
STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 10

INCOME AND CAPITAL

CHAPTER 6

Other income

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 ^{F1}... [^{F2}basic rate, or in the case of a Scottish taxpayer, the Scottish basic rate, of tax in the year of assessment less only personal reliefs to which the claimant is entitled under Chapters 2, 3 and 3A of Part 3 of the Income Tax Act 2007 as are appropriate to the claimant's circumstances];
- (b) where ^{F3}... the period over which those earnings are to be taken into account is less than a year, the earnings to which the [^{F4}basic rate][^{F5}, or the Scottish basic rate,] of tax is to be applied and the amount of the [^{F6}personal reliefs deductible under this paragraph are] 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 ^{F7}, calculated by applying to those earnings the initial and main primary percentages in accordance with section 8(1)(a) and (b) of that Act ^{F8}; 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

F1 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)**

Status: Point in time view as at 03/04/2017.

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, Section 109. (See end of Document for details)

- F2** Words in reg. 109(2)(a) substituted (6.4.2016) by The Social Security (Scottish Rate of Income Tax etc.) (Amendment) Regulations 2016 (S.I. 2016/233), regs. 1, **6(5)(a)**
- F3** Word in reg. 109(2)(b) omitted (6.4.2016) by virtue of The Social Security (Scottish Rate of Income Tax etc.) (Amendment) Regulations 2016 (S.I. 2016/233), regs. 1, **6(5)(b)(i)**
- F4** 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)**
- F5** Words in reg. 109(2)(b) inserted (6.4.2016) by The Social Security (Scottish Rate of Income Tax etc.) (Amendment) Regulations 2016 (S.I. 2016/233), regs. 1, **6(5)(b)(ii)**
- F6** Words in reg. 109(2)(b) substituted (6.4.2016) by The Social Security (Scottish Rate of Income Tax etc.) (Amendment) Regulations 2016 (S.I. 2016/233), regs. 1, **6(5)(b)(iii)**
- F7** Section 6 was substituted by the Welfare Reform and Pensions Act 1999 (c. 30), **section 73** and paragraph 2 of Schedule 9.
- F8** Section 8 was substituted by the National Insurance Contributions Act 2002 (c. 19), **section 1(1)**.

Status:

Point in time view as at 03/04/2017.

Changes to legislation:

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, Section 109.