having regard to the manner in which an income-related allowance is due to be paid in the particular case, it would be more practicable to treat it as paid on the first day of a subsequent benefit week.
- (2) Subject to paragraph (3), any other payment is to be treated as paid—
  - (a) in the case of a payment which is made before the first benefit week pursuant to the claim, on the day in the week in which it is paid which corresponds to the first day of the benefit week;
  - (b) in any other case, on the first day of the benefit week in which it is paid unless, having regard to the manner in which an income-related allowance is due to be paid in the particular case, it would be more practicable to treat it as paid on the first day of a subsequent benefit week.
- (3) Any other payment paid on a date which falls within the period in respect of which a previous payment is taken into account, not being a periodical payment, is to be treated as paid on the first day following the end of that period.

**Textual Amendments**  
**F101** Words in reg. 125 heading omitted (for specified purposes and with effect in accordance with reg. 1(6) of the amending S.I.) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(6)(c), **11(4)**

**Liable relative payments to be treated as capital**

**F102** 126. ....

**Textual Amendments**  
**F102** Reg. 126 omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(4)(b)**

**F103** CHAPTER 9

Child support

**Textual Amendments**  
**F103** Pt. 10 Ch. 9 omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(4)(c)**

127. ....

128. ....

129. ....

130. ....

## CHAPTER 10

### Students

#### Interpretation

131.—(1) In this Chapter—

“academic year” means the period of twelve months beginning on 1st January, 1st April, 1st July or 1st September according to whether the course in question begins in the winter, the spring, the summer or the autumn respectively but if students are required to begin attending the course during August or September and to continue attending through the autumn, the academic year of the course is to be considered to begin in the autumn rather than the summer;

“access funds” means—

- (a) grants made under section [F104 68] of the Further and Higher Education Act 1992 F105F106 ... for the purpose of providing funds on a discretionary basis to be paid to students;
- (b) grants made under sections 73(a) and (c) and 74(1) of the Education (Scotland) Act 1980 F107,
- (c) grants made under Article 30 of the Education and Libraries (Northern Ireland) Order 1993 F108, or grants, loans or other payments made under Article 5 of the Further Education (Northern Ireland) Order 1997 F109 in each case being grants, or grants, loans or other payments as the case may be, made for the purpose of assisting students in financial difficulties;
- (d) discretionary payments, known as “learner support funds”, which are made available to students in further education by institutions out of funds provided by the [F110 Young People’s Learning Agency for England under sections 61 and 62 of the Apprenticeships, Skills, Children and Learning Act 2009 or the Chief Executive of Skills Funding under sections 100 and 101 of that Act] F111; or
- (e) Financial Contingency Funds made available by the Welsh Ministers;

“college of further education” means, in Scotland, an educational establishment by which further education is provided;

[F112 “contribution” means—

- (a) any contribution in respect of the income of a student or any person which the Secretary of State, the Scottish Ministers or an education authority takes into account in ascertaining the amount of a student’s grant or student loan; or
- (b) any sums, which in determining the amount of a student’s allowance or bursary in Scotland under the Education (Scotland) Act 1980, the Scottish Ministers or education authority takes into account being sums which the Scottish Ministers or education authority consider that it is reasonable for the following persons to contribute towards the holder’s expenses—
  - (i) the holder of the allowance or bursary;
  - (ii) the holder’s parents;
  - (iii) the holder’s parent’s spouse, civil partner or a person ordinarily living with the holder’s parent as if he or she were the spouse or civil partner of that parent; or
  - (iv) the holder’s spouse or civil partner;]

“course of advanced education” means—

*Status: Point in time view as at 01/09/2010.*

*Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 10. (See end of Document for details)*

- (a) a course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a diploma of higher education or a higher national diploma; or
- (b) any other course which is of a standard above advanced GNVQ, or equivalent, including a course which is of a standard above a general certificate of education (advanced level), a Scottish national qualification (higher or advanced higher);

