

SCHEDULE 1 **E+W+S**

Regulation 2(2)

HER MAJESTY'S FORCES

PART 1 **E+W+S**

Prescribed establishments and organisations

1. Any of the regular naval, military or air forces of the Crown.
2. Royal Fleet Reserve.
3. Royal Navy Reserve.
4. Royal Marines Reserve.
5. Army Reserve.
6. Territorial Army.
7. Royal Air Force Reserve.
8. Royal Auxiliary Air Force.
9. The Royal Irish Regiment, to the extent that its members are not members of any force falling within paragraph 1.

PART 2 **E+W+S**

Establishments and organisations of which Her Majesty's forces do not consist

10. Her Majesty's forces are not to be taken to consist of any of the establishments or organisations specified in Part 1 of this Schedule by virtue only of the employment in such establishment or organisation of the following persons—
- (a) any person who is serving as a member of any naval force of Her Majesty's forces and who (not having been an insured person under the National Insurance Act 1965 ^{F1} and not having been a contributor under the Social Security Act 1975 ^{F2} or not being a contributor under the Contributions and Benefits Act) locally entered that force at an overseas base;
 - (b) any person who is serving as a member of any military force of Her Majesty's forces and who entered that force, or was recruited for that force outside the United Kingdom, and the depot of whose unit is situated outside the United Kingdom;
 - (c) any person who is serving as a member of any air force of Her Majesty's forces and who entered that force, or was recruited for that force, outside the United Kingdom, and is liable under the terms of engagement to serve only in a specified part of the world outside the United Kingdom.

Textual Amendments

F1 1965 c. 51.

F2 1975 c. 14.

Status: Point in time view as at 03/11/2008.
Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008. (See end of Document for details)

SCHEDULE 2 **E+W+S**

Regulation 19(2) and (3)

ASSESSMENT OF WHETHER A CLAIMANT HAS LIMITED CAPABILITY FOR WORK

PART 1 E+W+S

Physical disabilities

<i>(1) Activity</i>		<i>(2) Descriptors</i>	<i>(3) Points</i>
1. Walking with a walking stick or other aid if such aid is normally used.	1	(a) Cannot walk at all.	15
		(b) Cannot walk more than 50 metres on level ground without repeatedly stopping or severe discomfort.	15
		(c) Cannot walk up or down two steps even with the support of a handrail.	15
		(d) Cannot walk more than 100 metres on level ground without stopping or severe discomfort.	9
		(e) Cannot walk more than 200 metres on level ground without stopping or severe discomfort.	6
		(f) None of the above apply.	0
2. Standing and sitting.	2	(a) Cannot stand for more than 10 minutes, unassisted by another person, even if free to move around, before needing to sit down.	15
		(b) Cannot sit in a chair with a high back and no arms for more than 10 minutes before needing to move from the chair because the degree of discomfort experienced makes it impossible to continue sitting.	15
		(c) Cannot rise to standing from sitting in an upright chair without physical assistance from another person.	15
		(d) Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.	15
		(e) Cannot stand for more than 30 minutes, even if free to move around, before needing to sit down.	6
		(f) Cannot sit in a chair with a high back and no arms for more than 30	6

			minutes without needing to move from the chair because the degree of discomfort experienced makes it impossible to continue sitting.	
		(g)	None of the above apply.	0
3. Bending or kneeling.	3	(a)	Cannot bend to touch knees and straighten up again.	15
		(b)	Cannot bend, kneel or squat, as if to [^{F3} pick up a light object], such as a piece of paper, situated 15cm from the floor on a low shelf, and to move it and straighten up again without the help of another person.	9
		(c)	Cannot bend, kneel or squat, as if to [^{F4} pick up a light object] off the floor and straighten up again without the help of another person.	6
		(d)	None of the above apply.	0
4. Reaching.	4	(a)	Cannot raise either arm as if to put something in the top pocket of a coat or jacket.	15
		(b)	Cannot put either arm behind back as if to put on a coat or jacket.	15
		(c)	Cannot raise either arm to top of head as if to put on a hat.	9
		(d)	Cannot raise either arm above head height as if to reach for something.	6
		(e)	None of the above apply.	0
5. Picking up and moving or transferring by the use of the upper body and arms (excluding all other activities specified in Part 1 of this Schedule).	5	(a)	Cannot pick up and move a 0.5 litre carton full of liquid with either hand.	15
		(b)	Cannot pick up and move a one litre carton full of liquid with either hand.	9
		(c)	Cannot pick up and move a light but bulky object such as an empty cardboard box, requiring the use of both hands together.	6
		(d)	None of the above apply.	0
6. Manual dexterity.	6	(a)	Cannot turn a “star-headed” sink tap with either hand.	15
		(b)	Cannot pick up a £1 coin or equivalent with either hand.	15

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

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| | | (c) Cannot turn the pages of a book with either hand. | 15 |
| | | (d) Cannot physically use a pen or pencil. | 9 |
| | | (e) Cannot physically use a conventional keyboard or mouse. | 9 |
| | | (f) Cannot do up/undo small buttons, such as shirt or blouse buttons. | 9 |
| | | (g) Cannot turn a "star-headed" sink tap with one hand but can with the other. | 6 |
| | | (h) Cannot pick up a £1 coin or equivalent with one hand but can with the other. | 6 |
| | | (i) Cannot pour from an open 0.5 litre carton full of liquid. | 6 |
| | | (j) None of the above apply. | 0 |
| 7. Speech. | 7 | (a) Cannot speak at all. | 15 |
| | | (b) Speech cannot be understood by strangers. | 15 |
| | | (c) Strangers have great difficulty understanding speech. | 9 |
| | | (d) Strangers have some difficulty understanding speech. | 6 |
| | | (e) None of the above apply. | 0 |
| 8. Hearing with a hearing aid or other aid if normally worn. | 8 | (a) Cannot hear at all. | 15 |
| | | (b) Cannot hear well enough to be able to hear someone talking in a loud voice in a quiet room, sufficiently clearly to distinguish the words being spoken. | 15 |
| | | (c) Cannot hear someone talking in a normal voice in a quiet room, sufficiently clearly to distinguish the words being spoken. | 9 |
| | | (d) Cannot hear someone talking in a loud voice in a busy street, sufficiently clearly to distinguish the words being spoken. | 6 |
| | | (e) None of the above apply. | 0 |
| 9. Vision including visual acuity and visual fields, in normal daylight or bright electric light, with glasses or | 9 | (a) Cannot see at all. | 15 |

other aid to vision if such aid is normally worn.

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| | | (b) | Cannot see well enough to read 16 point print at a distance of greater than 20cm. | 15 | |
| | | (c) | Has 50% or greater reduction of visual fields. | 15 | |
| | | (d) | Cannot see well enough to recognise a friend at a distance of a least 5 metres. | 9 | |
| | | (e) | Has 25% or more but less than 50% reduction of visual fields. | 6 | |
| | | (f) | Cannot see well enough to recognise a friend at a distance of at least 15 metres. | 6 | |
| | | (g) | None of the above apply. | 0 | |
| 10 | (a) | Contenance other than enuresis (bed wetting) where the claimant does not have an artificial stoma or urinary collecting device. | 10 (a) (i) | Has no voluntary control over the evacuation of the bowel. | 15 |
| | | | 10 (a) (ii) | Has no voluntary control over the voiding of the bladder. | 15 |
| | | | 10 (a) (iii) | At least once a month loses control of bowels so that the claimant cannot control the full evacuation of the bowel. | 15 |
| | | | 10 (a) (iv) | At least once a week, loses control of bladder so that the claimant cannot control the full voiding of the bladder. | 15 |
| | | | 10 (a) (v) | Occasionally loses control of bowels so that the claimant cannot control the full evacuation of the bowel. | 9 |
| | | | 10 (a) (vi) | At least once a month loses control of bladder so that the claimant cannot control the full voiding of the bladder. | 6 |
| | | | 10 (a) (vii) | Risks losing control of bowels or bladder so that | 6 |

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				the claimant cannot control the full evacuation of the bowel or the full voiding of the bladder if not able to reach a toilet quickly.		
		10	(a) (viii)	None of the above apply.	0	
10	(b)	Contenance where the claimant uses a urinary collecting device, worn for the majority of the time including an indwelling urethral or suprapubic catheter.	10	(b) (i)	Is unable to affix, remove or empty the catheter bag or other collecting device without receiving physical assistance from another person.	15
			10	(b) (ii)	Is unable to affix, remove or empty the catheter bag or other collecting device without causing leakage of contents.	15
			10	(b) (iii)	Has no voluntary control over the evacuation of the bowel.	15
			10	(b) (iv)	At least once a month, loses control of bowels so that the claimant cannot control the full evacuation of the bowel.	15
			10	(b) (v)	Occasionally loses control of bowels so that the claimant cannot control the full evacuation of the bowel.	9
			10	(b) (vi)	Risks losing control of bowels so that the claimant cannot control the full evacuation of the bowel if not able to reach a toilet quickly.	6
			10	(b) (vii)	None of the above apply.	0
10	(c)	Contenance other than enuresis (bed wetting) where the claimant has an artificial stoma.	10	(c) (i)	Is unable to affix, remove or empty stoma appliance without receiving physical assistance from another person.	15
			10	(c) (ii)	Is unable to affix remove or empty stoma appliance without causing leakage of contents.	15

- [^{F5}10 (c) (iii) Where the claimant's [^{F6}15] artificial stoma relates solely to the evacuation of the bowel, has no voluntary control over voiding of the bladder.]
- 10 (c) [^{F7}(iv)] Where the claimant's 15 artificial stoma relates solely to the evacuation of the bowel, at least once a week, loses control of bladder so that the claimant cannot control the full voiding of the bladder.
- 10 (c) [^{F8}(v)] Where the claimant's 9 artificial stoma relates solely to the evacuation of the bowel, [^{F9}at least once a month], loses control of bladder so that the claimant cannot control the full voiding of the bladder.
- 10 (c) [^{F10}(vi)] Where the claimant's 6 artificial stoma relates solely to the evacuation of the bowel, risks losing control of the bladder so that the claimant cannot control the full voiding of the bladder if not able to reach a toilet quickly.
- 10 (c) [^{F11}(vii)] None of the above apply. 0
11. Remaining conscious during waking 11 moments. (a) At least once a week, has an 15 involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.
- (b) At least once a month, has an 9 involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.
- (c) At least twice in the six 6 months immediately preceding the assessment, has had an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.

