

## SCHEDULE 8

Regulation 104(2)

### SUMS TO BE DISREGARDED IN THE CALCULATION OF INCOME OTHER THAN EARNINGS

1. Any amount paid by way of tax on income which is taken into account under regulation 104 (calculation of income other than earnings).

2. Any payment in respect of any expenses incurred, or to be incurred, by a claimant who is—
- (a) engaged by a charitable or voluntary organisation; or
  - (b) a volunteer,

if the claimant otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under regulation 108(3) (notional income).

[<sup>F1</sup>2A. Any payment in respect of expenses arising out of the claimant's participation in a service user group.]

#### Textual Amendments

- F1** Sch. 8 para. 2A inserted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(2)(d), **11(19)(a)**

3. In the case of employment as an employed earner, any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment.

4. In the case of a payment under Parts 11 to 12ZB of the Contributions and Benefits Act <sup>F2</sup> or any remuneration paid by or on behalf of an employer to the claimant who for the time being is unable to work due to illness or maternity or who is taking paternity leave or adoption leave—

- (a) any amount deducted by way of primary Class 1 contributions under the Contributions and Benefits Act;
- (b) one-half of any sum paid by the claimant by way of a contribution towards an occupational or personal pension scheme.

#### Textual Amendments

- F2** Part 12ZB was inserted by the Employment Act 2002, section 4 and amended by the [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), [section 722](#) and paragraphs 169 and 184 of Schedule 6, the [Work and Families Act 2006](#), sections 2 and 11(1) and paragraph 21 of Schedule 1, the [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), [section 2](#) and paragraphs 142, 149 and 150, the [Act section 67](#) and Schedule 8, [S.I. 2006/1031](#) and [S.I. 2006/2012](#).

5. In Northern Ireland, in the case of a payment under Parts 11 to 12ZB of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 <sup>F3</sup>, or any remuneration paid by or on behalf of an employer to the claimant who for the time being is unable to work due to illness or maternity or who is taking paternity leave or adoption leave—

- (a) any amount deducted by way of primary Class 1 contributions under that Act;
- (b) one-half of any sum paid by way of a contribution towards an occupational or personal pension scheme.

**Status:** Point in time view as at 01/10/2010.

**Changes to legislation:** There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, SCHEDULE 8. (See end of Document for details)

### Textual Amendments

**F3** 1992 c. 7.

6. Any guardian's allowance.
- 7.—(1) Any child tax credit.
- (2) Any child benefit.
- [<sup>F4</sup>(3) An increase under section 80 or 90 of the Contributions and Benefits Act.]

### Textual Amendments

**F4** Sch. 8 para. 7(3) added (28.6.2010) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2010 (S.I. 2010/840), regs. 1, **9(20)(a)**

8. Any mobility component of disability living allowance.
9. Any concessionary payment made to compensate for the non-payment of—
  - (a) any payment specified in paragraph 8 or 11;
  - (b) an [<sup>F5</sup>income-related] employment and support allowance, income support or [<sup>F6</sup>an income-based jobseeker's allowance].

### Textual Amendments

**F5** Words in Sch. 8 para. 9(b) inserted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **18(a)(i)**

**F6** Words in Sch. 8 para. 9(b) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **18(a)(ii)**

10. Any mobility supplement or any payment intended to compensate for the non-payment of such a supplement.
11. Any attendance allowance or the care component of disability living allowance.
12. Any payment to the claimant as holder of the Victoria Cross or George Cross or any analogous payment.
- 13.—(1) Any payment—
  - (a) by way of an education maintenance allowance made pursuant to—
    - (i) regulations made under section 518 of the Education Act 1996 <sup>F7</sup>;
    - (ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980 <sup>F8</sup>, or
    - (iii) directions made under section 73ZA of the Education (Scotland) Act 1980 <sup>F9</sup> and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992 <sup>F10</sup>, or
  - (b) corresponding to such an education maintenance allowance, made pursuant to—
    - (i) section 14 or section 181 of the Education Act 2002 <sup>F11</sup>; or
    - (ii) regulations made under section 181 of that Act.

- (2) Any payment, other than a payment to which sub-paragraph (1) applies, made pursuant to—
- (a) regulations made under section 518 of the Education Act 1996;
  - (b) regulations made under section 49 of the Education (Scotland) Act 1980; or
  - (c) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992;

in respect of a course of study attended by a child or a young person or a person who is in receipt of an education maintenance allowance made pursuant to any provision specified in sub-paragraph (1).

#### Textual Amendments

- F7** 1996 c. 56. Section 518 was substituted by the [School Standards and Framework Act 1998 \(c. 31\), section 129](#).
- F8** 1980 c. 44.
- F9** Section 73ZA was inserted by the Further and Higher Education (Scotland) Act 2005 asp. 6, section 19.
- F10** 1992 c. 37.
- F11** 2002 c. 32. Section 14 was amended by the [Children Act 2004 \(c. 31\), section 59](#) and the [Education Act 2005 \(c. 18\), Schedule 14, paragraph 23\(1\) to \(3\)](#).