“covenant income” means the income payable to a student under a Deed of Covenant by a person whose income is, or is likely to be, taken into account in assessing the student’s grant or award;

“education authority” means a government department, [<sup>F113</sup>a local authority as defined in section 579 of the Education Act 1996 (interpretation)], an education authority as defined in section 123 of the Local Government (Scotland) Act 1973<sup>F114</sup>, an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986<sup>F115</sup>, any body which is a research council for the purposes of the Science and Technology Act 1965<sup>F116</sup> or any analogous government department, authority, board or body, of the Channel Islands, Isle of Man or any other country outside Great Britain;

“full-time course of advanced education” means a course of advanced education which is—

- (a) a full-time course of study which is not funded in whole or in part by the [<sup>F117</sup>Young People’s Learning Agency for England, the Chief Executive of Skills Funding] or by the Welsh Ministers or a full-time course of study which is not funded in whole or in part by the Scottish Ministers at a college of further education or a full-time course of study which is a course of higher education and is funded in whole or in part by the Scottish Ministers;
- (b) a course of study which is funded in whole or in part by the [<sup>F117</sup>Young People’s Learning Agency for England, the Chief Executive of Skills Funding] or by the Welsh Ministers if it involves more than 16 guided learning hours per week for the student in question, according to the number of guided learning hours per week for that student set out—
  - (i) [<sup>F118</sup>in the case of a course funded by the Young People’s Learning Agency for England or the Chief Executive of Skills Funding, in the student’s learning agreement signed on behalf of the establishment which is funded by either of those bodies for the delivery of that course; or]
  - (ii) in the case of a course funded by the Welsh Ministers, in a document signed on behalf of the establishment which is funded by that Council for the delivery of that course; or
- (c) a course of study (not being higher education) which is funded in whole or in part by the Scottish Ministers at a college of further education if it involves—
  - (i) more than 16 hours per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff according to the number of hours set out in a document signed on behalf of the college; or
  - (ii) 16 hours or less per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff and it involves additional hours using structured learning packages supported by the teaching staff where the combined total of hours exceeds 21 per week, according to the number of hours set out in a document signed on behalf of the college;

“full-time course of study” means a full-time course of study which—

- (a) is not funded in whole or in part by the [<sup>F119</sup>Young People’s Learning Agency for England, the Chief Executive of Skills Funding] or by the Welsh Ministers or a full-time course of study which is not funded in whole or in part by the Scottish Ministers at a college

of further education or a full-time course of study which is a course of higher education and is funded in whole or in part by the Scottish Ministers;

- (b) a course of study which is funded in whole or in part by the <sup>F119</sup>Young People’s Learning Agency for England, the Chief Executive of Skills Funding] or by the Welsh Ministers if it involves more than 16 guided learning hours per week for the student in question, according to the number of guided learning hours per week for that student set out—
  - (i) <sup>F120</sup>in the case of a course funded by the Young People’s Learning Agency for England or the Chief Executive of Skills Funding, in the student’s learning agreement signed on behalf of the establishment which is funded by either of those bodies for the delivery of that course; or]
  - (ii) in the case of a course funded by the Welsh Ministers, in a document signed on behalf of the establishment which is funded by that Council for the delivery of that course; or
- (c) is not higher education and is funded in whole or in part by the Scottish Ministers at a college of further education if it involves—
  - (i) more than 16 hours per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff according to the number of hours set out in a document signed on behalf of the college; or
  - (ii) 16 hours or less per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff and it involves additional hours using structured learning packages supported by the teaching staff where the combined total of hours exceeds 21 per week, according to the number of hours set out in a document signed on behalf of the college;

“full-time student” means a person who is not a qualifying young person or child within the meaning of section 142 of the Contributions and Benefits Act <sup>F121</sup> (child and qualifying young person) and who is—

- (a) aged less than 19 and is attending or undertaking a full-time course of advanced education;
- (b) aged 19 or over but under pensionable age and is attending or undertaking a full-time course of study at an educational establishment; or
- (c) on a sandwich course;