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- (c) Needs to witness a demonstration 9
of how to carry out a simple task,
before the claimant is able to learn
or understand how to complete
the task successfully, but would
be unable to successfully complete
the task the following day without
receiving a verbal prompt from
another person.
 - (d) Needs to witness a demonstration 9
of how to carry out a moderately
complex task, such as the steps
involved in operating a washing
machine to correctly clean clothes,
before the claimant is able to learn
or understand how to complete
the task successfully, but would
be unable to successfully complete
the task the following day without
receiving a verbal prompt from
another person.
 - (e) Needs verbal instructions as to how 6
to carry out a simple task before
the claimant is able to learn or
understand how to complete the
task successfully, but would be
unable, within a period of less than
one week, to successfully complete
the task
F12
... without receiving a verbal
prompt from another person.
 - (f) None of the above apply. 0
13. Awareness of hazard. 13
- (a) Reduced awareness of the risks of 15
everyday hazards (such as boiling
water or sharp objects) would lead
to daily instances of or to near-
avoidance of:
 - (i) injury to self or others; or
 - (ii) significant damage to
property or possessions,
to such an extent that overall day
to day life cannot successfully be
managed.
 - (b) Reduced awareness of the risks of 9
everyday hazards would lead for
the majority of the time to instances
of or to near-avoidance of

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- (i) injury to self or others; or
 - (ii) significant damage to property or possessions, to such an extent that overall day to day life cannot successfully be managed without supervision from another person.
 - (c) Reduced awareness of the risks of everyday hazards has led or would lead to frequent instances of or to near-avoidance of:
 - (i) injury to self or others; or
 - (ii) significant damage to property or possessions, but not to such an extent that overall day to day life cannot be managed when such incidents occur.
 - (d) None of the above apply. 0
- 14. Memory and concentration. 14
 - (a) On a daily basis, forgets or loses concentration to such an extent that overall day to day life cannot be successfully managed without receiving verbal prompting, given by someone else in the claimant's presence. 15
 - (b) For the majority of the time, forgets or loses concentration to such an extent that overall day to day life cannot be successfully managed without receiving verbal prompting, given by someone else in the claimant's presence. 9
 - (c) Frequently forgets or loses concentration to such an extent that overall day to day life can only be successfully managed with pre-planning, such as making a daily written list of all tasks forming part of daily life that are to be completed. 6
 - (d) None of the above apply. 0
- 15. Execution of tasks. 15
 - (a) Is unable to successfully complete any everyday task. 15
 - (b) Takes more than twice the length of time it would take a person without

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- any form of mental disablement, to successfully complete an everyday task with which the claimant is familiar.
- (c) Takes more than one and a half 9 times but no more than twice the length of time it would take a person without any form of mental disablement to successfully complete an everyday task with which the claimant is familiar.
 - (d) Takes one and a half times the 6 length of time it would take a person without any form of mental disablement to successfully complete an everyday task with which the claimant is familiar.
 - (e) None of the above apply. 0
16. Initiating and sustaining personal 16 action.
- (a) Cannot, due to cognitive 15 impairment or a severe disorder of mood or behaviour, initiate or sustain any personal action (which means planning, organisation, problem solving, prioritising or switching tasks).
 - (b) Cannot, due to cognitive 15 impairment or a severe disorder of mood or behaviour, initiate or sustain personal action without requiring [^{F13}daily] verbal prompting given by another person in the claimant's presence
^{F14}
....
 - (c) Cannot, due to cognitive 9 impairment or a severe disorder of mood or behaviour, initiate or sustain personal action without requiring verbal prompting given by another person in the claimant's presence for the majority of the time.
 - (d) Cannot, due to cognitive 6 impairment or a severe disorder of mood or behaviour, initiate or sustain personal action without requiring frequent verbal prompting given by another person in the claimant's presence.

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| | | (e) None of the above apply. | 0 |
| 17. Coping with change. | 17 | (a) Cannot cope with very minor, expected changes in routine, to the extent that overall day to day life cannot be managed. | 15 |
| | | (b) Cannot cope with expected changes in routine (such as a pre-arranged permanent change to the routine time scheduled for a lunch break), to the extent that overall day to day life is made significantly more difficult. | 9 |
| | | (c) Cannot cope with minor, unforeseen changes in routine (such as an unexpected change of the timing of an appointment on the day it is due to occur), to the extent that overall, day to day life is made significantly more difficult. | 6 |
| | | (d) None of the above apply. | 0 |
| 18. Getting about. | 18 | (a) Cannot get to any specified place with which the claimant is, or would be, familiar. | 15 |
| | | (b) Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person on each occasion. | 15 |
| | | (c) For the majority of the time is unable to get to a specified place with which the claimant is familiar without being accompanied by another person. | 9 |
| | | (d) Is frequently unable to get to a specified place with which the claimant is familiar without being accompanied by another person. | 6 |
| | | (e) None of the above apply. | 0 |
| 19. Coping with social situations. | 19 | (a) Normal activities, for example, visiting new places or engaging in social contact, are precluded because of overwhelming fear or anxiety. | 15 |
| | | (b) Normal activities, for example, visiting new places or engaging in social contact, are precluded for the majority of the time due to overwhelming fear or anxiety. | [^{F159}] |

Status: Point in time view as at 03/11/2008.

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20. Propriety of behaviour with other 20 people.
- (c) Normal activities, for example, 6
visiting new places or engaging
in social contact, are frequently
precluded, due to overwhelming
fear or anxiety.
 - (d) None of the above apply. 0
 - (a) Has unpredictable outbursts of 15
aggressive, disinhibited, or bizarre
behaviour, being either:
 - (i) sufficient to cause
disruption to others on a
daily basis; or
 - (ii) of such severity that
although occurring less
frequently than on a daily
basis, no reasonable person
would be expected to
tolerate them.
 - (b) Has a completely disproportionate 15
reaction to minor events or to
criticism to the extent that the
claimant has an extreme violent
outburst leading to threatening
behaviour or actual physical
violence.
 - (c) Has unpredictable outbursts of 9
aggressive, disinhibited or bizarre
behaviour, sufficient in severity
and frequency to cause disruption
for the majority of the time.
 - (d) Has a strongly disproportionate 9
reaction to minor events or to
criticism, to the extent that the
claimant cannot manage overall
day to day life when such events or
criticism occur.
 - (e) Has unpredictable outbursts of 6
aggressive, disinhibited or bizarre
behaviour, sufficient to cause
frequent disruption.
 - (f) Frequently demonstrates a 6
moderately disproportionate
reaction to minor events or to
criticism but not to such an extent
that the claimant cannot manage
overall day to day life when such
events or criticism occur.

Status: Point in time view as at 03/11/2008.

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

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| 21. Dealing with other people. | 21 | <ul style="list-style-type: none"> (g) None of the above apply. 0 (a) Is unaware of impact of own 15
behaviour to the extent that: <ul style="list-style-type: none"> (i) has difficulty relating to
others even for brief
periods, such as a few hours;
or (ii) causes distress to others on
a daily basis. (b) The claimant misinterprets verbal 15
or non-verbal communication to
the extent of causing himself or
herself significant distress on a
daily basis. (c) Is unaware of impact of own 9
behaviour to the extent that: <ul style="list-style-type: none"> (i) has difficulty relating to
others for longer periods,
such as a day or two; or (ii) causes distress to others for
the majority of the time. (d) The claimant misinterprets verbal 9
or non-verbal communication to
the extent of causing himself or
herself significant distress
F16
... for the majority of the time. (e) Is unaware of impact of own 6
behaviour to the extent that: <ul style="list-style-type: none"> (i) has difficulty relating
to others for prolonged
periods, such as a week; or (ii) frequently causes distress to
others. (f) The claimant misinterprets verbal 6
or non-verbal communication to
the extent of causing himself or
herself significant distress on a
frequent basis. (g) None of the above apply. 0 |
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Textual Amendments

F12 Words in Sch. 2 para. 12(e) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **12(f)**

Status: Point in time view as at 03/11/2008.

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

F13	Word in Sch. 2 para. 16(b) inserted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), 12(g)(i)
F14	Words in Sch. 2 para. 16(b) omitted (27.10.2008) by virtue of The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), 12(g)(ii)
F15	Word in Sch. 2 para. 19(b) added (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), 12(h)
F16	Words in Sch. 2 para. 21(d) omitted (27.10.2008) by virtue of The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), 12(i)

SCHEDULE 3 **E+W+S**

Regulation 34(1)

ASSESSMENT OF WHETHER A CLAIMANT HAS LIMITED CAPABILITY FOR WORK-RELATED ACTIVITY

<i>Column 1 Activity</i>	<i>Column 2 Descriptors</i>
1. Walking or moving on level ground.	Cannot— (a) walk (with a walking stick or other aid if such aid is normally used); (b) move (with the aid of crutches if crutches are normally used); or (c) manually propel the claimant's wheelchair; more than 30 metres without repeatedly stopping, experiencing breathlessness or severe discomfort.
2. Rising from sitting and transferring from one seated position to another.	Cannot complete both of the following— (a) rise to standing from sitting in an upright chair without receiving physical assistance from someone else; and (b) move between one seated position and another seated position located next to one another without receiving physical assistance from someone else.
3. Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting, bending or kneeling and all other activities specified in this Schedule).	Cannot pick up and move 0.5 litre carton full of liquid with either hand.
4. Reaching.	Cannot raise either arm as if to put something in the top pocket of a coat or jacket.
5. Manual dexterity.	Cannot—

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- (a) turn a “star-headed” sink tap with either hand; or
- (b) pick up a £1 coin or equivalent with either hand.

6. Contenance.

- (a) Contenance other than enuresis (bed wetting) where the claimant does not have an artificial stoma or urinary collecting device.
 - (a) Has no voluntary control over the evacuation of the bowel;
 - (b) Has no voluntary control over the voiding of the bladder;
 - (c) At least once a week, loses control of bowels so that the claimant cannot control the full evacuation of the bowel;
 - (d) At least once a week, loses control of bladder so that the claimant cannot control the full voiding of the bladder;
 - (e) At least once a week, fails to control full evacuation of the bowel, owing to a severe disorder of mood or behaviour; or
 - (f) At least once a week, fails to control full-voiding of the bladder, owing to a severe disorder of mood or behaviour.
- (b) Contenance where the claimant uses a urinary collecting device, worn for the majority of the time including an indwelling urethral or suprapubic catheter.
 - (a) Is unable to affix, remove or empty the catheter bag or other collecting device without receiving physical assistance from another person;
 - (b) Is unable to affix, remove or empty the catheter bag or other collecting device without causing leakage of contents;
 - (c) Has no voluntary control over the evacuation of the bowel;
 - (d) At least once a week loses control of bowels so that the claimant cannot control the full evacuation of the bowel; or
 - (e) At least once a week, fails to control full evacuation of the bowel, owing to a severe disorder of mood or behaviour.

