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STATUTORY INSTRUMENTS

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**2008 No. 794**

**The Employment and Support Allowance Regulations 2008**

**PART 11 E+W+S**

**SUPPLEMENTARY PROVISIONS**

**CHAPTER 1 E+W+S**

Miscellaneous

**Waiting days E+W+S**

**144.**—(1) A claimant is not entitled to an employment and support allowance in respect of 3 days at the beginning of a period of limited capability for work.

(2) Paragraph (1) does not apply where—

- (a) the claimant's entitlement to an employment and support allowance commences within 12 weeks of the claimant's entitlement to income support, state pension credit, a jobseeker's allowance, a carer's allowance<sup>F1</sup>, statutory sick pay or a maternity allowance] coming to an end;
- (b) the claimant is terminally ill and has—
  - (i) made a claim expressly on the ground of being terminally ill; or
  - (ii) made an application for supersession or revision in accordance with the Social Security and Child Support (Decisions and Appeals) Regulations 1999<sup>F2</sup> which contains an express statement of being terminally ill; or
- (c) the claimant has been discharged from being a member of Her Majesty's forces and 3 or more days immediately before that discharge were days of sickness absence from duty, which are recorded by the Secretary of State for Defence<sup>F3</sup>, or
- (d) the claimant is the other member of a couple to whom regulation 4I(2) of the Social Security (Claims and Payments) Regulations 1987 applies and the former claimant was not entitled to an employment and support allowance in respect of 3 days at the beginning of the period of limited capability for work which relates to the former claimant's entitlement.]

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**Textual Amendments**

- F1** Words in reg. 144(2)(a) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **9(1)(a)**
- F2** [S.I. 1999/991](#).
- F3** [Reg. 144\(2\)\(d\)](#) and word added (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **9(1)(b)**

**Linking rules** **E+W+S**

**145.**—(1) Any period of limited capability for work which is separated from another such period by not more than 12 weeks is to be treated as a continuation of the earlier period.

(2) Where the claimant is a work or training beneficiary in accordance with regulation 148, any period of limited capability for work which is separated from another such period by not more than 104 weeks is to be treated as a continuation of the earlier period.

(3) Where the claimant claims an employment and support allowance after ceasing to be in qualifying remunerative work and—

- (a) the period of limited capability for work began on the day immediately after the day on which the claimant so ceased;
- (b) the claimant has been entitled to an employment and support allowance within the period of 104 weeks before the beginning of that period of limited capability for work; and
- (c) the claimant satisfied the relevant tax credit conditions set out in paragraph (4) on the day before so ceasing,

the claimant is to be treated for the purposes of the claim as having had limited capability for work throughout the period during which those conditions were satisfied.

(4) A claimant satisfies the relevant tax credit conditions on a day if—

- (a) the claimant is entitled for the day to the disability element of working tax credit (on a claim made by the claimant or by the claimant jointly with another) or would be so entitled but for the fact that the relevant income (within the meaning of Part 1 of the Tax Credits Act) in the case of the claimant or the claimant and another is such that that person is not so entitled; and
- (b) either working tax credit or any element of child tax credit other than the family element is paid in respect of the day on such a claim.

(5) Where a claim for an employment and support allowance is made after the claimant ceases to be engaged in training and—

- (a) that claimant was entitled to an employment and support allowance within the period of 8 weeks immediately before becoming so engaged;
- (b) that claimant has limited capability for work on the day after ceasing to be so engaged; and
- (c) that day falls not later than the end of the period of 104 weeks beginning with the end of the last week for which the claimant was entitled to an employment and support allowance,

the claimant is to be treated, for the purposes of the claim, as having had limited capability for work for the period when so engaged in training.

**Advance awards** **E+W+S**

**146.**—(1) Where section 5 of the Act (advance award of income-related allowance) applies to a claim and the claimant satisfies the conditions in paragraph (3)—

- (a) the claim is to be treated as if made for a period from the relevant day; and
- (b) the Secretary of State may award an employment and support allowance from the relevant day.

(2) In this regulation the “relevant day” is the day after the end of a period of 13 weeks beginning on the first day on which the claimant would be entitled to an income-related allowance if the claimant satisfied the condition in paragraph 6(1)(a) of Schedule 1 to the Act.

(3) The conditions are that—

- (a) the Secretary of State is of the opinion that unless there is a change of circumstances the claimant will satisfy the conditions set out in section 1(3)(b) to (f) of, and Part 2 of Schedule 1 to, the Act when an income-related allowance becomes payable under the award; and
  - (b) the claimant is treated as having limited capability for work under regulation 20, 25, 26, [F<sup>4</sup>30] or 33(2) (conditions for treating a person as having limited capability for work) for the period before an income-related allowance becomes payable under the award.
- (4) Where an award is made under paragraph (1)—
- (a) the award for an employment and support allowance will become payable on the date on which the claimant would have been entitled to a main phase employment and support allowance if the claimant had satisfied the condition in paragraph 6(1)(a) of Schedule 1 to the Act before the relevant day;
  - (b) sections 4(4)(a) and 4(5)(a) of the Act do not apply to that award.

#### Textual Amendments

- F4** Word in [reg. 146\(3\)\(b\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), [regs. 1\(2\), 9\(2\)](#)

#### Recovery orders **E+W+S**

**147.**—(1) Where an award of income-related allowance has been made to a claimant, the Secretary of State may apply to the court for a recovery order against the claimant's partner.

(2) On making a recovery order the court may order the partner to pay such amount at such intervals as it considers appropriate, having regard to all the circumstances of the partner and, in particular, the partner's income.

(3) Except in Scotland, a recovery order is to be treated for all purposes as if it were a maintenance order within the meaning of section 150(1) of the Magistrates Courts Act 1980 <sup>F5</sup>.

(4) Where a recovery order requires the partner to make payments to the Secretary of State, the Secretary of State may, by giving notice in writing to the court which made the order, the liable person and the claimant, transfer to the claimant the right to receive payments under the order and to exercise the relevant rights in relation to the order.

(5) In paragraph 4, “the relevant rights” means, in relation to a recovery order, the right to bring any proceedings, take any steps or do any other thing under or in relation to the order.

#### Textual Amendments

- F5** [1980 c. 43](#). The definition in section 150(1) was inserted by the [Family Law Reform Act 1987 \(c. 42\)](#), [section 33\(1\)](#) and Schedule 2, paragraph 88.

**Status:**

Point in time view as at 27/10/2008.

**Changes to legislation:**

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, CHAPTER 1.