“grant” (except in the definition of “access funds”) means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary but does not include a payment from access funds or any payment to which paragraph 13 of Schedule 8 or paragraph 52 of Schedule 9 applies;

“grant income” means—

- (a) any income by way of a grant;
- (b) in the case of a student other than one to whom paragraph (c) refers, any contribution which has been assessed whether or not it has been paid;
- (c) in the case of a student who is a lone parent or is a person to whom Part 4 applies, any contribution which has been assessed and which has been paid,

and any such contribution which is paid by way of a covenant is to be treated as part of the student’s grant income;

“higher education” means higher education within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992 <sup>F122</sup>;

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*Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 10. (See end of Document for details)*

“last day of the course” means the date on which the last day of the final academic term falls in respect of the course in which the student is enrolled;

“period of study” means—

- (a) in the case of a course of study for one year or less, the period beginning with the start of the course and ending with the last day of the course;
- (b) in the case of a course of study for more than one year, in the first or, as the case may be, any subsequent year of the course, other than the final year of the course, the period beginning with the start of the course or, as the case may be, that year's start and ending with either—
  - (i) the day before the start of the next year of the course in a case where the student's grant or loan is assessed at a rate appropriate to the student's studying throughout the year or, if the claimant does not have a grant or loan, where a loan would have been assessed at such a rate had the claimant had one; or
  - (ii) in any other case the day before the start of the normal summer vacation appropriate to the student's course;
- (c) in the final year of a course of study of more than one year, the period beginning with that year's start and ending with the last day of the course;

“periods of experience” means periods of work experience which form part of a sandwich course;

“sandwich course” has the meaning prescribed in regulation 2(9) of the Education (Student Support) Regulations 2007 <sup>F123</sup>, regulation 4(2) of the Education (Student Loans) (Scotland) Regulations 2007 <sup>F124</sup> or regulation 2(8) of the Education (Student Support) Regulations (Northern Ireland) 2007 <sup>F125</sup>;

“standard maintenance grant” means—

- (a) except where paragraph (b) or (c) applies, in the case of a student attending or undertaking a course of study at the University of London or an establishment within the area comprising the City of London and the Metropolitan Police District, the amount specified for the time being in paragraph 2(2)(a) of Schedule 2 to the Education (Mandatory Awards) Regulations 2003 <sup>F126</sup> (“the 2003 Regulations”) for such a student;
- (b) except where paragraph (c) applies, in the case of a student residing at the student's parent's home, the amount specified in paragraph 3(2) of Schedule 2 to the 2003 Regulations;
- (c) in the case of a student receiving an allowance or bursary under the Education (Scotland) Act 1980 <sup>F127</sup>, the amount of money specified for the relevant year appropriate for the student set out in the Student Support in Scotland Guide issued by the Student Awards Agency for Scotland, or its nearest equivalent in the case of a bursary provided by a college of further education or a local education authority;
- (d) in any other case, the amount specified in paragraph 2(2) of Schedule 2 to the 2003 Regulations other than in paragraph (a) or (b) of that paragraph;

“student” means a person, other than a person in receipt of a training allowance, who is attending or undertaking a course of study at an educational establishment;

“student loan” means a loan towards a student's maintenance pursuant to any regulations made under section 22 of the Teaching and Higher Education Act 1998 <sup>F128</sup>, sections [<sup>F129</sup>73(f)], 73B and 74 of the Education (Scotland) Act 1980 or article 3 of the Education (Student Support) (Northern Ireland) Order 1998 <sup>F130</sup> and is to include, in Scotland, amounts paid under regulation 4(1)(c) of the Students' Allowances (Scotland) Regulations 2007 <sup>F131</sup>.