**14.** Any payment made to the claimant by way of a repayment under regulation 11(2) of the Education (Teacher Student Loans) (Repayment etc.) Regulations 2002 <sup>F12</sup>.

#### Textual Amendments

- F12** [S.I. 2002/2086](#).

**15.—(1)** Any payment made pursuant to section 2 of the Employment and Training Act 1973 <sup>F13</sup> (functions of the Secretary of State) or section 2 of the Enterprise and New Towns (Scotland) Act 1990 <sup>F14</sup> (functions in relation to training for employment etc.) except a payment—

- (a) made as a substitute for an employment and support allowance [<sup>F15</sup>or a jobseeker's allowance];
- (b) of an allowance referred to in section 2(3) of the Employment and Training Act 1973 or section 2(5) of the Enterprise and New Towns (Scotland) Act 1990;
- (c) intended to meet the cost of living expenses which relate to any one or more of the items specified in sub-paragraph (2) whilst a claimant is participating in an education, training or other scheme to help the claimant enhance that claimant's employment prospects unless the payment is a Career Development Loan paid pursuant to section 2 of the Employment and Training Act 1973 and the period of education or training or the scheme, which is supported by that loan, has been completed; or
- (d) made in respect of the cost of living away from home to the extent that the payment relates to rent for which housing benefit is payable in respect of accommodation which is not normally occupied by the claimant as that claimant's home.

(2) The items specified in this sub-paragraph for the purposes of sub-paragraph (1)(c) are food, ordinary clothing or footwear, household fuel, rent for which housing benefit is payable, or any housing costs to the extent that they are met under regulation 67(1)(c) or 68(1)(d) (housing costs), of the claimant or, where the claimant is a member of a family, any other member of the claimant's family, or any council tax or water charges for which that claimant or member is liable.

**Status:** Point in time view as at 01/10/2010.

**Changes to legislation:** There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, SCHEDULE 8. (See end of Document for details)

### Textual Amendments

**F13** 1973 c. 50.

**F14** 1990 c. 35.

**F15** Words in Sch. 8 para. 15(1)(a) inserted (28.6.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2010 \(S.I. 2010/840\)](#), regs. 1, **9(20)(b)**

**16.**—(1) Subject to sub-paragraph (2) and paragraph 41, any relevant payment made or due to be made at regular intervals.

(2) Sub-paragraph (1) is not to apply to a payment which is made by a person for the maintenance of any member of that person's family or of that person's former partner or of that person's children.

(3) In this paragraph, “relevant payment” means—

- (a) a charitable payment;
- (b) a voluntary payment;
- (c) a payment (not falling within sub-paragraph (a) or (b) above) from a trust whose funds are derived from a payment made in consequence of any personal injury to the claimant;
- (d) a payment under an annuity purchased—
  - (i) pursuant to any agreement or court order to make payments to the claimant; or
  - (ii) from funds derived from a payment made, in consequence of any personal injury to the claimant; or
- (e) a payment (not falling within sub-paragraph (a) to (d) above) received by virtue of any agreement or court order to make payments to the claimant in consequence of any personal injury to the claimant.

**17.** Subject to paragraphs 39 and 40, £10 of any of the following, namely—

- (a) a war disablement pension (except insofar as such a pension falls to be disregarded under paragraph 10 or 11);
- (b) a war widow's pension or war widower's pension;
- (c) a pension payable to a person as a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown;
- <sup>F16</sup>(d) in paragraph 17(d), after “payment” insert “and, if the amount of that payment has been abated to less than £10 by a <sup>F17</sup>pension or payment falling within article 31(1)(a) or (b) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005], so much of <sup>F18</sup>that pension or payment] as would not, in aggregate with the amount of <sup>F19</sup>any] guaranteed income payment disregarded, exceed £10”;
- (e) a payment made to compensate for the non-payment of such a pension or payment as is mentioned in any of the preceding sub-paragraphs;
- (f) a pension paid by the government of a country outside Great Britain which is analogous to any of the pensions or payments mentioned in sub-paragraphs (a) to (d) above;
- (g) a pension paid to victims of National Socialist persecution under any special provision made by the law of the Federal Republic of Germany, or any part of it, or of the Republic of Austria;
- (h) any widowed mother's allowance paid pursuant to section 37 of the Contributions and Benefits Act;

- (i) any widowed parent's allowance paid pursuant to section 39A of the Contributions and Benefits Act <sup>F20</sup>.