- (c) Continence other than enuresis (bed wetting) where the claimant has an artificial stoma appliance.
 - (a) Is unable to affix, remove or empty stoma appliance without receiving physical assistance from another person;
 - (b) Is unable to affix, remove or empty stoma without causing leakage of contents;
 - (c) Where the claimant's artificial stoma relates solely to the evacuation of the bowel, has no voluntary control over voiding of bladder;
 - (d) Where the claimant's artificial stoma relates solely to the evacuation of the bowel, at least once a week, loses control of the bladder so that the claimant cannot control the full voiding of the bladder; or
 - (e) Where the claimant's artificial stoma relates solely to the evacuation of the bowel, at least once a week, fails to control the full voiding of the bladder, owing to a severe disorder of mood or behaviour.

7. Maintaining personal hygiene.

- (a) Cannot clean own torso (excluding own back) without receiving physical assistance from someone else;
- (b) Cannot clean own torso [^{F17}(excluding own back)] without repeatedly stopping, experiencing breathlessness or severe discomfort;
- (c) Cannot clean own torso [^{F18}(excluding own back)] without receiving regular prompting given by someone else in the claimant's presence; or
- (d) Owing to a severe disorder of mood or behaviour, fails to clean own torso (excluding own back) without receiving—
 - (i) physical assistance from someone else; or

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- (ii) regular prompting given by someone else in the claimant's presence.

8. Eating and drinking.

- (a) Conveying food or drink to the mouth.
 - (a) Cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else;
 - (b) Cannot convey food or drink to the claimant's own mouth without repeatedly stopping, experiencing breathlessness or severe discomfort;
 - (c) Cannot convey food or drink to the claimant's own mouth without receiving regular prompting given by someone else in the claimant's physical presence; or
 - (d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimant's own mouth without receiving—
 - (i) physical assistance from someone else; or
 - (ii) regular prompting given by someone else in the claimant's presence.
- (b) Chewing or swallowing food or drink.
 - (a) Cannot chew or swallow food or drink;
 - (b) Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort;
 - (c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's presence; or
 - (d) Owing to a severe disorder of mood or behaviour, fails to—
 - (i) chew or swallow food or drink; or
 - (ii) chew or swallow food or drink without regular prompting given by someone else in the claimant's presence.

9. Learning or comprehension in the completion of tasks.
- (a) Cannot learn or understand how to successfully complete a simple task, such as the preparation of a hot drink, at all;
 - (b) Needs to witness a demonstration, given more than once on the same occasion of how to carry out a simple task before the claimant is able to learn or understand how to complete the task successfully, but would be unable to successfully complete the task the following day without receiving a further demonstration of how to complete it; or
 - (c) Fails to do any of the matters referred to in (a) or (b) owing to a severe disorder of mood or behaviour.
10. Personal action.
- (a) Cannot initiate or sustain any personal action (which means planning, organisation, problem solving, prioritising or switching tasks);
 - (b) Cannot initiate or sustain personal action without requiring daily verbal prompting given by someone else in the claimant's presence; or
 - (c) Fails to initiate or sustain basic personal action without requiring daily verbal prompting given by some else in the claimant's presence, owing to a severe disorder of mood or behaviour.
11. Communication.
- (a) None of the following forms of communication can be achieved by the claimant—
 - (i) speaking (to a standard that may be understood by strangers);
 - (ii) writing (to a standard that may be understood by strangers);
 - (iii) typing (to a standard that may be understood by strangers);

Status: Point in time view as at 03/11/2008.

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

- (iv) sign language to a standard equivalent to Level 3 British Sign Language;
- (b) None of the forms of communication referred to in (a) are achieved by the claimant, owing to a severe disorder of mood or behaviour;
- (c) Misinterprets verbal or non-verbal communication to the extent of causing distress to himself or herself on a daily basis; or
- (d) Effectively cannot make himself or herself understood to others because of the claimant's disassociation from reality owing to a severe disorder of mood or behaviour.

Textual Amendments

- F17** Words in Sch. 3 para. 7(b) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **13**
- F18** Words in Sch. 3 para. 7(c) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **13**

SCHEDULE 4 **E+W+S** Regulations 67(1)(a) and (2) and 68(1)(a) and (b)

AMOUNTS

PART 1 E+W+S

Prescribed amounts

1. The weekly amounts specified in column (2) in respect of each person or couple specified in column (1) are the weekly amounts specified for the purposes of regulations 67(1) and 68 (prescribed amounts and polygamous marriages).

<i>(1)</i> Person or Couple	<i>(2)</i> Amount
(1) Single claimant—	(1)
(a) who satisfies the conditions set out in section 2(2) or (3) or 4(4) or (5) of the Act;	(a) £60.50;
(b) aged not less than 25;	(b) £60.50;
(c) aged less than 25.	(c) £47.95;

- | | | | |
|-----|---|-----|-------------|
| (2) | Lone parent— | (2) | |
| | (a) who satisfies the conditions set out in section 4(4) or (5) of the Act; | | (a) £60.50; |
| | (b) aged not less than 18; | | (b) £60.50; |
| | (c) aged less than 18. | | (c) £47.95; |
| (3) | Couple— | (3) | |
| | (a) where both members are aged not less than 18; | | (a) £94.95; |
| | (b) where one member is aged not less than 18 and the other member is a person under 18 who— | | (b) £94.95; |
| | (i) had they not been members of a couple, would satisfy the requirements for entitlement to income support other than the requirement to make a claim for it; or | | |
| | (ii) had they not been members of a couple, would satisfy the requirements for entitlement to an income-related allowance; or | | |
| | (iii) satisfies the requirements of section 3(1)(f)(iii) of the Jobseekers Act (prescribed circumstances for persons aged 16 but less than 18); or | | |
| | (iv) is the subject of a direction under section 16 of that Act (persons under 18: severe hardship); | | |
| | (c) where the claimant satisfies the conditions set out in section 4(4) or (5) of the Act and both members are aged less than 18 and— | | (c) £94.95; |
| | (i) at least one of them is treated as responsible for a child; or | | |
| | (ii) had they not been members of a couple, each would have qualified for an income-related allowance; or | | |
| | (iii) had they not been members of a couple the claimant's partner would satisfy the requirements for entitlement to income support other than the requirement to make a claim for it; or | | |
| | (iv) the claimant's partner satisfies the requirements of section 3(1)(f)(iii) of the Jobseekers Act (prescribed circumstances for persons aged 16 but less than 18); or | | |
| | (v) there is in force in respect of the claimant's partner a direction under section 16 of that Act (persons under 18: severe hardship); | | |
| | (d) where both members are aged less than 18 and— | | (d) £72.35; |
| | (i) at least one of them is treated as responsible for a child; or | | |
| | (ii) had they not been members of a couple, each would have qualified for an income-related allowance; or | | |

Status: Point in time view as at 03/11/2008.

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

- (iii) had they not been members of a couple the claimant's partner satisfies the requirements for entitlement to income support other than a requirement to make a claim for it; or
 - (iv) the claimant's partner satisfies the requirements of section 3(1)(f)(iii) of the Jobseekers Act (prescribed circumstances for persons aged 16 but less than 18); or
 - (v) there is in force in respect of the claimant's partner a direction under section 16 of that Act (persons under 18: severe hardship);
- (e) where the claimant is aged not less than 25 and the claimant's partner is a person under 18 who—
- (i) would not qualify for an income-related allowance if the person were not a member of a couple;
 - (ii) would not qualify for income support if the person were not a member of a couple;
 - (iii) does not satisfy the requirements of section 3(1)(f)(iii) of the Jobseekers Act (prescribed circumstances for persons aged 16 but less than 18); and
 - (iv) is not the subject of a direction under section 16 of that Act (persons under 18: severe hardship);
- (f) where the claimant satisfies the conditions set out in section 4(4) or (5) of the Act and the claimant's partner is a person under 18 who—
- (i) would not qualify for an income-related allowance if the person were not a member of a couple;
 - (ii) would not qualify for income support if the person [^{F19}were] not a member of a couple;
 - (iii) does not satisfy the requirements of section 3(1)(f)(iii) of the Jobseekers Act (prescribed circumstances for persons aged 16 but less than 18); and
 - (iv) is not the subject of a direction under section 16 of that Act (persons under 18: severe hardship);
- (g) where the claimant satisfies the conditions set out in section 4(4) or (5) of the Act and both members are aged less than 18 and paragraph (c) does not apply;
- (h) [^{F20}where the claimant is aged not less than 18 but less than 25 and the claimant's partner is a person under 18 who—
- (i) would not qualify for an income-related allowance if the person were not a member of a couple;
 - (ii) would not qualify for income support if the person were not a member of a couple;

- (iii) does not satisfy the requirements of section 3(1)(f)(iii) of the Jobseekers Act (prescribed circumstances for persons aged 16 but less than 18); and
- (iv) is not the subject of a direction under section 16 of that Act (persons under 18: severe hardship);]
- (i) where both members are aged less than 18 and paragraph (d) does not apply. (i) £47.95.

Textual Amendments

F19 Word in Sch. 4 para. 1(3) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **14(1)(a)(i)**

F20 Words in Sch. 4 para. 1(3) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **14(1)(a)(ii)**

Regulations 67(1)(b) and 68(1)(c)

PART 2 **E+W+S**

Premiums

2. Except as provided in paragraph 4, the weekly premiums specified in Part 3 of this Schedule are, for the purposes of regulation 67(1)(b) and 68(1)(c), to be applicable to a claimant who satisfies the condition specified in paragraphs 5 to 8 in respect of that premium.

3. An enhanced disability premium in respect of a person is not applicable in addition to a pensioner premium.

4.—(1) For the purposes of this Part of this Schedule, once a premium is applicable to a claimant under this Part, a person is to be treated as being in receipt of any benefit—

- (a) in the case of a benefit to which the Social Security (Overlapping Benefits) Regulations 1979 ^{F21} applies, for any period during which, apart from the provisions of those Regulations, the person would be in receipt of that benefit; and
- (b) for any period spent by a person in undertaking a course of training or instruction provided or approved by the Secretary of State under section 2 of the Employment and Training Act 1973 ^{F22}, or by Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990 ^{F23}, or for any period during which the person is in receipt of a training allowance.

(2) For the purposes of the carer premium under paragraph 8, a claimant is to be treated as being in receipt of a carer's allowance by virtue of sub-paragraph (1)(a) only if and for so long as the person in respect of whose care the allowance has been claimed remains in receipt of attendance allowance, or the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Contributions and Benefits Act.

Textual Amendments

F21 [S.I. 1979/597](#).

F22 [1973 c. 50](#), as amended by sections 9 and 11 of, and Schedule 2, Part II paragraph 9 and Schedule 3 to, the [Employment and Training Act 1981 \(c. 57\)](#).

