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STATUTORY INSTRUMENTS

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**2008 No. 794**

**The Employment and Support Allowance Regulations 2008**

**PART 3**

**CONDITIONS OF ENTITLEMENT – CONTRIBUTORY ALLOWANCE**

**Relaxation of the first contribution condition**

**8.—(1)** A claimant who satisfies any of the conditions in paragraph (2) is to be taken to satisfy the first contribution condition if—

- (a) the claimant paid Class 1 or Class 2 contributions before the relevant benefit week in respect of any one tax year; and
  - (b) the earnings factor is derived—
    - (i) from earnings, on which primary Class 1 contributions have been paid or treated as paid, which are not less than that year's lower earnings limit multiplied by 25; or
    - (ii) from Class 2 contributions multiplied by 25.
- (2) The conditions referred to in paragraph (1) are that the claimant—
- (a) was entitled to a carer's allowance in the last complete tax year immediately preceding the relevant benefit year;
  - (b) had been engaged in qualifying remunerative work for a period of more than 2 years immediately before the first day of the period of limited capability for work and who was entitled to working tax credit where the disability element or the severe disability element of working tax credit specified in regulation 20(1)(b) or (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(1) was included in the award;
  - (c) in respect of any week in any tax year preceding the relevant benefit year—
    - (i) is entitled to be credited with earnings or contributions in accordance with regulation 9D of the Social Security (Credits) Regulations 1975(2) (credits for certain periods of imprisonment or detention in legal custody); or
    - (ii) would have been so entitled had an application to the Secretary of State been made for the purpose of that regulation; or
  - (d) on the first day of the period of limited capability for work, had received a contributory allowance in the last complete tax year immediately preceding the relevant benefit year in which entitlement to a contributory allowance is now being decided.

**Condition relating to youth – claimants aged 20 or over but under 25**

**9.—(1)** For the purposes of paragraph 4(1)(a) of Schedule 1 to the Act, a claimant who satisfies the conditions specified in paragraph (2) falls within a prescribed case.

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(1) S.I. 2002/2005.

(2) S.I. 1975/556. Regulation 9D was inserted by S.I.2001/573, regulation 2.

- (2) The conditions are that the claimant—
- (a) registered on a course of—
    - (i) full-time advanced or secondary education; or
    - (ii) training,
 at least 3 months before attaining the age of 20; and
  - (b) not more than one academic term immediately after registration attended one or more such courses in respect of a period referred to in paragraph (3).
- (3) The period mentioned in sub-paragraph (2)(b) is a period which—
- (a) began on or before a day at least 3 months before the day the claimant attained the age of 20; and
  - (b) ended no earlier than the beginning of the last two complete tax years before the relevant benefit year which would have applied if the claimant was entitled to an employment and support allowance having satisfied the first contribution condition and the second contribution condition.
- (4) For the purposes of this regulation a claimant is to be treated as attending a course on any day on which the course is interrupted by an illness or domestic emergency.
- (5) In this regulation—
- “advanced education” means education for the purposes of—
- (a) a course in preparation for a degree, a diploma of higher education, a higher national diploma, a higher national diploma of the Business and Technician Education Council or the Scottish Qualifications Authority, or a teaching qualification; or
  - (b) any other course which is of a standard above ordinary national diploma, a diploma of the Business and Technical Education Council or a higher or advanced higher national certificate of the Scottish Qualifications Authority or a general certificate of education (advanced level);
- “full-time” includes part-time where the person’s disability prevents attendance at a full-time course;
- “secondary education” means a course of education below a course of advanced education—
- (a) by attendance at an establishment recognised by the Secretary of State as being, or as comparable to, a university, college or school; or
  - (b) elsewhere where the Secretary of State is satisfied that the education is equivalent to that given in an establishment recognised as being, or as comparable to, a university, college or school.