#### Textual Amendments

- F16** Words in Sch. 8 para. 17(d) inserted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(2), **11(3)(a)**
- F17** Words in Sch. 8 para. 17(d) substituted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(2)(d), **11(19)(b)(i)**
- F18** Words in Sch. 8 para. 17(d) substituted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(2)(d), **11(19)(b)(ii)**
- F19** Word in Sch. 8 para. 17(d) substituted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(2)(d), **11(19)(b)(iii)**
- F20** Section 39A was inserted by the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), **section 55(2)**.

**18.** Where a claimant receives income under an annuity purchased with a loan which satisfies the following conditions—

- (a) that the loan was made as part of a scheme under which not less than 90% of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with that person's life or with the life of the survivor of two or more persons (in this paragraph referred to as “the annuitants”) who include the person to whom the loan was made;
- (b) that the interest on the loan is payable by the person to whom it was made or by one of the annuitants;
- (c) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65;
- (d) that the loan was secured on a dwelling in Great Britain and the person to whom the loan was made or one of the annuitants owns an estate or interest in that dwelling; and
- (e) that the person to whom the loan was made or one of the annuitants occupies the accommodation on which it was secured as that person's home at the time the interest is paid,

the amount, calculated on a weekly basis equal to—

- (i) where, or insofar as, section 369 of the Income and Corporation Taxes Act 1988 <sup>F21</sup> (mortgage interest payable under deduction of tax) applies to the payments of interest on the loan, the interest which is payable after deduction of a sum equal to income tax on such payments at the applicable percentage of income tax within the meaning of section 369(1A) of that Act <sup>F22</sup>;
- (ii) in any other case the interest which is payable on the loan without deduction of such a sum.

#### Textual Amendments

- F21** 1988 c. 1.
- F22** Subsection (1A) of section 369 was inserted by the [Finance Act 1999 \(c. 16\)](#), **Schedule 4**, paragraph 4.

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**19.** Any payment made to the claimant by a person who normally resides with the claimant, which is a contribution towards that person's living and accommodation costs, except where that person is residing with the claimant in circumstances to which paragraph 20 or 21 refers.

**20.** Where the claimant occupies a dwelling as the claimant's home and the dwelling is also occupied by another person and there is a contractual liability to make payments to the claimant in respect of the occupation of the dwelling by that person or a member of that person's family—

- (a) where the aggregate of any payments made in respect of any one week in respect of the occupation of the dwelling by that person or a member of that person's family, or by that person and a member of that person's family, is less than £20, the whole of that amount; or
- (b) where the aggregate of such payments is £20 or more per week, £20.

**21.** Where the claimant occupies a dwelling as the claimant's home and the claimant provides in that dwelling board and lodging accommodation, an amount, in respect of each person for whom such accommodation is provided for the whole or any part of a week, equal to—

- (a) where the aggregate of any payments made in respect of any one week in respect of such accommodation provided to such person does not exceed £20, 100% of such payments; or
- (b) where the aggregate of any such payments exceeds £20, £20 and 50% of the excess over £20.

**22.—(1)** Subject to sub-paragraphs (2) and (3), except where regulation 104(8)(b) (provision of support under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act in the calculation of income other than earnings) or regulation 107(3)(a) (notional income) applies, any income in kind;

(2) The exception under sub-paragraph (1) will not apply where the income in kind is received from the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust, the Fund, the Eileen Trust<sup>F23</sup>, MFET Limited] or [<sup>F24</sup>the Independent Living Fund (2006)].

(3) The first exception under sub-paragraph (1) will not apply where the claimant is the partner of a person subject to immigration control and whose partner is receiving support provided under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act and the income in kind is support provided in respect of essential living needs of the partner of the claimant and the claimant's dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.

(4) The reference in sub-paragraph (1) to “income in kind” does not include a payment to a third party made in respect of the claimant which is used by the third party to provide benefits in kind to the claimant.

#### Textual Amendments

**F23** Words in Sch. 8 para. 22(2) inserted (6.4.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(1), **12(3)(f)**

**F24** Words in Sch. 8 para. 22(2) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **18(b)**

**23.—(1)** Any income derived from capital to which the claimant is or is treated under regulation 117 (capital jointly held) as beneficially entitled but, subject to sub-paragraph (2), not income derived from capital disregarded under paragraph 1, 2, 4 to 8, 10 or 16 of Schedule 9.

(2) Income derived from capital disregarded under paragraph 2 or 4 to 8 of Schedule 9 but only to the extent of—

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- (a) any mortgage repayments made in respect of the dwelling or premises in the period during which that income accrued; or
  - (b) any council tax or water charges which the claimant is liable to pay in respect of the dwelling or premises and which are paid in the period during which that income accrued.
- (3) The definition of “water charges” in regulation 2(1) is to apply to sub-paragraph (2) with the omission of the words “in so far as such charges are in respect of the dwelling which a person occupies as the home”.