Status: Point in time view as at 03/11/2008.

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

F23 1990 c.35.

Pensioner premium **E+W+S**

5. The condition is that the claimant or the claimant's partner has attained the qualifying age for state pension credit.

Severe disability premium **E+W+S**

6.—(1) The condition is that the claimant is a severely disabled person.

(2) For the purposes of sub-paragraph (1), a claimant is to be treated as being a severely disabled person if, and only if—

(a) in the case of a single claimant, a lone parent or a claimant who is treated as having no partner in consequence of sub-paragraph (3)—

(i) the claimant is in receipt of the care component;

(ii) subject to sub-paragraph (4), the claimant has no non-dependants aged 18 or over normally residing with the claimant or with whom the claimant is normally residing; and

(iii) no person is entitled to, and in receipt of, a carer's allowance under section 70 of the Contributions and Benefits Act in respect of caring for the claimant;

(b) in the case of a claimant who has a partner—

(i) the claimant is in receipt of the care component;

(ii) the claimant's partner is also in receipt of the care component or attendance allowance or, if the claimant is a member of a polygamous marriage, all the partners of that marriage are in receipt of the care component or attendance allowance; and

(iii) subject to sub-paragraph (4), the claimant has no non-dependants aged 18 or over normally residing with the claimant or with whom the claimant is normally residing, and, either a person is entitled to, and in receipt of, a carer's allowance in respect of caring for only one of the couple or, in the case of a polygamous marriage, for one or more but not all the partners of the marriage or, as the case may be, no person is entitled to, and in receipt of, such an allowance in respect of caring for either member of the couple or any partner of the polygamous marriage.

(3) Where a claimant has a partner who does not satisfy the condition in sub-paragraph (2)(b)(ii) and that partner is blind or severely sight impaired or is treated as blind or severely sight impaired that partner is to be treated for the purposes of sub-paragraph (2) as if the partner were not a partner of the claimant.

(4) For the purposes of sub-paragraph (2)(a)(ii) and (b)(iii) no account is to be taken of—

(a) a person receiving attendance allowance, or the care component;

(b) subject to sub-paragraph (7), a person who joins the claimant's household for the first time in order to care for the claimant or the claimant's partner and immediately before so joining the claimant or the claimant's partner was treated as a severely disabled person; or

(c) a person who is blind or severely sight impaired or is treated as blind or severely sight impaired.

(5) For the purposes of sub-paragraph (2)(b) a person is to be treated—

(a) as being in receipt of attendance allowance or the care component if the person would, but for the person being a patient for a period exceeding 28 days, be so in receipt;

- (b) as being entitled to, and in receipt of, a carer's allowance if the person would, but for the person for whom the person was caring being a patient in hospital for a period exceeding 28 days, be so entitled and in receipt.
- (6) For the purposes of sub-paragraph (2)(a)(iii) and (b), no account is to be taken of an award of carer's allowance to the extent that payment of such an award is backdated for a period before the date on which the award is first paid.
- (7) Sub-paragraph (4)(b) is to apply only for the first 12 weeks following the date on which the person to whom that provision applies first joins the claimant's household.
- (8) In sub-paragraph (2)(a)(iii) and (b), references to a person being in receipt of a carer's allowance are to include references to a person who would have been in receipt of that allowance but for the application of a restriction under section 7 of the Social Security Fraud Act 2001 (loss of benefit provisions).
- (9) In this paragraph—
- “blind or severely sight impaired” means registered as blind or severely sight impaired in a register compiled by a local authority under section 29 of the National Assistance Act 1948^{F24} (welfare services) or, in Scotland, has been certified as blind and in consequence the person is registered as blind in a register maintained by or on behalf of a regional or island council and a person who has ceased to be registered as blind or severely sight impaired where that person's eyesight has been regained is, nevertheless, to be treated as blind or severely sight impaired for a period of 28 weeks following the date on which the person ceased to be so registered;
- “the care component” means the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Contributions and Benefits Act.

Textual Amendments

F24 1948 c. 29.

Enhanced disability premium **E+W+S**

- 7.—(1) Subject to sub-paragraph (2), the condition is that—
- (a) the claimant's applicable amount includes the support component; or
- (b) the care component of disability living allowance is, or would, but for a suspension of benefit in accordance with regulations under section 113(2) of the Contributions and Benefits Act or, but for an abatement as a consequence of hospitalisation, be payable at the highest rate prescribed under section 72(3) of that Act in respect of—
- (i) the claimant; or
- (ii) the claimant's partner (if any) who is aged less than the qualifying age for state pension credit.
- (2) An enhanced disability premium is not applicable in respect of—
- (a) a claimant who—
- (i) is not a member of a couple or a polygamous marriage; and
- (ii) is a patient within the meaning of regulation 69(2) and has been for a period of more than 52 weeks; or
- (b) a member of a couple or a polygamous marriage where each member is a patient within the meaning of regulation 69(2) and has been for a period of more than 52 weeks.

Status: Point in time view as at 03/11/2008.

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

Carer premium **E+W+S**

8.—(1) Subject to sub-paragraphs (2) and (4), the condition is that the claimant or the claimant's partner is, or both of them are, entitled to a carer's allowance under section 70 of the Contributions and Benefits Act.

- (2) Where a carer premium is awarded but—
 - (a) the person in respect of whose care the carer's allowance has been awarded dies; or
 - (b) in any other case the person in respect of whom a carer premium has been awarded ceases to be entitled to a carer's allowance,

the condition for the award of the premium is to be treated as satisfied for a period of 8 weeks from the relevant date specified in sub-paragraph (3).

- (3) The relevant date for the purposes of sub-paragraph (2) is—
 - (a) where sub-paragraph (2)(a) applies, the Sunday following the death of the person in respect of whose care a carer's allowance has been awarded or the date of death if the death occurred on a Sunday; or
 - (b) in any other case, the date on which the person who has been entitled to a carer's allowance ceases to be entitled to that allowance.

(4) Where a person who has been entitled to a carer's allowance ceases to be entitled to that allowance and makes a claim for an income-related allowance, the condition for the award of the carer premium is to be treated as satisfied for a period of 8 weeks from the date on which—

- (a) the person in respect of whose care the carer's allowance has been awarded dies; or
- (b) in any other case, the person who has been entitled to a carer's allowance ceased to be entitled to that allowance.

Persons in receipt of concessionary payments **E+W+S**

9. For the purpose of determining whether a premium is applicable to a person under paragraphs 6, 7 and 8, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs is to be treated as if it were a payment of that benefit.

Persons in receipt of benefit **E+W+S**

10. For the purposes of this Part of this Schedule, a person is to be regarded as being in receipt of any benefit if, and only if, it is paid in respect of the person and is to be so regarded only for any period in respect of which that benefit is paid.

PART 3 **E+W+S**

Weekly amount of premiums specified in Part 2

<i>Premium</i>	<i>Amount</i>
<div style="display: flex; align-items: center;"> <div style="background-color: #cccccc; padding: 5px; margin-right: 10px;"> VALID FROM 04/2022 </div> <div style="border: 1px solid black; padding: 5px;"> Pensioner premium for a person to whom (1) paragraph 5 applies who— </div> </div>	
<div style="border: 1px solid black; padding: 5px; width: fit-content;"> 11.— (1) </div>	

Status: Point in time view as at 03/11/2008.

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

- | | |
|--|---|
| <p>(a) is a single claimant and—</p> <p>(i) is entitled to the work-related activity component;</p> <p>(ii) is entitled to the support component; or</p> <p>(iii) is not entitled to either of those components;</p> <p>(b) is a member of a couple and—</p> <p>(i) is entitled to the work-related activity component;</p> <p>(ii) is entitled to the support component; or</p> <p>(iii) is not entitled to either of those components.</p> | <p>(a)</p> <p>(i) £39.55;</p> <p>(ii) £34.55;</p> <p>(iii) £63.55;</p> <p>(b)</p> <p>(i) £70.40;</p> <p>(ii) £65.40;</p> <p>(iii) £94.40.</p> |
| <p>(2) Severe disability premium—</p> <p>(a) where the claimant satisfies the condition in paragraph 6(2)(a);</p> <p>(b) where the claimant satisfies the condition in paragraph 6(2)(b)—</p> <p>(i) if there is someone in receipt of a carer's allowance or if the person or any partner satisfies that condition only by virtue of paragraph 6(5);</p> <p>(ii) if no-one is in receipt of such an allowance.</p> | <p>(2)</p> <p>(a) £50.35;</p> <p>(b)</p> <p>(i) £50.35;</p> <p>(ii) £100.70.</p> |
| <p>(3) Carer premium.</p> | <p>(3) £27.75 in respect of each person who satisfies the condition specified in [F25 paragraph 8(1)].</p> |
| <p>(4) Enhanced disability premium where the conditions in paragraph 7 are satisfied.</p> | <p>(4)</p> <p>(a) £12.60 in respect of each person who is neither—</p> <p>(i) a child or young person; nor</p> <p>(ii) a member of a couple or a polygamous marriage, in respect of whom the conditions specified in paragraph 7 are satisfied;</p> |

Status: Point in time view as at 03/11/2008.

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

- (b) £18.15 where the claimant is a member of a couple or a polygamous marriage and the conditions specified in [F26, paragraph 7] are satisfied in respect of a member of that couple or polygamous marriage.

Textual Amendments

- F25** Words in Sch. 4 para. 11(3) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **14(1)(b)(i)**
- F26** Words in Sch. 4 para. 11(4)(b) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **14(1)(b)(ii)**

Regulation 67(3)

PART 4 E+W+S

The components

- 12. The amount of the work-related activity component is £24.00.
- 13. The amount of the support component is £29.00.

SCHEDULE 5 E+W+S

Regulation 69

SPECIAL CASES

PART 1 E+W+S

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

Claimants without accommodation

- 1. A claimant who is without accommodation. 1. The amount applicable to the claimant under regulation 67(1) (a).

Members of religious orders

- 2. A claimant who is a member of, and fully maintained by, a religious order. 2. Nil.

Prisoners

- 3. A claimant 3.
 - (a) except where sub-paragraph (a) Nil;
 - (b) applies, who is a prisoner; (b)

Status: Point in time view as at 03/11/2008.