(2) For the purposes of the definition of “full-time student” in paragraph (1), a person is to be regarded as attending or, as the case may be, undertaking a full-time course of study, a full-time course of advanced education or as being on a sandwich course—

(a) subject to paragraph (3), in the case of a person attending or undertaking a part of a modular course which would be a full-time course of study for the purposes of this Part, for the period beginning on the day on which that part of the course starts and ending—

(i) on the last day on which the claimant is registered with the educational establishment as attending or undertaking that part as a full-time course of study; or

(ii) on such earlier date (if any) as the claimant finally abandons the course or is dismissed from it;

(b) in any other case, throughout the period beginning on the date on which the claimant starts attending or undertaking the course and ending on the last day of the course or on such earlier date (if any) as the claimant finally abandons it or is dismissed from it.

(3) For the purpose of sub-paragraph (a) of paragraph (2), the period referred to in that sub-paragraph is to include—

(a) where a person has failed examinations or has failed to successfully complete a module relating to a period when the claimant was attending or undertaking a part of the course as a full-time course of study, any period in respect of which the claimant attends or undertakes the course for the purpose of retaking those examinations or that module;

(b) any period of vacation within the period specified in that paragraph or immediately following that period except where the person has registered with the educational establishment to attend or undertake the final module in the course and the vacation immediately follows the last day on which the claimant is required to attend or undertake the course.

(4) In paragraph (2), “modular course” means a course of study which consists of two or more modules, the successful completion of a specified number of which is required before a person is considered by the educational establishment to have completed the course.

#### Textual Amendments

**F104** Word in reg. 131(1) substituted (26.10.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(1), **11(14)(a)**

**F105** 1992 c. 13.

**F106** Words in reg. 131(1) omitted (26.10.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(1), **11(14)(b)**

**F107** 1980 c. 44.

**F108** [S.I. 1993/2810 \(N.I. 12\)](#). The functions under article 30 were transferred by [S.R. 1999/481](#) and the relevant amending instruments are [S.I. 1997/1772 \(N.I. 15\)](#), [S.I. 2005/1116 \(N.I. 5\)](#) and [S.I. 2005/1963 \(N.I. 13\)](#).

**F109** [S.I. 1997/1772 \(N.I. 15\)](#).

**F110** Words in reg. 131(1) substituted (1.9.2010) by [The Apprenticeships, Skills, Children and Learning Act 2009 \(Consequential Amendments to Subordinate Legislation\) \(England\) Order 2010 \(S.I. 2010/1941\)](#), **art. 28(4)(a)**, reg. 1

**F111** 2000 c. 21. Section 5 was amended by the [Education Act 2002 \(c. 32\)](#), **section 178(1)**, (2)(a) and (b). Section 6 was amended by the [Special Educational Needs and Disability Act 2001 \(c. 10\)](#), **sections 34(7)** and 42(6) and Schedule 9. Section 9 was amended by the [Education and Inspections Act 2006 \(c. 40\)](#), **section 176(2)**.

**F112** Words in reg. 131(1) substituted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **10(7)**

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*Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 10. (See end of Document for details)*