**24.** Any income which is payable in a country outside the United Kingdom for such period during which there is prohibition against the transfer to the United Kingdom of that income.

**25.** Where a payment of income is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

**26.—(1)** Any payment made to the claimant in respect of a child or young person who is a member of the claimant's family—

- (a) pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002 <sup>F25</sup> or in accordance with a scheme approved by the Scottish Ministers under section 51A of the Adoption (Scotland) Act 1978 <sup>F26</sup> (schemes for payment of allowances to adopters);
- (b) which is a payment made by a local authority in pursuance of section 15(1) of, and paragraph 15 of Schedule 1 to, the Children Act 1989 <sup>F27</sup> (local authority contribution to a child's maintenance where the child is living with a person as a result of a residence order)<sup>F28</sup>, or in Scotland section 50 of the Children Act 1975 (payments towards maintenance of children)];
- (c) which is a payment made by an authority, as defined in Article 2 of the Children (Northern Ireland) Order 1995 <sup>F29</sup>, in pursuance of Article 15 of, and paragraph 17 of Schedule 1 to, that Order (contributions by an authority to child's maintenance);
- (d) in accordance with regulations made pursuant to section 14F of the Children Act 1989 <sup>F30</sup> (special guardianship support services).

(2) Any payment, other than a payment to which sub-paragraph (1)(a) applies, made to the claimant pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002 <sup>F31</sup>.

#### Textual Amendments

**F25** 2002 c. 38.

**F26** 1978 c. 28.

**F27** 1989 c. 41. Section 15(1) was amended by the [Courts and Legal Services Act 1990 \(c. 41\)](#), [section 116](#) and Schedule 16, paragraph 10 and paragraph 15 of Schedule 1 was amended by the [Civil Partnership Act 2004 \(c. 33\)](#), [section 78\(1\)](#) and (3).

**F28** Words in Sch. 8 para. 26(1)(b) inserted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(2)(d), [11\(19\)\(c\)](#)

**F29** S.I. 1995/755 (N.I. 2).

**F30** Section 14F was inserted by the [Adoption and Children Act 2002 \(c. 38\)](#), [section 115\(1\)](#).

**F31** 2002 c. 38.

**27.** In the case of a claimant who has a child or young person—

- (a) who is a member of the claimant's family; and

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- (b) who is residing at an educational establishment at which that child or young person is receiving relevant education,

any payment made to that educational establishment, in respect of that child or young person's maintenance by or on behalf of a person who is not a member of the family or by a member of the family out of funds contributed for that purpose by a person who is not a member of the family.

**28.** Any payment made by a local authority to the claimant with whom a person is accommodated by virtue of arrangements made under section 23(2)(a) of the Children Act 1989 (provision of accommodation and maintenance for a child whom they are looking after) or, as the case may be, section 26 of the Children (Scotland) Act 1995<sup>F32</sup> or by a voluntary organisation under section 59(1)(a) of the 1989 Act (provision of accommodation by voluntary organisations) or by a local authority under regulation 9 of the Fostering of Children (Scotland) Regulations 1996<sup>F33</sup> (payment of allowances).

#### Textual Amendments

**F32** 1995 c. 36.

**F33** S.I. 1996/3263.

**29.** Any payment made to the claimant or the claimant's partner for a person ("the person concerned"), who is not normally a member of the claimant's household but is temporarily in the claimant's care, by—

- (a) a health authority;
- (b) a local authority but excluding payments of housing benefit made in respect of the person concerned;
- (c) a voluntary organisation;
- (d) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948<sup>F34</sup>;
- (e) a Primary Care Trust established under section 16A of the National Health Service Act 1977<sup>F35</sup> or by an order made under section 18(2)(c) of the Health Service Act; or
- (f) a Local Health Board established under section 16BA of the National Health Service Act 1977 or by an order made under section 11 of the Health Service (Wales) Act.

#### Textual Amendments

**F34** 1948 c. 29. Section 26(3A) was inserted by the [National Health Service and Community Care Act 1990](#) (c. 19), [section 42\(4\)](#).

**F35** 1977 c. 49. Section 18(1) of the [National Health Service Act 2006](#) (c. 41) provides for the continued existence of Primary Care Trusts established under section 16A of the National Health Service Act 1977.

**30.—**(1) Any payment made by a local authority in accordance with—

- (a) section 17, 23B, 23C or 24A of the Children Act 1989<sup>F36</sup>;
- (b) section 12 of the Social Work (Scotland) Act 1968<sup>F37</sup>; or
- (c) section 29 or 30 of the Children (Scotland) Act 1995 (local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care).