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

- | | |
|---|--|
| (b) who is detained in custody pending trial or sentence following conviction by a court. | (b) only such amount, if any, as may be applicable under regulation 67(1)(c) and the amount of nil under regulation 67(3). |
|---|--|

Specified cases of temporarily separated couples

- | | |
|--|---|
| 4. A claimant who is a member of a couple and who is temporarily separated from the claimant's partner where— | 4. Either— |
| (a) one member of the couple is— | (a) the amount applicable to the claimant as a member of a couple under regulation 67(1); or |
| (i) not a patient but is residing in a care home, an Abbeyfield Home or an independent hospital; or | |
| (ii) resident in premises used for the rehabilitation of alcoholics or drug addicts; or | |
| (iii) resident in accommodation provided under section 3 of and Part 2 of the Schedule to, the Polish Resettlement Act 1947
<small>F27</small>
(provision of accommodation in camps); or | |
| (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
<small>F28</small>
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— | (b) the aggregate of the claimant's applicable amount and that of the claimant's partner assessed under the provisions of |

Status: Point in time view as at 03/11/2008.

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

these Regulations as if each of them were a single claimant or a lone parent, whichever is the greater.

- (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.

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
- (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.

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.

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 7. where either—

- (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 sub-paragraph (2).

- (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.

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.

Polygamous marriages where any member is abroad

8. Subject to paragraph 9, a claimant who is a 8. member of a polygamous marriage where one or more members of the marriage are temporarily absent from the United Kingdom.

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.

Status: Point in time view as at 03/11/2008.

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

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).
- (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 [^{F29}partners] .
- 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.

Partner of a person subject to immigration control

- 10.**
- (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—
- 10.**
- (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.

- (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^{F30}
; 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 of exclusion from entitlement to income-related allowance.

Person from abroad

11. Person from abroad.

11. Nil.

Textual Amendments

F27 1947 c. 19; amended by Schedule 4 of the [Social Security Act 1980 \(c. 30\)](#) and by [S.I. 1951/674](#) and [1968/1699](#).

F28 [1990 c. 35](#).

F29 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**

F30 [S.I. 2000/636](#), the relevant amending instruments are [S.I. 2002/2497](#) and [S.I. 2003/2274](#).

PART 2 **E+W+S**

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

Patients

Status: Point in time view as at 03/11/2008.

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

- 12.** A claimant who is detained, or liable to be detained under—
- 12.** 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
F31
(hospital and limitation directions) or section 59A of the Criminal Procedure (Scotland) Act 1995
F32
(hospital directions); or
- (b) section 47 of the Mental Health Act 1983
F33
(removal to hospital of persons serving sentences of imprisonment, etc.) or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003
F34
(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.
- 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

F31 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.

F32 1995 c. 46; section 59A was inserted by the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp. 13\)](#), [Schedule 4](#), paragraph 8(6).

F33 Section 47 was amended by the [Crime \(Sentences\) Act 1997](#), section 49(3).

F34 2003 asp. 13.

SCHEDULE 6 **E+W+S**

Regulations 67(1)(c), [F3568(1)(d)]

HOUSING COSTS

Textual Amendments

F35 Word in Sch. 6 heading substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **16(a)**

E+W+S

Housing costs

1.—(1) Subject to the following provisions of this Schedule, the housing costs applicable to a claimant are those costs—

- (a) which the claimant or, where the claimant has a partner, that partner is, in accordance with paragraph 4, liable to meet in respect of the dwelling occupied as the home which the claimant or that claimant's partner is treated as occupying; and
- (b) which qualify under paragraphs 16 to 18.

(2) In this Schedule—

“existing housing costs” means housing costs arising under an agreement entered into before 2nd October 1995, or under an agreement entered into after 1st October 1995 (“the new agreement”)—

- (a) which replaces an existing agreement, provided that the person liable to meet the housing costs—
 - (i) remains the same in both agreements; or
 - (ii) where in either agreement more than one person is liable to meet the housing costs, the person is liable to meet the housing costs in both the existing agreement and the new agreement;
- (b) where the existing agreement was entered into before 2nd October 1995; and
- (c) which is for a loan of the same amount as, or less than the amount of, the loan under the agreement it replaces, and for this purpose any amount payable to arrange the new agreement and included in the loan must be disregarded;

“housing costs” means those costs to which sub-paragraph (1) refers;

“new housing costs” means housing costs arising under an agreement entered into after 1st October 1995 other than an agreement referred to in the definition of “existing housing costs”;

“standard rate” means the rate for the time being determined in accordance with paragraph 13.

(3) For the purposes of this Schedule a disabled person is a person—

- (a) in respect of whom the main phase employment and support allowance is payable to the claimant or to a person living with the claimant;
- (b) who, had that person in fact been entitled to income support, would have satisfied the requirements of paragraph 12 of Schedule 2 to the Income Support Regulations (additional condition for the disability premium);
- (c) aged 75 or over; or
- (d) who is disabled or severely disabled for the purposes of section 9(6) of the Tax Credits Act (maximum rate).

Status: Point in time view as at 03/11/2008.

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

(4) For the purposes of sub-paragraph (3), a person will not cease to be a disabled person on account of that person being disqualified for receiving benefit or treated as not having limited capability for work by virtue of the operation of section 18(1) to (3) of the Act.

Remunerative work **E+W+S**

2.—(1) Subject to [^{F36}sub-paragraphs (2) to (8)], a [^{F37}non-dependant (referred to in this paragraph as “person”)] is to be treated for the purposes of this Schedule as engaged in remunerative work if that person is engaged, or, where the person's hours of work fluctuate, is engaged on average, for not less than 16 hours a week, being work for which payment is made or which is done in expectation of payment.

(2) Subject to sub-paragraph (3), in determining the number of hours for which a person is engaged in work where that person's hours of work fluctuate, regard is to be had to the average of hours worked over—

- (a) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the person does no work, those periods but disregarding any other absences);
- (b) in any other case, the period of 5 weeks immediately prior to the date of claim, or such other length of time as may, in the particular case, enable the person's weekly average hours of work to be determined more accurately.

(3) Where no recognisable cycle has been established in respect of a person's work, regard is to be had to the number of hours or, where those hours will fluctuate, the average of the hours, which that person is expected to work in a week.

(4) A person is to be treated as engaged in remunerative work during any period for which that person is absent from work referred to in sub-paragraph (1) if the absence is either without good cause or by reason of a recognised, customary or other holiday.

(5) A person is not to be treated as engaged in remunerative work on any day on which the person is on maternity leave, paternity leave or adoption leave or is absent from work because the person is ill.

(6) For the purposes of this paragraph, in determining the number of hours in which a person is engaged or treated as engaged in remunerative work, no account is to be taken of any hours in which the person is engaged in an employment or a scheme to which regulation 43(1) (circumstances under which partners of persons entitled to an income-related allowance are not to be treated as engaged in remunerative work) applies.

(7) For the purposes of sub-paragraphs (1) and (2), in determining the number of hours for which a person is engaged in work, that number is to include any time allowed to that person by that person's employer for a meal or for refreshment, but only where that person is, or expects to be, paid earnings in respect of that time.

[^{F38}(8) A person is to be treated as not being engaged in remunerative work on any day in which that person falls within the circumstances prescribed in regulation 43(2) (circumstances in which partners of claimants entitled to an income-related allowance are not to be treated as engaged in remunerative work).

(9) Whether a claimant or the claimant's partner is engaged in, or to be treated as being engaged in, remunerative work is to be determined in accordance with regulations 41 or 42 (meaning of “remunerative work” for the purposes of paragraph 6(1)(e) and (f) of Schedule 1 to the Act) as the case may be.]

Textual Amendments

- F36** Words in Sch. 6 para. 2(1) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), 16(b)(i)(aa)
- F37** Words in Sch. 6 para. 2(1) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), 16(b)(i)(bb)
- F38** Sch. 6 para. 2(8)(9) substituted for Sch. 6para. 2(8) (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **16(b)(ii)**

Previous entitlement to other income-related benefits **E+W+S**

3.—(1) Where the claimant or the claimant's partner was in receipt of, or was treated as being in receipt of, an income-based jobseeker's allowance or income support not more than 12 weeks before one of them becomes entitled to an income-related allowance or, where the claimant or the claimant's partner is a person to whom paragraph 15(2) or (13) (linking rules) refers, not more than 26 weeks before becoming so entitled and—

- (a) the applicable amount for that income-based jobseeker's allowance or income support included an amount in respect of housing costs under paragraphs 14 to 16 of Schedule 2 to the Jobseeker's Allowance Regulations or, as the case may be, paragraphs 15 to 17 of Schedule 3 to the Income Support Regulations; and
- (b) the circumstances affecting the calculation of those housing costs remain unchanged since the last calculation of those costs,

the applicable amount in respect of housing costs for an income-related allowance is to be the applicable amount in respect of those costs current when entitlement to an income-based jobseeker's allowance or income support was last determined.

(2) Where a claimant or the claimant's partner was in receipt of state pension credit not more than 12 weeks before one of them becomes entitled to ^{F39}an income-related allowance] or, where the claimant or the claimant's partner is a person to whom paragraph 15(2) or (13) (linking rules) refers, not more than 26 weeks before becoming so entitled, and—

- (a) the appropriate minimum guarantee included an amount in respect of housing costs under paragraphs 11 to 13 of Schedule 2 to the State Pension Credit Regulations 2002 ^{F40}; and
- (b) the circumstances affecting the calculation of those housing costs remain unchanged since the last calculation of those costs,

the applicable amount in respect of housing costs for an income-related allowance is to be the applicable amount in respect of those costs current when entitlement to state pension credit was last determined.

(3) Where, in the period since housing costs were last calculated for an income-based jobseeker's allowance, income support or, as the case may be, state pension credit, there has been a change of circumstances, other than a reduction in the amount of an outstanding loan, which increases or reduces those costs, the amount to be met under this Schedule must, for the purposes of the claim for an income-related allowance, be recalculated so as to take account of that change.

Textual Amendments

- F39** Words in Sch. 6 para. 3(2) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **16(c)**
- F40** S.I. 2002/1792, the relevant amending instruments are S.I. 2002/3019, S.I. 2006/718 and S.I. 2006/2378.

Status: Point in time view as at 03/11/2008.

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

Circumstances in which a person is liable to meet housing costs **E+W+S**

4. A person is liable to meet housing costs where—
- (a) the liability falls upon that person or that person's partner but not where the liability is to a member of the same household as the person on whom the liability falls;
 - (b) because the person liable to meet the housing costs is not meeting them, the claimant has to meet those costs in order to continue to live in the dwelling occupied as the home and it is reasonable in all the circumstances to treat the claimant as liable to meet those costs;
 - (c) in practice the claimant shares the housing costs with other members of the household none of whom are close relatives either of the claimant or the claimant's partner, and—
 - (i) one or more of those members is liable to meet those costs; and
 - (ii) it is reasonable in the circumstances to treat the claimant as sharing responsibility.