- F113** Words in reg. 131 substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) (Local and Subordinate Legislation) Order 2010 (S.I. 2010/1172), art. 1(1), **Sch. 3 para. 81**
- F114** 1973 c. 65, **section 123** was substituted by the Local Government etc. (Scotland) Act 1994 (c. 39), **section 180** and Schedule 13, paragraph 92(28).
- F115** S.I. 1986/594 (N.I. 3).
- F116** 1965 c. 4.
- F117** Words in reg. 131(1) substituted (1.9.2010) by The Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Subordinate Legislation) (England) Order 2010 (S.I. 2010/1941), **art. 28(4)(b)(i)**, reg. 1
- F118** Words in reg. 131(1) substituted (1.9.2010) by The Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Subordinate Legislation) (England) Order 2010 (S.I. 2010/1941), **art. 28(4)(b)(ii)**, reg. 1
- F119** Words in reg. 131(1) substituted (1.9.2010) by The Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Subordinate Legislation) (England) Order 2010 (S.I. 2010/1941), **art. 28(4)(c)(i)**, reg. 1
- F120** Words in reg. 131(1) substituted (1.9.2010) by The Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Subordinate Legislation) (England) Order 2010 (S.I. 2010/1941), **art. 28(4)(c)(ii)**, reg. 1
- F121** Section 142 was substituted by the Child Benefit Act 2005 (c. 6), **section 1(2)**.
- F122** 1992 c. 37.
- F123** S.I. 2007/176.
- F124** S.S.I. 2007/154.
- F125** S.R. 2007/195.
- F126** S.I. 2003/1994.
- F127** 1980 c. 44.
- F128** 1998 c. 30. Section 22 was amended by the Learning and Skills Act 2000 (c. 21), **section 146(1)** and (2)(a), the Higher Education Act 2004 (c. 8), **sections 42(1)**, 43(1), (2) and (3) and 50 and Schedule 7, the Income Tax (Earnings and Pensions) Act 2003 (c. 1), **section 722** and Schedule 6, Part 2, paragraph 236(a) and (b) and the Finance Act 2003 (c. 14), **section 147(3)**.
- F129** Word in reg. 131(1) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **8(9)**
- F130** S.I. 1998/1760 (N.I. 14).
- F131** S.S.I. 2007/153.

### Calculation of grant income

**132.**—(1) The amount of student's grant income to be taken into account, subject to paragraphs (2) and (3), is to be the whole of the student's grant income.

- (2) There is to be disregarded from the amount of a student's grant income any payment—
- (a) intended to meet tuition fees or examination fees;
  - (b) intended to meet additional expenditure incurred by a disabled student in respect of that student's attendance on a course;
  - (c) intended to meet additional expenditure connected with term time residential study away from the student's educational establishment;
  - (d) on account of the student maintaining a home at a place other than that at which the student resides while attending the course but only to the extent that the student's rent is not met by housing benefit;
  - (e) on account of any other person but only if that person is residing outside of the United Kingdom and there is no applicable amount in respect of that person;

- (f) intended to meet the cost of books and equipment;
  - (g) intended to meet travel expenses incurred as a result of the student's attendance on the course;
  - (h) intended for the maintenance of a child dependant;
  - (i) intended for the child care costs of a child dependant.
- [<sup>F132</sup>(j) of higher education bursary for care leavers made under Part III of the Children Act 1989.]
- (3) Where a student does not have a student loan and is not treated as possessing such a loan, there is to be excluded from the student's grant income—
- (a) the sum of [<sup>F133</sup>£295] per academic year in respect of travel costs; and
  - (b) the sum of [<sup>F134</sup>£380] per academic year towards the costs of books and equipment, whether or not any such costs are incurred.
- (4) Subject to paragraph (6), a student's grant income except any amount intended for the maintenance of adult dependants under Part 3 of Schedule 2 to the Education (Mandatory Awards) Regulations 2003 is to be apportioned—
- (a) subject to paragraph (7), in a case where it is attributable to the period of study, equally between the weeks in the period beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of the period of study and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period of study;
  - (b) in any other case, equally between the weeks in the period beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of the period for which it is payable and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period for which it is payable.
- (5) Any grant in respect of an adult dependant paid under section 63(6) of the Health Services and Public Health Act 1968 <sup>F135</sup> (grants in respect of the provision of instruction to officers of hospital authorities) and any amount intended for the maintenance of an adult dependant under the provisions referred to in paragraph (4) is to be apportioned equally over a period of 52 weeks or, if there are 53 benefit weeks (including part-weeks) in the year, 53 weeks.
- (6) In a case where a student is in receipt of a student loan or where that student could have acquired a student loan by taking reasonable steps but had not done so, any amount intended for the maintenance of an adult dependant under provisions other than those referred to in paragraph (4) is to be apportioned over the same period as the student's loan is apportioned or, as the case may be, would have been apportioned.
- (7) In the case of a student on a sandwich course, any periods of experience within the period of study is to be excluded and the student's grant income is to be apportioned equally between the weeks in the period beginning with the benefit week, the first day of which immediately follows the last day of the period of experience and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period of study.