#### **Condition relating to youth – previous claimants**

- 10.**—(1) Paragraph 4(1)(a) of Schedule 1 to the Act does not apply to a claimant—
- (a) who has previously ceased to be entitled to an employment and support allowance, entitlement for which was as a result of satisfying the condition set out in sub-paragraph (1) of that paragraph;
  - (b) whose previous entitlement had not been ended by a decision which embodied a determination (other than a determination in the circumstances applicable to a claimant under paragraph (2)(a)) that the claimant did not have limited capability for work;
  - (c) in relation to whom regulation 145 (linking rules) does not apply;
  - (d) aged 20 or over, or, where regulation 9 would otherwise apply to the person, aged 25 or over; and

- (e) to whom paragraph (2) applies.
- (2) This paragraph applies to a claimant—
  - (a) whose previous entitlement to an employment and support allowance ended solely with a view to that person taking up employment or training;
  - (b) whose earnings factor from an employment or series of employments pursued in the period from the end of the previous entitlement to the beginning of the period of limited capability for work, was below the lower earnings limit multiplied by 25 in any of the last three complete tax years before the beginning of the relevant benefit year; and
  - (c) who—
    - (i) in respect of the last two complete tax years before the beginning of the relevant benefit year has either paid or been credited with earnings equivalent in each of those years to the year's lower earnings limit multiplied by 50, of which at least one, in the last tax year, was in respect of the disability element or severe disability element of working tax credit; or
    - (ii) makes a claim for an employment and support allowance within a period of 12 weeks after the day on which the last such employment pursued in accordance with subparagraph (b) ceased.

**Condition relating to youth – residence or presence**

**11.—**(1) The prescribed conditions for the purposes of paragraph 4(1)(c) of Schedule 1 to the Act as to residence or presence in Great Britain are that the claimant—

- (a) is ordinarily resident in Great Britain;
  - (b) is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act or is a person to whom paragraph (3) applies;
  - (c) is present in Great Britain; and
  - (d) has been present in Great Britain for a period of, or for periods amounting in aggregate to, not less than 26 weeks in the 52 weeks immediately preceding the relevant benefit week.
- (2) For the purposes of paragraph (1), a claimant is to be treated as being resident and present in Great Britain where the claimant is absent from Great Britain by reason only of being—
- (a) the spouse, civil partner, son, daughter, father, father-in-law, mother or mother-in-law of, and living with, a member of Her Majesty's forces who is abroad in that capacity;
  - (b) in employment prescribed for the purposes of paragraph 7(1)(c) of Schedule 2 to the Act in connection with continental shelf operations; or
  - (c) abroad in the capacity of being an aircraft worker or mariner.
- (3) This paragraph applies where a person is—
- (a) a member of a family of a national of an European Economic Area state;
  - (b) a person who is lawfully working in Great Britain and is a national of a State with which the Community has concluded an agreement under Article 310 of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families;
  - (c) a person who is a member of a family of, and living with, a person specified in subparagraph (b); or
  - (d) a person who has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the

immigration rules within the meaning of the Immigration Act 1971(3) to be responsible for that person's maintenance and accommodation.

(4) A person is to be treated as having satisfied the residence or presence conditions in paragraph (1) throughout a period of limited capability for work where those conditions are satisfied on the first day of that period of limited capability for work.

#### **Condition relating to youth – full-time education**

**12.**—(1) For the purposes of paragraph 4(4) of Schedule 1 to the Act, a claimant is to be treated as receiving full-time education for any period during which the claimant—

- (a) is at least 16 years old but under the age of 19; and
- (b) attends a course of education for 21 hours or more a week.

(2) For the purposes of paragraph (1)(b), in calculating the number of hours a week during which a claimant attends a course, no account is to be taken of any instruction or tuition which is not suitable for persons of the same age who do not have a disability.

(3) In determining the duration of a period of full-time education under paragraph (1) any temporary interruption of that education may be disregarded.

(4) A claimant who is 19 years of age or over is not to be treated for the purposes of paragraph 4(1)(b) of Schedule 1 to the Act as receiving full-time education.

#### **Modification of the relevant benefit year**

**13.**—(1) Where paragraph (2) applies, sub-paragraph (1)(f) of paragraph 3 of Schedule 1 to the Act has effect as if “relevant benefit year” is the benefit year which includes the day which would be the beginning of the period of limited capability for work if regulation 145 did not apply.

(2) This paragraph applies where a claimant does not satisfy—

- (a) the first contribution condition;
- (b) the second contribution condition; or
- (c) both contribution conditions,

but would satisfy those conditions if the modified definition of “relevant benefit year” provided in paragraph (1) applied.