
STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 4

CONDITIONS OF ENTITLEMENT – INCOME-RELATED ALLOWANCE

Meaning of education

14.—(1) Subject to regulations 15 and 16, for the purposes of paragraph 6 of Schedule 1 to the Act, “education” means a course of study to which paragraph (2) applies which is being undertaken at an educational establishment.

(2) This paragraph applies to a course of study which is—

- (a) a full-time course which is not funded in whole or in part by—
 - (i) the Learning and Skills Council for England;
 - (ii) the Welsh Ministers; or
 - (iii) the Scottish Ministers at a college of further education;
- (b) a full-time course of higher education which is funded in whole or in part by the Scottish Ministers;
- (c) funded in whole or in part by the Learning and Skills Council for England 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) in the case of a course funded by the Learning and Skills Council for England, in the student’s learning agreement signed on behalf of the establishment which is funded by that Council 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 those Ministers for the delivery of that course;
- (d) not a course of higher education and which is funded in whole or in part by the Scottish Ministers at a college of further education and 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; or

- (e) a sandwich course within the meaning prescribed in regulation 2(9) of the Education (Student Support) Regulations 2007(1), regulation 4(2) of the Education (Student Loans) (Scotland) Regulations 2007(2) or regulation 2(8) of the Education (Student Support) Regulations (Northern Ireland) 2007(3).

(3) In this regulation “higher education” means higher education within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992(4).

Claimants to be treated as receiving education

15. Subject to regulation 18, a qualifying young person is to be treated as receiving education for the purposes of paragraph 6(1)(g) of Schedule 1 to the Act.

Claimants not to be treated as receiving education

16. Where a claimant is under 19 but not a qualifying young person, that claimant is not to be treated as receiving education where the course of study is not—

- (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) or above a Scottish national qualification (higher or advanced higher).

Courses of study

17.—(1) For the purposes of the definition of “education” in regulation 14, a person is to be regarded as undertaking a course of study—

- (a) subject to paragraph (2), in the case of a person undertaking a part of a modular course that would be a course of study for the purposes of these Regulations, 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 person 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 person finally abandons the course or is dismissed from it;
- (b) in any other case, throughout the period beginning on the date on which the person starts undertaking the course and ending on the last day of the course or on such earlier date (if any) as the person finally abandons it or is dismissed from it.

(2) For the purpose of sub-paragraph (a) of paragraph (1), the period referred to in that sub-paragraph includes—

- (a) where a person has failed examinations or has failed to successfully complete a module relating to a period when the person was attending or undertaking a part of the course as a course of study, any period in respect of which the person 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

(1) S.I. 2007/176.

(2) S.S.I. 2007/154.

(3) S.R. 2007/195.

(4) 1992 c. 37, amended by the Further and Higher Education (Scotland) Act 2005 (asp. 6).

immediately follows the last day on which the person is required to attend or undertake the course.

(3) In paragraph (1), “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.

Circumstances in which the condition that the claimant is not receiving education does not apply

18. Paragraph 6(1)(g) of Schedule 1 to the Act does not apply where the claimant is entitled to a disability living allowance.