Circumstances in which a person is to be treated as occupying a dwelling as the home **E+W+S**

5.—(1) Subject to the following provisions of this paragraph, a person is to be treated as occupying as the home the dwelling normally occupied as the home by that person or, if that person is a member of a family, by that person and that person's family and that person is not to be treated as occupying any other dwelling as the home.

(2) In determining whether a dwelling is the dwelling normally occupied as the claimant's home for the purposes of sub-paragraph (1) regard must be had to any other dwelling occupied by the claimant or by the claimant and that claimant's family whether or not that other dwelling is in Great Britain.

(3) Subject to sub-paragraph (4), where a claimant who has no partner is a full-time student or is on a training course and is liable to make payments (including payments of mortgage interest or, in Scotland, payments under heritable securities or, in either case, analogous payments) in respect of either (but not both) the dwelling which that claimant occupies for the purpose of attending the course of study or the training course or, as the case may be, the dwelling which that claimant occupies when not attending that course, that claimant is to be treated as occupying as the home the dwelling in respect of which that claimant is liable to make payments.

(4) A full-time student is not to be treated as occupying a dwelling as that student's home for any week of absence from it, other than an absence occasioned by the need to enter hospital for treatment, outside the period of study, if the main purposes of that student's occupation during the period of study would be to facilitate attendance on that student's course.

(5) Where a claimant has been required to move into temporary accommodation by reason of essential repairs being carried out to the dwelling normally occupied as the home and that claimant is liable to make payments (including payments of mortgage interest or, in Scotland, payments under heritable securities or, in either case, analogous payments) in respect of either (but not both) the dwelling normally occupied or the temporary accommodation, that claimant must be treated as occupying as the home the dwelling in respect of which that claimant is liable to make those payments.

(6) Where a claimant is liable to make payments in respect of two (but not more than two) dwellings, that claimant must be treated as occupying both dwellings as the home only—

- (a) where that claimant has left and remains absent from the former dwelling occupied as the home through fear of violence in that dwelling or of violence by a former member of the claimant's family and it is reasonable that housing costs should be met in respect of both that claimant's former dwelling and that claimant's present dwelling occupied as the home;

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- (b) in the case of a couple or a member of a polygamous marriage where a partner is a full-time student or is on a training course and it is unavoidable that that student, or they, should occupy two separate dwellings and reasonable that housing costs should be met in respect of both dwellings; or
 - (c) in the case where a claimant has moved into a new dwelling occupied as the home, except where sub-paragraph (5) applies, for a period not exceeding four benefit weeks from the first day of the benefit week in which the move occurs if that claimant's liability to make payments in respect of two dwellings is unavoidable.
- (7) Where—
- (a) a claimant has moved into a dwelling and was liable to make payments in respect of that dwelling before moving in;
 - (b) that claimant had claimed an income-related allowance before moving in and either that claim has not yet been determined or it has been determined but an amount has not been included under this Schedule and if the claim has been refused a further claim has been made within four weeks of the date on which the claimant moved into the new dwelling occupied as the home; and
 - (c) the delay in moving into the dwelling in respect of which there was liability to make payments before moving in was reasonable and—
 - (i) that delay was necessary in order to adapt the dwelling to meet the disablement needs of the claimant or any member of the claimant's family;
 - (ii) the move was delayed pending the outcome of an application for a social fund payment under Part 8 of the Contributions and Benefits Act to meet a need arising out of the move or in connection with setting up the home in the dwelling, and—
 - (aa) a member of the claimant's family is aged five or under;
 - (bb) the claimant is a person in respect of whom the main phase employment and support allowance is payable;
 - (cc) the claimant's applicable amount includes a pensioner premium;
 - (dd) the claimant's applicable amount includes a severe disability premium; or
 - (ee) a child tax credit is paid for a member of the claimant's family who is disabled or severely disabled for the purposes of section 9(6) of the Tax Credits Act; or
 - (iii) the claimant became liable to make payments in respect of the dwelling while that claimant was a patient or was in residential accommodation,
- that claimant is to be treated as occupying the dwelling as the home for any period not exceeding four weeks immediately prior to the date on which that claimant moved into the dwelling and in respect of which that claimant was liable to make payments.
- (8) This sub-paragraph applies to a claimant who enters residential accommodation—
- (a) for the purpose of ascertaining whether the accommodation suits that claimant's needs; and
 - (b) with the intention of returning to the dwelling which that claimant normally occupies as the home should, in the event, the residential accommodation prove not to suit that claimant's needs,
- and while in the accommodation, the part of the dwelling which that claimant normally occupies as the home is not let or sub-let to another person.
- (9) A claimant to whom sub-paragraph (8) applies is to be treated as occupying the dwelling that the claimant normally occupies as the home during any period (commencing on the day that

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claimant enters the accommodation) not exceeding 13 weeks in which the claimant is resident in the accommodation, but only in so far as the total absence from the dwelling does not exceed 52 weeks.

(10) A claimant, other than a claimant to whom sub-paragraph (11) applies, is to be treated as occupying a dwelling as the home throughout any period of absence not exceeding 13 weeks, if, and only if—

- (a) that claimant intends to return to occupy the dwelling as the home;
- (b) the part of the dwelling normally occupied by that claimant has not been let or sub-let to another person; and
- (c) the period of absence is unlikely to exceed 13 weeks.

(11) This sub-paragraph applies to a claimant whose absence from the dwelling that that claimant normally occupies as the home is temporary and—

- (a) that claimant intends to return to occupy the dwelling as the home;
- (b) the part of the dwelling normally occupied by that claimant has not been let or sub-let; and
- (c) that claimant is—

- (i) detained in custody on remand pending trial or, as a condition of bail, required to reside—

- (aa) in a dwelling other than the dwelling that claimant occupies as the home; or

- (bb) in premises approved under section 13 of the Offender Management Act 2007^{F41},

- or, detained pending sentence upon conviction;

- (ii) resident in a hospital or similar institution as a patient;
- (iii) undergoing or, as the case may be, that claimant's partner or dependant child is undergoing, in the United Kingdom or elsewhere, medical treatment or medically approved convalescence, in accommodation other than residential accommodation;
- (iv) following, in the United Kingdom or elsewhere, a training course;
- (v) undertaking medically approved care of a person residing in the United Kingdom or elsewhere;
- (vi) undertaking the care of a child whose parent or guardian is temporarily absent from the dwelling normally occupied by that parent or guardian for the purpose of receiving medically approved care or medical treatment;
- (vii) a claimant who is, whether in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation;
- (viii) a full-time student to whom sub-paragraph (3) or (6)(b) does not apply;
- (ix) a claimant other than a claimant to whom sub-paragraph (8) applies, who is receiving care provided in residential accommodation; or
- (x) a claimant to whom sub-paragraph (6)(a) does not apply and who has left the dwelling that claimant occupies as the home through fear of violence in that dwelling, or by a person who was formerly a member of that claimant's family; and

- (d) the period of that claimant's absence is unlikely to exceed a period of 52 weeks, or in exceptional circumstances, is unlikely substantially to exceed that period.

(12) A claimant to whom sub-paragraph (11) applies is to be treated as occupying the dwelling that claimant normally occupies as the home during any period of absence not exceeding 52 weeks beginning with the first day of that absence.

(13) In this paragraph—

“medically approved” means certified by a medical practitioner;

“patient” means a person who is undergoing medical or other treatment as an in-patient in a hospital or similar institution;

“residential accommodation” means accommodation which is a care home, an Abbeyfield Home or an independent hospital;

“training course” means such a course of training or instruction provided wholly or partly by or on behalf of or in pursuance of arrangements made with, or approved by or on behalf of, Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

Textual Amendments

F41 2007 c. 21.

Housing costs not met **E+W+S**

6.—(1) No amount may be met under the provisions of this Schedule—

- (a) in respect of housing benefit expenditure; or
- (b) where the claimant is living in a care home, an Abbeyfield Home or an independent hospital except where the claimant is living in such a home or hospital during a temporary absence from the dwelling the claimant occupies as the home and in so far as they relate to temporary absences, the provisions of paragraph 5(8) to (12) apply to that claimant during that absence.

(2) Subject to the following provisions of this paragraph, loans which, apart from this paragraph, qualify under paragraph 16 (loans on residential property) must not so qualify where the loan was incurred during the relevant period and was incurred—

- (a) after 27th October 2008; or
- [^{F42}(b) after 2nd May 1994 and the housing costs applicable to that loan were not met by virtue of the former paragraph 5A of Schedule 3 to the Income Support Regulations, or paragraph 4(2)(a) of Schedule 3 to the Income Support Regulations, paragraph 4(2)(a) of Schedule 2 to the Jobseeker’s Allowance Regulations or paragraph 5(2)(a) of Schedule 2 to the State Pension Credit Regulations;]
- (c) subject to sub-paragraph (3), in the 26 weeks preceding 27th October 2008 by a person—
 - (i) who was not at that time entitled to income support, income-based jobseeker’s allowance or state pension credit; and
 - (ii) who becomes, or whose partner becomes entitled to an income-related allowance after 27th October 2008 and that entitlement is within 26 weeks of an earlier entitlement to income support, an income-based jobseeker’s allowance or state pension credit of the claimant or the claimant’s partner.

(3) Sub-paragraph (2)(c) will not apply in respect of a loan where the claimant has interest payments on that loan met without restrictions under an award of income support in respect of a period commencing before 27th October 2008.

(4) The “relevant period” for the purposes of this paragraph is any period during which the person to whom the loan was made—

- (a) is entitled to an income-related allowance, an income-based jobseeker’s allowance, income support or state pension credit; or

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

(b) has a partner and the partner is entitled to an income-related allowance, an income-based jobseeker's allowance, income support or state pension credit, together with any linked period, that is to say a period falling between two periods separated by not more than 26 weeks in which one of the paragraphs (a) or (b) is satisfied.

(5) For the purposes of sub-paragraph (4), a person is to be treated as entitled to an income-related allowance during any period when that person or that person's partner was not so entitled because—

- (a) that person or that person's partner was participating in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations or in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations; and
- (b) in consequence of such participation that person or that person's partner was engaged in remunerative work or had an income in excess of the claimant's applicable amount as prescribed in Part 9.

(6) A person treated by virtue of paragraph 15 as being in receipt of an income-related allowance for the purposes of this Schedule is not to be treated as entitled to an income-related allowance for the purposes of sub-paragraph (4).

(7) For the purposes of sub-paragraph (4)—

- (a) any week in the period of 26 weeks ending on 1st October 1995 on which there arose an entitlement to income support such as is mentioned in that sub-paragraph must be taken into account in determining when the relevant period commences; and
- (b) two or more periods of entitlement and any intervening linked periods must together form a single relevant period.