(2) Subject to paragraph (3), any payment (or part of a payment) made by a local authority in accordance with section 23C of the Children Act 1989 or section 29 of the Children (Scotland) Act



1995 (local authorities' duty to promote welfare of children and powers to grant financial assistance to persons in, or formerly in, their care) to a person ("A") which A passes on to the claimant.

- (3) Sub-paragraph (2) applies only where A—
- (a) was formerly in the claimant's care; and
  - (b) is aged 18 or over; and
  - (c) continues to live with the claimant.

#### Textual Amendments

- F36** 1989 c. 41. Sections 23B, 23C and 24A were substituted by the [Children \(Leaving Care\) Act 2000 \(c. 35\)](#), sections 2 and 4.
- F37** 1968 c. 49.

**31.**—(1) Subject to sub-paragraph (2) any payment received under an insurance policy, taken out to insure against the risk of being unable to maintain repayments on a loan which qualifies under paragraph 16 or 17 of Schedule 6 (housing costs – loans to acquire an interest in a dwelling, or for repairs and improvements to the dwelling, occupied as the home) and used to meet such repayments, to the extent that it does not exceed the aggregate of—

- (a) the amount, calculated on a weekly basis, of any interest on that loan which is in excess of the amount met in accordance with Schedule 6;
- (b) the amount of any payment, calculated on a weekly basis, due on the loan attributable to the repayment of capital; and
- (c) any amount due by way of premiums on—
  - (i) that policy; or
  - (ii) a policy of insurance taken out to insure against loss or damage to any building or part of a building which is occupied by the claimant as the claimant's home.

(2) This paragraph does not apply to any payment which is treated as possessed by the claimant by virtue of regulation 107(3)(c) (notional income – income due to be paid or income paid to or in respect of a third party).

**32.**—(1) Except where paragraph 31 (or 33) applies, and subject to sub-paragraph (2), any payment made to the claimant which is intended to be used and is used as a contribution towards—

- (a) any payment due on a loan if secured on the dwelling occupied as the home which does not qualify under Schedule 6;
- (b) any interest payment or charge which qualifies in accordance with paragraphs 16 to 18 of Schedule 6 to the extent that the payment or charge is not met;
- (c) any payment due on a loan which qualifies under paragraph 16 or 17 of Schedule 6 attributable to the payment of capital;
- (d) any amount due by way of premiums on—
  - (i) an insurance policy taken out to insure against the risk of being unable to make the payments referred to in (a) to (c) above; or
  - (ii) a policy of insurance taken out to insure against loss or damage to any building or part of a building which is occupied by the claimant as the claimant's home;
- (e) the claimant's rent in respect of the dwelling occupied by the claimant as the home but only to the extent that it is not met by housing benefit; or the claimant's accommodation

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charge but only to the extent that the actual charge exceeds the amount payable by a local authority in accordance with Part 3 of the National Assistance Act 1948.

(2) This paragraph does not apply to any payment which is treated as possessed by the claimant by virtue of regulation 107(3)(c).

**33.**—(1) Subject to sub-paragraph (2), any payment received under an insurance policy, other than an insurance policy referred to in paragraph 31, taken out to insure against the risk of being unable to maintain repayments under a regulated agreement as defined for the purposes of the Consumer Credit Act 1974 <sup>F38</sup> or under a hire-purchase agreement or a conditional sale agreement as defined for the purposes of Part 3 of the Hire-Purchase Act 1964 <sup>F39</sup>.

(2) A payment referred to in sub-paragraph (1) is to only be disregarded to the extent that the payment received under that policy does not exceed the amounts, calculated on a weekly basis which are used to—

- (a) maintain the repayments referred to in sub-paragraph (1); and
- (b) meet any amount due by way of premiums on that policy.

#### Textual Amendments

**F38** 1974 c. 39.

**F39** 1964 c. 53.

**34.**—(1) Subject to sub-paragraphs (2) and (3), in the case of a claimant residing in a care home, an Abbeyfield Home or an independent hospital, any payment, except a charitable or voluntary payment disregarded under paragraph 16 made to the claimant which is intended to be used and is used to meet the cost of maintaining the claimant in that home or hospital.

(2) This paragraph does not apply to a claimant for whom accommodation in a care home, an Abbeyfield Home or an independent hospital is provided by a local authority under section 26 of the National Assistance Act 1948.

(3) The amount to be disregarded under this paragraph is not to exceed the difference between—

- (a) the claimant's applicable amount; and
- (b) the weekly charge for the accommodation.

**35.** Any social fund payment made pursuant to Part 8 of the Contributions and Benefits Act.

**36.** Any payment of income which under regulation 112 (income treated as capital) is to be treated as capital.

**37.** Any payment under Part 10 of the Contributions and Benefits Act (pensioner's Christmas bonus).

**38.** Any payment which is due to be paid before the date of claim which would otherwise fall to be taken into account in the same benefit week as a payment of the same kind and from the same source.