#### Textual Amendments

**F132** Reg. 132(2)(j) added (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **10(8)**

**F133** Word in reg. 132(3)(a) substituted (27.10.2008) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), regs. 1(5), **7(3)(a)**

**F134** Word in reg. 132(3)(b) substituted (27.10.2008) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), regs. 1(5), **7(3)(b)**

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*Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 10. (See end of Document for details)*

**F135** 1968 c. 46. Section 63(6) was amended by the [Health and Medicines Act 1988 \(c. 49\)](#), [section 20](#).

### Calculation of covenant income where a contribution is assessed

**133.**—(1) Where a student is in receipt of income by way of a grant during a period of study and a contribution has been assessed, the amount of the student's covenant income to be taken into account for that period and any summer vacation immediately following is to be the whole amount of the student's covenant income less, subject to paragraph (3), the amount of the contribution.

(2) The weekly amount of the student's covenant income is to be determined—

- (a) by dividing the amount of income which falls to be taken into account under paragraph (1) by 52 or, if there are 53 benefit weeks (including part-weeks) in the year, 53; and
- (b) by disregarding from the resulting amount, £5.

(3) For the purposes of paragraph (1), the contribution is to be treated as increased by the amount, if any, by which the amount excluded under regulation 132(2)(g) (calculation of grant income) falls short of the amount for the time being specified in paragraph 7(2) of Schedule 2 to the Education (Mandatory Awards) Regulations 2003 <sup>F136</sup> (travel expenditure).

#### Textual Amendments

**F136** [S.I. 2003/1994](#), the relevant amending instrument is [S.I. 2007/1629](#).

### Calculation of covenant income where no grant income or no contribution is assessed

**134.**—(1) Where a student is not in receipt of income by way of a grant the amount of the student's covenant income is to be calculated as follows—

- (a) any sums intended for any expenditure specified in regulation 132(2)(a) to (e), necessary as a result of the student's attendance on the course, are to be disregarded;
- (b) any covenant income, up to the amount of the standard maintenance grant, which is not so disregarded is to be apportioned equally between the weeks of the period of study and there is to be disregarded from the covenant income to be so apportioned the amount which would have been disregarded under regulation 132(2)(f) and (g) and (3) had the student been in receipt of the standard maintenance grant;
- (c) the balance, if any, is to be divided by 52 or, if there are 53 benefit weeks (including part-weeks) in the year, 53 and treated as weekly income of which £5 is to be disregarded.

(2) Where a student is in receipt of income by way of a grant and no contribution has been assessed, the amount of the student's covenant income is to be calculated in accordance with paragraph (1), except that—

- (a) the value of the standard maintenance grant is to be abated by the amount of the student's grant income less an amount equal to the amount of any sums disregarded under regulation 132(2)(a) to (e); and
- (b) the amount to be disregarded under paragraph (1)(b) is to be abated by an amount equal to the amount of any sums disregarded under regulation 132(2)(f) and (g) and (3).

### Relationships with amounts to be disregarded under Schedule 8

**135.** No part of a student's covenant income or grant income is to be disregarded under paragraph 16 of Schedule 8 (charitable and voluntary payments).

### Other amounts to be disregarded

**136.**—(1) For the purposes of ascertaining income other than grant income, covenant income and loans treated as income in accordance with regulation 137 (treatment of student loans), any amounts intended for any expenditure specified in regulation 132(2) (calculation of grant income) necessary as a result of the student's attendance on the course is to be disregarded but only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the sums disregarded under regulation 132(2) and (3), 133(3) (calculation of covenant income where a contribution is assessed), 134(1)(a) or (b) (calculation of covenant income where no grant income or no contribution is assessed) and 137(6) on like expenditure.

