

SCHEDULE 5

Regulation 69

SPECIAL CASES

PART 1

Amounts prescribed for the purposes of section 4(2) of the Act

Claimants without accommodation

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| <p>1. A claimant who is without accommodation.</p> | <p>1. The amount applicable to the claimant under regulation 67(1) (a).</p> |
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Members of religious orders

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| <p>2. A claimant who is a member of, and fully maintained by, a religious order.</p> | <p>2. Nil.</p> |
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Prisoners

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| <p>3. A claimant</p> <p>(a) except where sub-paragraph (b) applies, who is a prisoner;</p> <p>(b) who is detained in custody pending trial or sentence following conviction by a court.</p> | <p>3.</p> <p>(a) Nil;</p> <p>(b) only such amount, if any, as may be applicable under regulation 67(1)(c) and the amount of nil under regulation 67(3).</p> |
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Specified cases of temporarily separated couples

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| <p>4. A claimant who is a member of a couple and who is temporarily separated from the claimant's partner where—</p> <p>(a) one member of the couple is—</p> <p>(i) not a patient but is residing in a care home, an Abbeyfield Home or an independent hospital; or</p> <p>(ii) resident in premises used for the rehabilitation of alcoholics or drug addicts; or</p> <p>(iii) resident in accommodation provided under section 3 of and Part 2 of the Schedule to, the Polish Resettlement Act 1947</p> <p><small>F1</small></p> <p>(provision of accommodation in camps); or</p> | <p>4. Either—</p> <p>(a) the amount applicable to the claimant as a member of a couple under regulation 67(1); or</p> |
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Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, SCHEDULE 5. (See end of Document for details)

- (iv) participating in arrangements for training made under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990

^{F2}

or attending a course at an employment rehabilitation centre established under that section of the 1973 Act, where the course requires the person to live away from the dwelling occupied as the home; or

- (v) in a probation or bail hostel approved for the purpose by the Secretary of State; and

(b) the other member of the couple is—

- (i) living in the dwelling occupied as the home; or
- (ii) a patient; or
- (iii) residing in a care home, an Abbeyfield Home or an independent hospital.

(b) the aggregate of the claimant's applicable amount and that of the claimant's partner assessed under the provisions of these Regulations as if each of them were a single claimant or a lone parent,

whichever is the greater.

Polygamous marriages where one or more partners are temporarily separated

5. A claimant who is a member of a polygamous marriage and who is temporarily separated from a partner, where one of them is living in the home where the other member is—

- (a) not a patient but is residing in a care home, an Abbeyfield Home or an independent hospital; or
- (b) resident in premises used for the rehabilitation of alcoholics or drug addicts; or

5. Either—

- (a) the amount applicable to the members of the polygamous marriage under regulation 68; or
- (b) the aggregate of the amount applicable for the members of the polygamous marriage who remain in the home

under regulation 68 and the amount applicable in respect of those members not in the home calculated as if each of them were a single claimant or a lone parent,

whichever is the greater.

- (c) attending a course of training or instruction provided or approved by the Secretary of State where the course requires the person to live away from home; or
- (d) in a probation or bail hostel approved for the purpose by the Secretary of State.

Couple where one member is abroad

6. Subject to paragraph 7, a claimant who is a member of a couple where one member of the couple is temporarily absent from the United Kingdom.
6. For the first 4 weeks of that absence, the amount applicable to them as a couple under regulation 67(1) or 69, as the case may be, and thereafter, the amount applicable to the claimant in Great Britain under regulation 67(1) or 69, as the case may be, as if the claimant were a single claimant or, as the case may be, lone parent.

Couple or member of couple taking child or young person abroad for treatment

- 7.— (1) A claimant who is a member of a couple where either—
7. For the first 26 weeks of that absence, the amount applicable to the claimant under regulation 67(1) or 69, as the case may be and, thereafter, if the claimant is in Great Britain the amount applicable to the claimant under regulation 67(1) or 69, as the case may be, as if the claimant were a single claimant or, as the case may be, a lone parent.
- (a) the claimant or the claimant's partner is; or
 - (b) both the claimant and the claimant's partner are,
- absent from the United Kingdom in the circumstances specified in subparagraph (2).

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- (2) For the purposes of sub-paragraph (1) the specified circumstances are—
 - (a) in respect of a claimant, those in regulation 153(1)(a), (b), (c)(ii), (d) and (e);
 - (b) in respect of a claimant's partner, as if regulation 153(1)(a), (b), (c)(ii), (d) and (e) applied to that partner.

Polygamous marriages where any member is abroad

- 8. Subject to paragraph 9, a claimant who is a member of a polygamous marriage where one or more members of the marriage are temporarily absent from the United Kingdom. 8. For the first 4 weeks of that absence, the amount applicable to the claimant under regulation 68 and 69, as the case may be, and thereafter, if the claimant is in Great Britain the amount applicable to the claimant under regulations 68 and 69, as the case may be, as if any members of the polygamous marriage not in the United Kingdom were not a member of the marriage.