**39.** The total of a claimant's income or, if the claimant is a member of a family, the family's income and the income of any person which the claimant is treated as possessing under regulation 83(3) (calculation of income and capital of members of claimant's family and of a polygamous marriage) to be disregarded under regulation 133(2)(b) and 134(1)(c) (calculation of covenant income), regulation 137(1) and (2) (treatment of student loans), regulation 138(3) (treatment of payments from access funds) and paragraph 17 is in no case to exceed £20 per week.

**40.** Notwithstanding paragraph 39 where two or more payments of the same kind and from the same source are to be taken into account in the same benefit week, there is to be disregarded from

each payment the sum which would otherwise fall to be disregarded under this Schedule; but this paragraph is to apply only in the case of a payment which it has not been practicable to treat under regulation 93(1)(b) (date on which income is treated as paid) as paid on the first day of the benefit week in which it is due to be paid.

**41.—**(1) Any payment made under [<sup>F40</sup>or by] the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust (“the Trusts”), the Fund, the Eileen Trust<sup>F41</sup>, MFET Limited] or [<sup>F42</sup>the Independent Living Fund (2006)].

(2) Any payment by or on behalf of a person who is suffering or who suffered from haemophilia, or who is or was a qualifying person which derives from a payment made under [<sup>F40</sup>or by] any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) that person's partner or former partner from whom that person is not, or where that person has died was not, estranged or divorced or with whom that person has formed a civil partnership that has not been dissolved or, where that person has died, had not been dissolved at the time of that person's death;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(3) Any payment by or on behalf of the partner or former partner of a person who is suffering or who suffered from haemophilia or who is or was a qualifying person provided that the partner or former partner and that person are not, or if either of them has died were not, estranged or divorced or, where the partner or former partner and that person have formed a civil partnership, the civil partnership has not been dissolved or, if either of them has died, had not been dissolved at the time of the death, which derives from a payment made under [<sup>F40</sup>or by] any of the Trusts to which sub-paragraph (1) refers and which is made to or for the benefit of—

- (a) the person who is suffering from haemophilia or who is a qualifying person;
- (b) any child who is a member of that person's family or who was such a member and who is a member of the claimant's family; or
- (c) any young person who is a member of that person's family or who was such a member and who is a member of the claimant's family.

(4) Any payment by a person who is suffering from haemophilia or who is a qualifying person, which derives from a payment under [<sup>F40</sup>or by] any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person has no partner or former partner from whom that person is not estranged or divorced or with whom that person has formed a civil partnership that has not been dissolved, nor any child or young person who is or had been a member of that person's family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent; or
  - (ii) where that person at the date of the payment is a child, a young person or a full-time student who has not completed full-time education and had no parent or step-parent, to that person's guardian,

but only for a period from the date of the payment until the end of two years from that person's death.

(5) Any payment out of the estate of a person who suffered from haemophilia or who was a qualifying person, which derives from a payment under [<sup>F40</sup>or by] any of the Trusts to which sub-paragraph (1) refers, where—

**Status:** Point in time view as at 01/10/2010.

**Changes to legislation:** There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, SCHEDULE 8. (See end of Document for details)

- (a) that person at the date of that person's death (the relevant date) had no partner or former partner from whom that person was not estranged or divorced or with whom that person had formed a civil partnership that had not been dissolved, nor any child or young person who was or had been a member of that person's family; and
- (b) the payment is made either—
  - (i) to that person's parent or step-parent; or
  - (ii) where that person at the relevant date was a child, a young person or a full-time student who had not completed full-time education and had no parent or step-parent, to that person's guardian,

but only for a period of two years from the relevant date.

(6) In the case of a person to whom or for whose benefit a payment referred to in this paragraph is made, any income which derives from any payment of income or capital made under or deriving from any of the Trusts.

(7) For the purposes of sub-paragraphs (2) to (6), any reference to the Trusts is to be construed as including a reference to the Fund, the Eileen Trust<sup>F43</sup>, MFET Limited], the Skipton Fund and the London Bombings Relief Charitable Fund.

#### Textual Amendments

- F40** Words in Sch. 8 para. 41(1)-(5) inserted (6.4.2010) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(1), **12(5)(r)**
- F41** Words in Sch. 8 para. 41(1) inserted (6.4.2010) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(1), **12(3)(f)**
- F42** Words in Sch. 8 para. 41(1) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **18(b)**
- F43** Words in Sch. 8 para. 41(7) inserted (6.4.2010) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(1), **12(3)(f)**

**42.** Any payment made by the Secretary of State to compensate for the loss (in whole or in part) of entitlement to housing benefit.

**43.** Any payment made to a juror or a witness in respect of attendance at a court other than compensation for loss of earnings or for the loss of a benefit payable under the benefit Acts.

