
STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 7

**EFFECT OF WORK ON ENTITLEMENT TO AN
EMPLOYMENT AND SUPPORT ALLOWANCE**

Exempt work

45.—(1) The categories of work referred to in regulation 40(2)(f) are set out in the following paragraphs.

(2) Work for which the earnings in any week do not exceed £20.00.

(3) Work for which the earnings in any week do not exceed [^{F1}16 x National Minimum Wage, subject to paragraph (9A),] and which—

(a) is part of the claimant's treatment programme and is done under medical supervision while the claimant is an in-patient, or is regularly attending as an out-patient, of a hospital or similar institution; or

(b) is supervised by a person employed by a public or local authority or [^{F2}by a] voluntary organisation [^{F2}or community interest company] engaged in the provision or procurement of work for persons who have disabilities.

(4) Work which is done for less than 16 hours a week, for which earnings in any week do not exceed [^{F3}16 x National Minimum Wage, subject to paragraph (9A),]^{F4}...

^{F5}(4A)

(5) Work done in the course of receiving assistance in pursuing self-employed earner's employment whilst participating in a programme provided or other arrangements made under section 2 of the Employment and Training Act 1973 ^{F6} (functions of the Secretary of State) or section 2 of the Enterprise and New Towns (Scotland) Act 1990 ^{F7} (functions in relation to training for employment etc.).

(6) Work done where the claimant receives no payment of earnings and where the claimant—

(a) is engaged by a charity or voluntary organisation; or

(b) is a volunteer,

where the Secretary of State is satisfied in any of those cases that it is reasonable for the claimant to provide the service free of charge.

(7) Work done in the course of participating in a work placement approved in writing by the Secretary of State before the placement starts.

(8) The number of hours for which a claimant is engaged in work is to be determined—

(a) where no recognisable cycle has been established in respect of a claimant's work, by reference to the number of hours or, where those hours are likely to fluctuate, the average of the hours, which the claimant is expected to work in a week;

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(b) where the number of hours for which the claimant is engaged fluctuate, by reference to the average of hours worked over—

- (i) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences);
- (ii) in any other case, the period of five weeks immediately before the date of claim or the date on which a superseding decision is made under section 10 (decisions superseding earlier decisions) of the Social Security Act 1998 ^{F8}, or such other length of time as may, in the particular case, enable the claimant's average hours of work to be determined more accurately.

(9) For the purposes of determining the number of hours for which a claimant is engaged in work, that number is to include any time allowed to that claimant by the claimant's employer for a meal or for refreshment, but only where that claimant is, or expects to be, paid earnings in respect of that time.

[^{F9}(9A) Where the amount determined by the calculation in paragraphs (3) and (4) would, but for this paragraph, include an amount of—

- (a) less than 50p, that amount shall be rounded up to the nearest 50p; or
- (b) less than £1 but more than 50p, that amount shall be rounded up to the nearest £1.]

(10) In this regulation—

F10
...

F10
...

“supervised work” means work done in accordance with paragraph (3)(a) or (b);

“volunteer” has the same meaning it has in regulation 43;

“work placement” means practical work experience with an employer, which is neither paid nor undertaken in expectation of payment.

Textual Amendments

- F1** Words in reg. 45(3) substituted (11.4.2011) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), **16(5)(a)**
- F2** Words in reg. 45(3)(b) inserted (28.6.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2010 \(S.I. 2010/840\)](#), regs. 1, **9(10)(a)**
- F3** Words in reg. 45(4) substituted (11.4.2011) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), **16(5)(a)**
- F4** Words in reg. 45(4) omitted (3.4.2017) by virtue of [The Employment and Support Allowance \(Exempt Work Hardship Amounts\) \(Amendment\) Regulations 2017 \(S.I. 2017/205\)](#), regs. 1, **3(a)**
- F5** Reg. 45(4A) omitted (3.4.2017) by virtue of [The Employment and Support Allowance \(Exempt Work Hardship Amounts\) \(Amendment\) Regulations 2017 \(S.I. 2017/205\)](#), regs. 1, **3(b)**
- F6** [1973 c. 50](#). Section 2 was substituted by section 25(1) of the Employment Act 1988. Subsections (4) and (6) of section 2 were repealed by section 29(4) of and Schedule 7 to the Employment Act 1989. Subsections (3A) and (3B) of section 2, which apply to Scotland only, inserted by the Trade Union Reform and Employment Rights Act 1993.
- F7** [1990 c. 35](#). Section 2 amended by sections 47(4)(a) and (b) and 51 of and Schedule 10 to the Trade Union Reform and Employment Rights Act 1993. Section 2 also amended by articles 1(2) and 4 of and paragraph 100(2) of Schedule 2 to Scotland Act 1998 (Consequential Modifications) Order (No. 2) 1999.
- F8** [1998 c. 14](#). Section 10 was amended by sections 18 and 26(3) of and by paragraph 23 of Schedule 7 to and by Schedule 10 to the Transfer of Functions Act 1999.

F9 Reg. 45(9A) inserted (11.4.2011) by The Social Security (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/674), regs. 1(4), **16(5)(b)**

F10 Words in reg. 45(10) omitted (3.4.2017) by virtue of The Employment and Support Allowance (Exempt Work Hardship Amounts) (Amendment) Regulations 2017 (S.I. 2017/205), regs. 1, **3(c)**

Modifications etc. (not altering text)

C1 Reg. 45 modified by SI 2010/1907 Sch. 2 para. 11 (as amended) (1.11.2010) by The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) (Amendment) Regulations 2010 (S.I. 2010/2430), regs. 1(2), **17(5)** (with reg. 15(2))

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Changes to legislation:

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