(2) Where a claim is made in respect of any period in the normal summer vacation and any income is payable under a Deed of Covenant which commences or takes effect after the first day of that vacation, that income is to be disregarded.

### Treatment of student loans

**137.**—(1) A student loan is to be treated as income unless it is a specified loan or award in which case it is to be disregarded.

(2) For the purposes of paragraph (1), a “specified loan or award” means—

- (a) in relation to England, a loan made by the Higher Education Funding Council for England under section 65 of the Further and Higher Education Act 1992 <sup>F137</sup>;
- (b) in relation to Wales, a loan made by the Higher Education Funding Council for Wales under section 65 of the Further and Higher Education Act 1992;
- (c) in relation to Scotland, a loan made by an educational institution from funds it has received under the Education (Access Funds) (Scotland) Regulations 1990 <sup>F138</sup>;
- (d) in relation to Northern Ireland, an award made by the Department for Employment and Learning under article 51 of the Education and Libraries (Northern Ireland) Order 1986 <sup>F139</sup>.

(3) In calculating the weekly amount of the loan to be taken in account as income—

- (a) in respect of a course that is of a single academic year's duration or less, a loan which is payable in respect of that period is to be apportioned equally between the weeks in the period beginning with—
  - (i) except in a case where paragraph (ii) applies, the benefit week, the first day of which coincides with, or immediately follows, the first day of the single academic year;
  - (ii) where the student is required to start attending the course in August or where the course is less than an academic year's duration, the benefit week, the first day of which coincides with, or immediately follows, the first day of the course,and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the course;
- (b) in respect of an academic year of a course which starts other than on 1st September, a loan which is payable in respect of that academic year is to be apportioned equally between the weeks in the period beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of that academic year and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of that academic year but excluding any benefit weeks falling entirely within the quarter during which, in the opinion of the Secretary of State, the longest of any vacation is taken;
- (c) for the purposes of sub-paragraph (b), “quarter” is to have the same meaning as for the purposes of regulation 104(6) (calculation of income other than earnings);

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- (d) in respect of the final academic year of a course (not being a course of a single year's duration), a loan which is payable in respect of that final academic year is to be apportioned equally between the weeks in the period beginning with—
- (i) except in a case where paragraph (ii) applies, the benefit week, the first day of which coincides with, or immediately follows, the first day of that academic year;
  - (ii) where the final academic year starts on 1st September, the benefit week, the first day of which coincides with, or immediately follows, the earlier of 1st September or the first day of the autumn term,
- and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the course;
- (e) in any other case, the loan is to be apportioned equally between the weeks in the period beginning with the earlier of—
- (i) the first day of the first benefit week in September; or
  - (ii) the benefit week, the first day of which coincides with, or immediately follows, the first day of the autumn term,
- and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of June,
- and, in all cases, from the weekly amount so apportioned there is to be disregarded £10.
- (4) A student is to be treated as possessing a student loan in respect of an academic year where—
- (a) a student loan has been made to that student in respect of that year; or
  - (b) the student could acquire such a loan in respect of that year by taking reasonable steps to do so.
- (5) Where a student is treated as possessing a student loan under paragraph (4), the amount of the student loan to be taken into account as income is to be, subject to paragraph (6)—
- (a) in the case of a student to whom a student loan is made in respect of an academic year, a sum equal to the maximum student loan the student is able to acquire in respect of that year by taking reasonable steps to do so and either—
    - (i) in the case of a student other than one to whom paragraph (ii) refers, any contribution whether or not it has been paid to that student; or
    - (ii) in the case of a student who is entitled to an income-related allowance by virtue of being a student to whom regulation 18 (circumstances in which the condition that the claimant is not receiving education does not apply) applies;
  - (b) in the case of a student to whom a student loan is not made in respect of an academic year, the maximum student loan that would be made to the student if—
    - (i) the student took all reasonable steps to obtain the maximum student loan that student is able to acquire in respect of that year; and
    - (ii) no deduction in that loan was made by virtue of the application of a means test.
- (6) There is to be deducted from the amount of income taken into account under paragraph (5)—
- (a) the sum of [<sup>F140</sup>£295] per academic year in respect of travel costs; and
  - (b) the sum of [<sup>F141</sup>£380] per academic year towards the costs of books and equipment, whether or not any such costs are incurred.