**44.** Any payment in consequence of a reduction of council tax under section 13 or section 80 of the Local Government Finance Act 1992 <sup>F44</sup> (reduction of liability for council tax).

#### Textual Amendments

- F44** 1992 c. 14.

**45.—(1)** Any payment or repayment made—

- (a) as respects England, under regulation 5, 6 or 12 of the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 <sup>F45</sup> (travelling expenses and health service supplies);
- (b) as respects Wales, under regulation 5, 6 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007 <sup>F46</sup>,

(c) as respects Scotland, under regulation 3, 5 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No. 2) Regulations 2003 <sup>F47</sup> (travelling expenses and health service supplies).

(2) Any payment or repayment made by the Secretary of State for Health, the Scottish Ministers or the Welsh Ministers which is analogous to a payment or repayment mentioned in sub-paragraph (1).

**Textual Amendments**

**F45** [S.I. 2003/2382](#), the relevant amending instruments are [S.I. 2004/663](#), [S.I. 2004/696](#), [S.I. 2004/936](#), [S.I. 2005/26](#), [S.I. 2005/578](#), [S.I. 2006/562](#) and [S.I. 2006/675](#).

**F46** [S.I. 2007/1104](#) (W. 116).

**F47** [S.S.I. 2003/460](#).

**46.** Any payment made to such persons entitled to receive benefits as may be determined by or under a scheme made pursuant to section 13 of the Social Security Act 1988 <sup>F48</sup> in lieu of vouchers or similar arrangements in connection with the provision of those benefits (including payments made in place of healthy start vouchers, milk tokens or the supply of vitamins).

**Textual Amendments**

**F48** [1988 c. 7](#).

**47.** Any payment made either by the Secretary of State for Justice or by the Scottish Ministers under a scheme established to assist relatives and other persons to visit persons in custody.

**48.** Any payment (other than a training allowance) made, whether by the Secretary of State or by any other person, under the Disabled Persons (Employment) Act 1944 <sup>F49</sup> to assist disabled persons to obtain or retain employment despite their disability.

**Textual Amendments**

**F49** [1944 c. 10](#).

**49.** Any supplementary pension under article 23(2) of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 <sup>F50</sup> (pensions to widows, widowers or surviving civil partners) and any analogous payment made by the Secretary of State for Defence to any person who is not a person entitled under that Order.

**Textual Amendments**

**F50** [S.I. 2006/606](#).

[<sup>F51</sup>**50.**—(1) ) If the claimant is in receipt of any benefit under Part 2, 3 or 5 of the Contributions and Benefits Act, any increase in the rate of that benefit arising under Part 4 (increases for dependants) or section 106(a) (unemployability supplement) of that Act, where the dependant in respect of whom the increase is paid is not a member of the claimant's family.

(2) If the claimant is in receipt of any pension or allowance under Part 2 or 3 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006, any increase in the rate of that pension or allowance under that Order, where the dependant in respect of whom the increase is paid is not a member of the claimant's family.]

**Status:** Point in time view as at 01/10/2010.

**Changes to legislation:** There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, SCHEDULE 8. (See end of Document for details)

#### Textual Amendments

**F51** Sch. 8 para. 50 substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **11(3)(b)**

**51.** In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983<sup>F52</sup> (pensions to widows, widowers or surviving civil partners), the sum specified in paragraph 1(c) of Schedule 4 to that scheme.

#### Textual Amendments

**F52** [S.I. 1983/686](#), the relevant amending instrument is [S.I. 1994/2021](#).

**52.—(1)** Any payment which is—

- (a) made under any of the Dispensing Instruments to a widow, [<sup>F53</sup>widower or surviving civil partner] of a person—
  - (i) whose death was attributable to service in a capacity analogous to service as a member of the armed forces of the Crown; and
  - (ii) whose service in such capacity terminated before 31st March 1973; and
- (b) equal to the amount specified in article 23(2) of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006.

(2) In this paragraph “the Dispensing Instruments” means the Order in Council of 19th December 1881, the Royal Warrant of 27th October 1884 and the Order by His Majesty of 14th January 1922 (exceptional grants of pay, non-effective pay and allowances).

#### Textual Amendments

**F53** Words in Sch. 8 para. 52(1)(a) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **18(c)**

**53.** Any payment made<sup>F54</sup>... under section 12B of the Social Work (Scotland) Act 1968<sup>F55</sup>, or under sections 12A to 12D of the National Health Service Act 2006 (direct payments for health care)<sup>F56</sup> or under regulations made under section 57 of the Health and Social Care Act 2001<sup>F57</sup> (direct payments).