(8) Where the loan to which sub-paragraph (2) refers has been applied—

- (a) for paying off an earlier loan, and that earlier loan qualified under paragraph 16 during the relevant period; or
- (b) to finance the purchase of a property where an earlier loan, which qualified under paragraph 16 or 17 during the relevant period in respect of another property, is paid off (in whole or in part) with monies received from the sale of that property,

then the amount of the loan to which sub-paragraph (2) applies is the amount (if any) by which the new loan exceeds the earlier loan.

(9) Notwithstanding the preceding provisions of this paragraph, housing costs must be met in any case where a claimant satisfies any of the conditions specified in sub-paragraphs (10) to (13), but—

- (a) those costs must be subject to any additional limitations imposed by the sub-paragraph; and
- (b) where the claimant satisfies the conditions in more than one of these sub-paragraphs, only one of them will apply in that claimant's case and the one that applies will be the one most favourable to the claimant.

(10) The conditions specified in this sub-paragraph are that—

- (a) during the relevant period the claimant or a member of the claimant's family acquires an interest ("the relevant interest") in a dwelling which that claimant then occupies or continues to occupy, as the home; and
- (b) in the week preceding the week in which the relevant interest was acquired, housing benefit was payable to the claimant or a member of the claimant's family,

so however that the amount to be met by way of housing costs will initially not exceed the aggregate of—

- (i) the housing benefit payable in the week mentioned at sub-paragraph (10)(b); and

(ii) any amount included in the applicable amount of the claimant or a member of the claimant's family in accordance with regulation 67(1)(c) or 68(1)(d) in that week, and is to be increased subsequently only to the extent that it is necessary to take account of any increase, arising after the date of the acquisition, in the standard rate or in any housing costs which qualify under paragraph 18 (other housing costs).

(11) The condition specified in this sub-paragraph is that the loan was taken out, or an existing loan increased, to acquire alternative accommodation more suited to the special needs of a disabled person than the accommodation which was occupied before the acquisition by the claimant.

(12) The conditions specified in this sub-paragraph are that—

- (a) the loan commitment increased in consequence of the disposal of the dwelling occupied as the home and the acquisition of an alternative such dwelling; and
- (b) the change of dwelling was made solely by reason of the need to provide separate sleeping accommodation for ^{F43}persons of different sexes aged 10 or over but aged under 20] who belong to the same family as the claimant.

(13) The conditions specified in this sub-paragraph are that—

- (a) during the relevant period the claimant or a member of the claimant's family acquires an interest (“the relevant interest”) in a dwelling which that claimant then occupies as the home; and
- (b) in the week preceding the week in which the relevant interest was acquired, the applicable amount of the claimant or a member of the claimant's family included an amount determined by reference to paragraph 18 and did not include any amount specified in paragraph 16 or paragraph 17,

so however that the amount to be met by way of housing costs will initially not exceed the amount so determined, and will be increased subsequently only to the extent that it is necessary to take account of any increase, arising after the date of acquisition, in the standard rate or in any housing costs which qualify under paragraph 18.

(14) The following provisions of this Schedule will have effect subject to the provisions of this paragraph.

Textual Amendments

F42 Sch. 6 para. 6(2)(b) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **16(d)(i)**

F43 Words in Sch. 6 para. 6(12)(b) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **16(d)(ii)**

Apportionment of housing costs **E+W+S**

7.—(1) Where the dwelling occupied as the home is a composite hereditament and—

- (a) before 1st April 1990 for the purposes of section 48(5) of the General Rate Act 1967 ^{F44} (reduction of rates on dwellings), it appeared to a rating authority or it was determined in pursuance of subsection (6) of section 48 of that Act that the hereditament, including the dwelling occupied as the home, was a mixed hereditament and that only a proportion of the rateable value of the hereditament was attributable to use for the purpose of a private dwelling; or
- (b) in Scotland, before 1st April 1989 an assessor acting pursuant to section 45(1) of the Water (Scotland) Act 1980 ^{F45} (provision as to valuation roll) has apportioned the net annual value

Status: Point in time view as at 03/11/2008.

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of the premises including the dwelling occupied as the home between the part occupied as a dwelling and the remainder,

the amounts applicable under this Schedule are to be such proportion of the amounts applicable in respect of the hereditament or premises as a whole as is equal to the proportion of the rateable value of the hereditament attributable to the part of the hereditament used for the purposes of a private tenancy or, in Scotland, the proportion of the net annual value of the premises apportioned to the part occupied as a dwelling house.

(2) Subject to sub-paragraph (1) and the following provisions of this paragraph, where the dwelling occupied as the home is a composite hereditament, the amount applicable under this Schedule is to be the relevant fraction of the amount which would otherwise be applicable under this Schedule in respect of the dwelling occupied as the home.

(3) For the purposes of sub-paragraph (2), the relevant fraction is to be obtained in accordance with the formula—

$$\frac{A}{A+B}$$

where—

A is the current market value of the claimant's interest in that part of the composite hereditament which is domestic property within the meaning of section 66 of the Act of 1988;

B is the current market value of the claimant's interest in that part of the composite hereditament which is not domestic property within that section.

(4) In this paragraph—

“composite hereditament” means—

- (a) as respects England and Wales, any hereditament which is shown as a composite hereditament in a local non-domestic rating list;
- (b) as respects Scotland, any lands and heritages entered in the valuation roll which are part residential subjects within the meaning of section 26(1) of the Act of 1987;

“local non-domestic rating list” means a list compiled and maintained under section 41(1) of the Act of 1988;

“the Act of 1987” means the Abolition of Domestic Rates Etc. (Scotland) Act 1987^{F46};

“the Act of 1988” means the Local Government Finance Act 1988^{F47}.

(5) Where responsibility for expenditure which relates to housing costs met under this Schedule is shared, the amounts applicable are to be calculated by reference to the appropriate proportion of that expenditure for which the claimant is responsible.

Textual Amendments

F44 1967 c. 9.

F45 1980 c. 45.

F46 1987 c. 47.

F47 1988 c. 41. Section 41(1) was amended by the [Local Government Finance Act 1992 \(c. 14\)](#), [Schedule 13](#), paragraph 59.

Existing housing costs **E+W+S**

8.—(1) Subject to the provisions of this Schedule, the existing housing costs to be met in any particular case are—

- (a) where the claimant has been entitled to an employment and support allowance for a continuous period of 26 weeks or more, the aggregate of—
 - (i) an amount determined in the manner set out in paragraph 11 by applying the standard rate to the eligible capital for the time being owing in connection with a loan which qualifies under paragraph 16 or 17; and
 - (ii) an amount equal to any payments which qualify under paragraph 18(1)(a) to (c);
- (b) where the claimant has been entitled to an employment and support allowance for a continuous period of not less than 8 weeks but less than 26 weeks, an amount which is half the amount which would fall to be met by applying the provisions of sub-paragraph (a);
- (c) in any other case, nil.

(2) For the purposes of sub-paragraph (1) and subject to sub-paragraph (3), the eligible capital for the time being owing is to be determined on the date the existing housing costs are first met and thereafter on each anniversary of that date.

(3) Where a claimant or that claimant's partner ceases to be in receipt of or treated as being in receipt of income support, income-based jobseeker's allowance or state pension credit and one of them becomes entitled to an income-related allowance in a case to which paragraph 3 applies, the eligible capital for the time being owing is to be recalculated on each anniversary of the date on which the housing costs were first met for whichever of the benefits concerned the claimant or the claimant's partner was first entitled.

New housing costs **E+W+S**

9.—(1) Subject to the provisions of this Schedule, the new housing costs to be met in any particular case are—

- (a) where the claimant has been entitled to an employment and support allowance for a continuous period of 39 weeks or more, an amount—
 - (i) determined in the manner set out in paragraph 11 by applying the standard rate to the eligible capital for the time being owing in connection with a loan which qualifies under paragraph 16 or 17; and
 - (ii) equal to any payments which qualify under paragraph 18(1)(a) to (c);
- (b) in any other case, nil.

(2) For the purposes of sub-paragraph (1) and subject to sub-paragraph (3), the eligible capital for the time being owing is to be determined on the date the new housing costs are first met and thereafter on each anniversary of that date.

(3) Where a claimant or that claimant's partner ceases to be in receipt of or treated as being in receipt of income support, income-based jobseeker's allowance or state pension credit and one of them becomes entitled to an income-related allowance in a case to which [F48] paragraph 3] applies, the eligible capital for the time being owing is to be recalculated on each anniversary of the date on which the housing costs were first met for whichever of the benefits concerned the claimant or that claimant's partner was first entitled.

(4) This sub-paragraph applies to a claimant who at the time the claim is made—

- (a) is a person who is described in paragraph 4 or 5 of Schedule 1B of the Income Support Regulations (person caring for another person);
- (b) is detained in custody pending trial or sentence upon conviction; or
- (c) has been refused payments under a policy of insurance on the ground that—
 - (i) the claim under the policy is the outcome of a pre-existing medical condition which, under the terms of the policy, does not give rise to any payment by the insurer; or

Status: Point in time view as at 03/11/2008.

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

- (ii) that claimant was infected by the Human Immunodeficiency Virus;
- (iii) and the policy was taken out to insure against the risk of being unable to maintain repayments on a loan which is secured by a mortgage or a charge over land, or (in Scotland) by a heritable security.

(5) This sub-paragraph applies subject to sub-paragraph (7) where a person claims an income-related allowance because of—

- (a) the death of a partner; or
- (b) being abandoned by that claimant's partner,

and where that claimant's family includes a child.

(6) In the case of a claimant to whom sub-paragraph (4) or (5) applies, any new housing costs are to be met as though they were existing housing costs and paragraph 8 (existing housing costs) applied to them.

(7) Sub-paragraph (5) must cease to apply to a claimant who subsequently becomes one of a couple.

Textual Amendments

F48 Words in [Sch. 6 para. 9\(3\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **16(e)**

General exclusions from paragraphs 8 and 9 **E+W+S**

10.—(1) Paragraphs 8 and 9 will not apply where—

- (a) the claimant's partner has attained the qualifying age for state pension credit;
- (b) the housing costs are payments—
 - (i) under a co-ownership agreement;
 - (ii) under or relating to a tenancy or licence of a Crown tenant; or
 - (iii) where the dwelling occupied as the home is a tent, in respect of the tent and the site on which it stands.

(2) In a case falling within sub-paragraph (1), the housing costs to be met are—

- (a) where paragraph (a) of sub-paragraph (1) applies, an amount—
 - (i) determined in the manner set out in paragraph 11 by applying the standard rate to the eligible capital for the time being owing in connection with a loan which qualifies under paragraph 16 or 17; and
 - (ii) equal to the payments which qualify under paragraph 18;
- (b) where paragraph (b) of sub-paragraph (1) applies, an amount equal to the payments which qualify under paragraph 18(1)(d) to (f).