Polygamous marriage: taking child or young person abroad for treatment

- 9.— (1) A claimant who is a member of a polygamous marriage where one or more members of the marriage is absent from the United Kingdom in the circumstances specified in sub-paragraph (2). 9. For the first 26 weeks of that absence, the amount applicable to the claimant under regulations 68 and 69, as the case may be, and thereafter, if the claimant is in Great Britain the amount applicable to the claimant under regulations 68 and 69, as the case may be, as if any member of the polygamous marriage not in the United Kingdom were not a member of the marriage.
- (2) For the purposes of sub-paragraph (1) the specified circumstances are—
 - (a) in respect of a claimant, those in regulation 153(1)(a), (b), (c)(ii), (d) and (e);
 - (b) in respect of a claimant's partner or partners, as the case may be, as if regulation 153(1)(a), (b), (c)(ii), (d) and (e) applied to that partner or those [^{F3}partners] .

Partner of a person subject to immigration control

- 10. 10.

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- (a) A claimant who is the partner of a person subject to immigration control.
 - (b) Where regulation 68 (polygamous marriages) applies and the claimant is a person—
 - (i) who is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act; or
 - (ii) to whom section 115 of that Act does not apply by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000^{F4}
; and
 - (iii) who is a member of a couple and one or more of the person's partners is subject to immigration control within the meaning of section 115(9) of that Act and section 115 of that Act applies to that partner or those partners for the purposes
- (a) The amount applicable in respect of the claimant only under regulation 67(1)(a) any amount which may be applicable to the claimant under regulation 67(1)(b) plus the amount applicable to the claimant under regulation 67(1)(c) or, as the case may be, regulation 69.
 - (b) the amount determined in accordance with that regulation or regulation 69 in respect of the claimant and any partners of the claimant who are not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and to whom section 115 of that Act does not apply for the purposes of exclusion from entitlement to an income-related allowance.

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of exclusion from entitlement
to income-related allowance.

Person from abroad

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|------------|---------------------|-----------------|
| 11. | Person from abroad. | 11. Nil. |
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Textual Amendments

- F1** 1947 c. 19; amended by Schedule 4 of the [Social Security Act 1980 \(c. 30\)](#) and by [S.I. 1951/674](#) and [1968/1699](#).
- F2** [1990 c. 35](#).
- F3** Word in Sch. 5 para. 9(2)(b) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **15**
- F4** [S.I. 2000/636](#), the relevant amending instruments are [S.I. 2002/2497](#) and [S.I. 2003/2274](#).

PART 2

Amounts prescribed for the purposes of sections 2(1) and 4(2) of the Act

[^{F5}Persons serving a sentence of imprisonment detained in hospital]

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| 12. | [^{F5} A person serving a sentence of imprisonment detained in hospital.] | The amount applicable under regulation 67(2) and the amount of nil under regulation 67(3). |
| | (a) section 45A of the Mental Health Act 1983
^{F6}
(hospital and limitation directions) or section 59A of the Criminal Procedure (Scotland) Act 1995
^{F7}
(hospital directions); or | |
| | (b) section 47 of the Mental Health Act 1983
^{F8}
(removal to hospital of persons serving sentences of imprisonment, etc.) or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003
^{F9}
(transfer of prisoners for treatment for mental disorder), | |

but not if the detention continues after the date which the Secretary of State certifies or Scottish Ministers certify would have been the earliest date on which the claimant

could have been released in respect of, or from, the prison sentence if the claimant had not been detained in hospital.

[^{F10}**Patients**]

- 13.** Subject to paragraph 12, a single claimant who has been a patient for a continuous period of more than 52 weeks or, where the claimant is one of a couple, the other member of the couple has been a patient for a continuous period of more than 52 weeks. **13.** The amounts applicable under regulation 67(1)(a), (c) and (2) and the amount of nil under regulation 67(3).
- 14. Person in hardship**
A claimant who is a person in hardship. **14.** The amount to which the claimant is entitled under regulation 67(1)(a) and (2) or 68(1)(a) is to be reduced by 20%.

Textual Amendments

- F5** Words in Sch. 5 Pt. 2 substituted (25.3.2010) by [The Social Security \(Persons Serving a Sentence of Imprisonment Detained in Hospital\) Regulations 2010 \(S.I. 2010/442\)](#), regs. 1, [5\(4\)\(a\)](#)
- F6** 1983 c. 20; section 45A was inserted by the [Crime \(Sentences\) Act 1977 \(c. 43\)](#), [section 46](#), and amended by the [Criminal Justice Act 2003 \(c. 44\)](#), [Schedule 32](#), paragraphs 37 and 39 and Schedule 37, Part 7.
- F7** 1995 c. 46; section 59A was inserted by the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp. 13\)](#), [Schedule 4](#), paragraph 8(6).
- F8** Section 47 was amended by the [Crime \(Sentences\) Act 1997](#), section 49(3).
- F9** 2003 asp. 13.
- F10** Word in Sch. 5 Pt. 2 inserted (25.3.2010) by [The Social Security \(Persons Serving a Sentence of Imprisonment Detained in Hospital\) Regulations 2010 \(S.I. 2010/442\)](#), regs. 1, [5\(4\)\(b\)](#)

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Changes to legislation:

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