#### Textual Amendments

**F54** Words in Sch. 8 para. 53 omitted (6.4.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), **10(9)**

**F55** Words in Sch. 8 para. 53 inserted (6.4.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(1), **12(7)**

**F56** 1968 c. 49.

**F57** 2001 c. 15.

**54.—(1)** Any payment specified in sub-paragraph (2) to a claimant who was formerly a student and who has completed the course in respect of which those payments were made.

(2) The payments specified for the purposes of sub-paragraph (1) are—

- (a) any grant income and covenant income as defined for the purposes of Chapter 10 of Part 10;
- (b) any student loan as defined in Chapter 10 of Part 10;
- (c) any contribution as defined in Chapter 10 of Part 10 which—
  - (i) is taken into account in ascertaining the amount of a student loan referred to in paragraph (b); and
  - (ii) has been paid.

**55.**—(1) Subject to sub-paragraph (2), in the case of a person who is receiving, or who has received, assistance under the self-employment route, any payment to the person—

- (a) to meet expenses wholly and necessarily incurred whilst carrying on the commercial activity;
- (b) which is used or intended to be used to maintain repayments on a loan taken out by that person for the purposes of establishing or carrying on the commercial activity,

in respect of which such assistance is or was received.

(2) Sub-paragraph (1) is to apply only in respect of payments which are paid to that person from the special account as defined for the purposes of Chapter 5 of Part 10.

**56.** Any payment made with respect to a person on account of the provision of after-care under section 117 of the Mental Health Act 1983 <sup>F58</sup> or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 <sup>F59</sup> or the provision of accommodation or welfare services to which Part 3 of the National Assistance Act 1948 <sup>F60</sup> refers or to which the Social Work (Scotland) Act 1968 <sup>F61</sup> refers, which falls to be treated as notional income under paragraph (6) of regulation 107 (payments made in respect of a person living in a care home, an Abbeyfield Home or an independent hospital).

#### Textual Amendments

**F58** 1983 c. 20.

**F59** 2003 asp. 13.

**F60** 1948 c. 29.

**F61** 1968 c. 49.

**57.**—(1) Any payment of a sports award except to the extent that it has been made in respect of any one or more of the items specified in sub-paragraph (2).

(2) The items specified for the purposes of sub-paragraph (1) are food, ordinary clothing or footwear, household fuel, rent for which housing benefit is payable or any housing costs to the extent that they are met under regulation 67(1)(c) or 68(1)(d) (housing costs), of the claimant or, where the claimant is a member of a family, any other member of the claimant's family, or any council tax or water charges for which that claimant or member is liable.

(3) For the purposes of sub-paragraph (2) “food” does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the person in the sport in respect of which the award was made;

**58.** Where the amount of a subsistence allowance paid to a person in a benefit week exceeds the amount of income-based jobseeker's allowance that person would have received in that benefit week had it been payable to that person, less 50p, that excess amount.

**59.** In the case of a claimant participating in an employment zone programme, any discretionary payment made by an employment zone contractor to the claimant, being a fee, grant, loan or otherwise.

**Status:** Point in time view as at 01/10/2010.

**Changes to legislation:** There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, SCHEDULE 8. (See end of Document for details)

<sup>F62</sup>**60.**—(1) Any payment of child maintenance made or derived from a liable relative where the child or young person in respect of whom the payment is made is a member of the claimant’s family, except where the person making the payment is the claimant or the claimant’s partner.

(2) In sub-paragraph (1)—

“child maintenance” means any payment towards the maintenance of a child or young person, including any payment made voluntarily and payments made under—

- (a) the Child Support Act 1991;
- (b) the Child Support (Northern Ireland) Order 1991;
- (c) a court order;
- (d) a consent order;
- (e) a maintenance agreement registered for execution in the Books of Council and Session or the sheriff court books;

“liable relative” means a person listed in regulation 119 (interpretation) other than a person falling within sub-paragraph (d) of that definition.]

#### Textual Amendments

**F62** Sch. 8 para. 60 substituted (for specified purposes and with effect in accordance with reg. 1(6) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(6)(c), **11(19)(d)**

**61.** In the case of a person to whom paragraph (5) of regulation 6 of the Income Support Regulations (persons not treated as in remunerative work) applies, the whole of that person’s income.

**62.** Any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001 <sup>F63</sup>.

#### Textual Amendments

**F63** [S.I. 2001/1167](#).

**63.**—(1) Any payment made by a local authority or by the Welsh Ministers, to or on behalf of the claimant or the claimant’s partner relating to a service which is provided to develop or sustain the capacity of the claimant or the claimant’s partner to live independently in the claimant’s or the claimant’s partner’s accommodation.

(2) For the purposes of sub-paragraph (1) “local authority” includes, in England, a county council.

**64.** Any housing benefit to which the claimant is entitled.

**65.** Any council tax benefit to which the claimant is entitled.



**Status:**

Point in time view as at 01/10/2010.

**Changes to legislation:**

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, SCHEDULE 8.