
STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 10

INCOME AND CAPITAL

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),

by the amount of an [^{F1}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 ^{F2}, 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.

- (a) [^{F3}]^{F4}(4A) (a) This paragraph applies where earnings are derived by a claimant as a member of a reserve force prescribed in Part 1 of Schedule 6 to the Contributions Regulations—
 - (i) in respect of a period of annual continuous training for a maximum of 15 days in any calendar year; or
 - (ii) in respect of training in the claimant's first year of training as a member of a reserve force for a maximum of 43 days in that year.
- (b) Earnings, whether paid to the claimant alone or together with other earnings derived from the same source, are to be taken into account—
 - (i) in the case of a period of training which lasts for the number of days listed in column 1 of the table in sub-paragraph (c), over a period of time which is equal to the number of days set out in the corresponding row in column 2 of that table; or
 - (ii) in any other case, over a period which is equal to the duration of the training period.

(c) This is the table referred to in sub-paragraph (b)(i)—

<i>Column 1</i>	<i>Column 2</i>
<i>Period of training in days</i>	<i>Period of time over which earnings are to be taken into account in days</i>
8 to 10	7
15 to 17	14
22 to 24	21
29 to 31	28
36 to 38	35
43	42]

(4B) The period over which earnings to which paragraph (4A) applies are to be taken into account shall begin on the date on which the payment is treated as paid under regulation 93.]

(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

- F1** 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)**

- F2** 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)**.
- F3** Reg. 91(4A) substituted (6.4.2015) by The Social Security (Members of the Reserve Forces) (Amendment) Regulations 2015 (S.I. 2015/389), regs. 1, **4(3)**
- F4** Reg. 91(4A)(4B) inserted (5.11.2012) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2012 (S.I. 2012/2575), regs. 1(2), **5(2)**

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) ^{F5}(2) (a) Where the claimant's earnings consist of any items to which this paragraph applies those earnings shall be taken into account over a period equal to such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the earnings by the amount of 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

- F5** 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) ^{F6}... 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—

- (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, [^{F7}severe disablement allowance or universal credit] is to be treated as paid on [^{F8}on any day] in respect of which it is payable.

^{F9}(3)

^{F10}(4)

Textual Amendments

- F6** Words in reg. 93(1) omitted (11.4.2011) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), **16(7)(a)**
- F7** Words in reg. 93(2) substituted (29.4.2013) by [The Universal Credit \(Consequential, Supplementary, Incidental and Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/630\)](#), regs. 1(2), **37(5)(a)**
- F8** Words in reg. 93(2) substituted (29.4.2013) by [The Universal Credit \(Consequential, Supplementary, Incidental and Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/630\)](#), regs. 1(2), **37(5)(b)**
- F9** Reg. 93(3) omitted (11.4.2011) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), **16(7)(b)**
- F10** Reg. 93(4) omitted (11.4.2011) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), **16(7)(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;
 - [^{F11}(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;]
 - [^{F11}(iiia) 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.

(8) Where any payment of earnings is taken into account under [F12 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

- F11** Reg. 94(1)(b)(iii)(iia) 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)**
- F12** 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)**

Changes to legislation:

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, CHAPTER 2.