
STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 10

INCOME AND CAPITAL

CHAPTER 7

Capital

Diminishing notional capital rule

116.—(1) Where a claimant is treated as possessing capital under regulation 115(1) (notional capital), the amount which the claimant is treated as possessing—

- (a) in the case of a week that is subsequent to—
 - (i) the relevant week in respect of which the conditions set out in paragraph (2) are satisfied; or
 - (ii) a week which follows that relevant week and which satisfies those conditions, is to be reduced by an amount determined under paragraph (2);
- (b) in the case of a week in respect of which paragraph (1)(a) does not apply but where—
 - (i) that week is a week subsequent to the relevant week; and
 - (ii) that relevant week is a week in which the condition in paragraph (3) is satisfied, is to be reduced by the amount determined under paragraph (3).

(2) This paragraph applies to a benefit week or part-week where the claimant satisfies the conditions that—

- (a) the claimant is in receipt of an income-related allowance; and
- (b) but for regulation 115(1), the claimant would have received an additional amount of an income-related allowance in that benefit week or, as the case may be, that part-week,

and in such a case, the amount of the reduction for the purposes of paragraph (1)(a) is to be equal to that additional amount.

(3) Subject to paragraph (4), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to an income-related allowance in the relevant week, but for regulation 115(1), and in such a case the amount of the reduction is to be equal to the aggregate of—

- (a) the amount of an income-related allowance to which the claimant would have been entitled in the relevant week but for regulation 115(1); and for the purposes of this sub-paragraph if the relevant week is a part-week that amount is to be determined by dividing the amount of an income-related allowance to which the claimant would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;
- (b) the amount of housing benefit (if any) equal to the difference between the claimant's maximum housing benefit and the amount (if any) of housing benefit which the claimant

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is awarded in respect of the benefit week, within the meaning of regulation 2(1) of the Housing Benefit Regulations 2006 ^{F1} (interpretation), which includes the last day of the relevant week;

- (c) the amount of council tax benefit (if any) equal to the difference between the claimant's maximum council tax benefit and the amount (if any) of council tax benefit which the claimant is awarded in respect of the benefit week which includes the last day of the relevant week, and for this purpose "benefit week" [^{F2}means a period of 7 consecutive days beginning on a Monday and ending on a Sunday].

(4) The amount determined under paragraph (3) is to be re-determined under that paragraph if the claimant makes a further claim for an income-related allowance and the conditions in paragraph (5) are satisfied, and in such a case—

- (a) sub-paragraphs (a) to (c) of paragraph (3) will apply as if for the words "relevant week" there were substituted the words "relevant subsequent week"; and
- (b) subject to paragraph (6), the amount as re-determined is to have effect from the first week following the relevant subsequent week in question.

(5) The conditions are that—

- (a) a further claim is made 26 or more weeks after—
- (i) the date on which the claimant made a claim for an income-related allowance in respect of which the claimant was first treated as possessing the capital in question under regulation 115(1);
 - (ii) in a case where there has been at least one re-determination in accordance with paragraph (4), the date on which the claimant last made a claim for an income-related allowance which resulted in the weekly amount being re-determined; or
 - (iii) the date on which the claimant last ceased to be in receipt of an income-related allowance;

whichever last occurred; and

- (b) the claimant would have been entitled to an income-related allowance but for regulation 115(1).

(6) The amount as re-determined pursuant to paragraph (4) is not to have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount is to continue to have effect.

(7) For the purposes of this regulation—

"part-week" means a period to which Part 14 (periods of less than a week) applies;

"relevant week" means the benefit week or part-week in which the capital in question of which the claimant has deprived himself or herself within the meaning of regulation 115(1)—

- (a) was first taken into account for the purpose of determining the claimant's entitlement to an income-related allowance, a jobseeker's allowance or income support; or
- (b) was taken into account on a subsequent occasion for the purpose of determining or re-determining the claimant's entitlement to an income-related allowance, a jobseeker's allowance or income support on that subsequent occasion and that determination or re-determination resulted in the claimant's beginning to receive, or ceasing to receive, an income-related allowance, a jobseeker's allowance or income support;

and where more than one benefit week or part-week is identified by reference to paragraphs (a) and (b) of this definition the later or latest such benefit week or, as the case may be, the later or latest such part-week;

“relevant subsequent week” means the benefit week or part-week which includes the day on which the further claim or, if more than one further claim has been made, the last such claim was made.

Textual Amendments

F1 [S.I. 2006/213](#).

F2 Words in reg. 116(3)(c) substituted (1.4.2013) by [The Council Tax Benefit Abolition \(Consequential Provision\) Regulations 2013 \(S.I. 2013/458\)](#), reg. 1, **Sch. 2 para. 8**

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