#### Textual Amendments

F137 1992 c. 13.

**F138** S.I. 1990/1534 (S. 157).

**F139** S.I. 1986/594 (N.I. 3).

**F140** Word in reg. 137(6)(a) substituted (27.10.2008) by The Social Security (Students and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/1599), regs. 1(5), **7(4)(a)**

**F141** Word in reg. 137(6)(b) substituted (27.10.2008) by The Social Security (Students and Miscellaneous Amendments) Regulations 2008 (S.I. 2008/1599), regs. 1(5), **7(4)(b)**

### Treatment of payments from access funds

**138.**—(1) This regulation applies to payments from access funds that are not payments to which regulation 142(2) or (3) (income treated as capital) applies.

(2) A payment from access funds, other than a payment to which paragraph (3) applies, is to be disregarded as income.

(3) Subject to paragraph (4) and paragraph 39 of Schedule 8, any payments from access funds which are intended and used for food, ordinary clothing or footwear, household fuel, rent for which housing benefit is payable or any housing costs to the extent that they are met under regulation 67(1)(c) or 68(1)(d) (housing costs), of a single claimant or, as the case may be, of the claimant's partner, and any payments from access funds which are used for any council tax or water charges for which that claimant or partner is liable is to be disregarded as income to the extent of £20 per week.

(4) Where a payment from access funds is made—

(a) on or after 1st September or the first day of the course, whichever first occurs, but before receipt of any student loan in respect of that year and that payment is intended for the purpose of bridging the period until receipt of the student loan; or

(b) before the first day of the course to a person in anticipation of that person becoming a student,

that payment is to be disregarded as income.

### Treatment of fee loans

**139.** A loan for fees, known as a fee loan or a fee contribution loan, made pursuant to regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1998<sup>F142</sup>, section 22 of the Teaching and Higher Education Act 1998<sup>F143</sup> or section 73(f) of the Education (Scotland) Act 1980<sup>F144</sup>, is to be disregarded as income.

#### Textual Amendments

**F142** S.I. 1998/1760 (N.I. 14).

**F143** 1998 c. 30.

**F144** 1980 c. 44.

### Disregard of contribution

**140.** Where the claimant or the claimant's partner is a student and, for the purposes of assessing a contribution to the student's grant or student loan, the other partner's income has been taken into account, an amount equal to that contribution is to be disregarded for the purposes of assessing that other partner's income.

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### **Further disregard of student's income**

**141.** Where any part of a student's income has already been taken into account for the purposes of assessing that student's entitlement to a grant or student loan, the amount taken into account is to be disregarded in assessing that student's income.

### **Income treated as capital**

**142.**—(1) Any amount by way of a refund of tax deducted from a student's income is to be treated as capital.

(2) An amount paid from access funds as a single lump sum is to be treated as capital.

(3) An amount paid from access funds as a single lump sum which is intended and used for an item other than food, ordinary clothing or footwear, household fuel, rent for which housing benefit is payable or any housing costs to the extent that they are met under regulation 67(1)(c) or 68(1)(d), of a single claimant or, as the case may be, of the claimant's partner, or which is used for an item other than any council tax or water charges for which that claimant or partner is liable is to be disregarded as capital but only for a period of 52 weeks from the date of the payment.

### **Disregard of changes occurring during summer vacation**

**143.** In calculating a student's income there is to be disregarded any change in the standard maintenance grant occurring in the recognised summer vacation appropriate to the student's course, if that vacation does not form part of the student's period of study, from the date on which the change occurred up to the end of that vacation.



**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 10.