The calculation for loans **E+W+S**

11. The weekly amount of existing housing costs or, as the case may be, new housing costs to be met under this Schedule in respect of a loan which qualifies under paragraph 16 or 17 are to be calculated by applying the formula—

$$\frac{AxB}{52}$$

where—

A = the amount of the loan which qualifies under paragraph 16 or 17; and

B = the standard rate for the time being applicable in respect of that loan.

General provisions applying to new and existing housing costs E+W+S

12.—(1) Where on or after 2nd October 1995 a person enters into a new agreement in respect of a dwelling and an agreement entered into before 2nd October 1995 (“the earlier agreement”) continues in force independently of the new agreement, then—

- (a) the housing costs applicable to the new agreement are to be calculated by reference to the provisions of paragraph 9 (new housing costs);
- (b) the housing costs applicable to the earlier agreement are to be calculated by reference to the provisions of paragraph 8 (existing housing costs);

and the resulting amounts are to be aggregated.

(2) Sub-paragraph (1) does not apply in the case of a claimant to whom paragraph 10 applies.

(3) Where for the time being a loan exceeds, or in a case where more than one loan is to be taken into account, the aggregate of those loans exceeds the appropriate amount specified in sub-paragraph (4), then the amount of the loan or, as the case may be, the aggregate amount of those loans, will for the purposes of this Schedule, be the appropriate amount.

(4) Subject to the following provisions of this paragraph, the appropriate amount is £100,000.

(5) Where a claimant is treated under paragraph 5(6) (payments in respect of two dwellings) as occupying two dwellings as the home, then the restrictions imposed by sub-paragraph (3) are to be applied separately to the loans for each dwelling.

(6) In a case to which paragraph 7 (apportionment of housing costs) applies, the appropriate amount for the purposes of sub-paragraph (3) is to be the lower of—

- (a) a sum determined by applying the formula—

$$PxQ$$

where—

P = the relevant fraction for the purposes of paragraph 7; and

Q = the amount or, as the case may be, the aggregate amount for the time being of any loan or loans which qualify under this Schedule; or

- (b) the sum for the time being specified in sub-paragraph (4).

(7) In a case to which paragraph 16(3) or 17(3) (loans which qualify in part only) applies, the appropriate amount for the purposes of sub-paragraph (3) is to be the lower of—

- (a) a sum representing for the time being the part of the loan applied for the purposes specified in paragraph 16(1) or (as the case may be) paragraph 17(1); or
- (b) the sum for the time being specified in sub-paragraph (4).

(8) In the case of any loan to which paragraph 17(2)(k) (loan taken out and used for the purpose of adapting a dwelling for the special needs of a disabled person) applies the whole of the loan, to the extent that it remains unpaid, is to be disregarded in determining whether the amount for the time being specified in sub-paragraph (4) is exceeded.

(9) Where in any case the amount for the time being specified for the purposes of sub-paragraph (4) is exceeded and there are two or more loans to be taken into account under either or both paragraphs 16 and 17, then the amount of eligible interest in respect of each of those loans to the extent that the loans remain outstanding is to be determined as if each loan had been reduced to a sum equal to the qualifying portion of that loan.

Status: Point in time view as at 03/11/2008.

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

(10) For the purposes of sub-paragraph (9), the qualifying portion of a loan is to be determined by applying the following formula—

$$R \times \frac{S}{T}$$

where—

R = the amount for the time being specified for the purposes of sub-paragraph (3);

S = the amount of the outstanding loan to be taken into account; and

T = the aggregate of all outstanding loans to be taken into account under paragraphs 16 and 17.

[^{F49}(11) Sub-paragraph (12) applies to a person who, had the person been entitled to income support and not an employment and support allowance, would have been a person to whom any of the following transitional or savings provisions would have applied—

- (a) regulation 4 of the Income Support (General) Amendment No. 3 Regulations 1993 (“the 1993 Regulations”);
- (b) regulation 28 of the Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1995 (“the 1995 Regulations”).

(12) Where this sub-paragraph applies, the amount of housing costs applicable in the particular case shall be determined as if—

- (a) in a case to which regulation 4(1) of the 1993 Regulations would have applied, sub-paragraphs 12(4) to (9) do not apply;
- (b) in a case to which regulation 4(4) of the 1993 Regulations would have applied, the appropriate amount is £150,000; and
- (c) in a case to which the 1995 Regulations would have applied, the appropriate amount is £125,000.]

Textual Amendments

F49 Sch. 6 para. 12(11)(12) added (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **16(f)**

The standard rate **E+W+S**

13.—(1) The standard rate is the rate of interest applicable per annum to a loan which qualifies under this Schedule.

(2) Subject to sub-paragraph (3), the standard rate is to be 1.58% plus—

- (a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
- (b) where an order under section 19 of the Bank of England Act 1998 (reserve powers) ^{F50} is in force, any equivalent rate determined by the Treasury under that section.

(3) The Secretary of State will determine the date from which the standard rate calculated in accordance with sub-paragraph (2) takes effect.

Textual Amendments

F50 1998 c. 11.

Excessive Housing Costs **E+W+S**

14.—(1) Housing costs which, apart from this paragraph, fall to be met under this Schedule are to be met only to the extent specified in sub-paragraph (3) where—

- (a) the dwelling occupied as the home, excluding any part which is let, is larger than is required by the claimant, that claimant's partner (if the claimant has a partner), any person under the age of 20 and any other non-dependants having regard, in particular, to suitable alternative accommodation occupied by a household of the same size; or
- (b) the immediate area in which the dwelling occupied as the home is located is more expensive than other areas in which suitable alternative accommodation exists; or
- (c) the outgoings of the dwelling occupied as the home which are met under paragraphs 16 to 18 are higher than the outgoings of suitable alternative accommodation in the area.

(2) For the purposes of paragraphs (a) to (c) of sub-paragraph (1), no regard is to be had to the capital value of the dwelling occupied as the home.

(3) Subject to the following provisions of this paragraph, the amount of the loan which falls to be met is to be restricted and the excess over the amounts which the claimant would need to obtain suitable alternative accommodation will not be allowed.

(4) Where, having regard to the relevant factors, it is not reasonable to expect the claimant and the claimant's partner to seek alternative cheaper accommodation, no restriction is to be made under sub-paragraph (3).

(5) In sub-paragraph (4) “the relevant factors” are—

- (a) the availability of suitable accommodation and the level of housing costs in the area; and
- (b) the circumstances of the claimant and those who live with the claimant, including, in particular, the age and state of health of any of those persons, the employment prospects of the claimant and, where a change in accommodation is likely to result in a change of school, the effect on the education of any person below the age of 20 who lives with the claimant.

(6) Where sub-paragraph (4) does not apply and the claimant or the claimant's partner was able to meet the financial commitments for the dwelling occupied as the home when these were entered into, no restriction is to be made under this paragraph during the 26 weeks immediately following the date on which—

- (a) the claimant became entitled to an income-related allowance where the claimant's housing costs fell within one of the cases in sub-paragraph (1) on that date; or
- (b) a decision took effect which was made under section 10 of the Social Security Act 1998 on the ground that the claimant's housing costs fell within one of the cases in sub-paragraph (1),

nor during the next 26 weeks if and so long as the best endeavours of the claimant are used to obtain cheaper accommodation.

(7) For the purposes of calculating any period of 26 weeks referred to in sub-paragraph (6), and for those purposes only, a person is to be treated as entitled to an income-related allowance for any period of 12 weeks or less in respect of which that person was not in receipt of an income-related allowance and which fell immediately between periods in respect of which that person was in receipt of that allowance.

(8) Any period in respect of which—

- (a) an income-related allowance was paid to a claimant; and
- (b) it was subsequently determined that such a claimant was not entitled to an income-related allowance for that period,

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will be treated for the purposes of sub-paragraph (7) as a period in respect of which that claimant was not in receipt of an income-related allowance.

(9) Paragraphs (c) to (f) of sub-paragraph (1) of paragraph 15 will apply to sub-paragraph (7) as they apply to paragraphs 8 and 9 but with the modification that the words “Subject to sub-paragraph (2)” were omitted and references to “the claimant” were references to the person mentioned in sub-paragraph (7).

(10) References to an income-related allowance in sub-paragraphs (6) and (7) must be treated as including references to income support, income-based jobseeker's allowance and state pension credit in respect of any period which falls immediately before the appointed day.

Linking rule **E+W+S**

15.—(1) Subject to sub-paragraph (2), for the purposes of this Schedule—

- (a) a claimant is to be treated as being in receipt of an income-related allowance during the following periods—
 - (i) any period in respect of which it was subsequently determined that that claimant was entitled to an income-related allowance; and
 - (ii) any period of 12 weeks or less or, as the case may be, 52 weeks or less, in respect of which that claimant was not in receipt of an income-related allowance and which fell immediately between periods in respect of which—
 - (aa) that claimant was, or was treated as being, in receipt of an income-related allowance;
 - (bb) that claimant was treated as entitled to an income-related allowance for the purpose of sub-paragraph (9) or (10); or
 - (cc) (i) above applies;
- (b) a claimant is to be treated as not being in receipt of an income-related allowance during any period other than a period to which (a)(ii) above applies in respect of which it is subsequently determined that that claimant was not so entitled;
- (c) where—
 - (i) the claimant was a member of a couple or a polygamous marriage; and
 - (ii) the claimant's partner was, in respect of a past period, in receipt of an income-related allowance for that claimant's partner and the claimant; and
 - (iii) the claimant is no longer a member of that couple or polygamous marriage; and
 - (iv) the claimant made a claim for an income-related allowance within 12 weeks or, as the case may be, 52 weeks, of ceasing to be a member of that couple or polygamous marriage,

the claimant must be treated as having been in receipt of an income-related allowance for the same period as the claimant's former partner had been or had been treated, for the purposes of this Schedule, as having been;

- (d) where the claimant's partner's applicable amount was determined in accordance with paragraph 1(1) (single claimant) or paragraph 1(2) (lone parents) of Part 1 of Schedule 4 (prescribed amounts) in respect of a past period, provided that the claim was made within 12 weeks or, as the case may be, 52 weeks, of the claimant and that claimant's partner becoming one of a couple or polygamous marriage, the claimant is to be treated as having been in receipt of an income-related allowance for the same period as the claimant's partner had been or had been treated, for the purposes of this Schedule, as having been;

(e) where the claimant is a member of a couple or a polygamous marriage and the claimant's partner was, in respect of a past period, in receipt of an income-related allowance for that claimant's partner and the claimant, and the claimant has begun to receive an income-related allowance as a result of an election by the members of the couple or polygamous marriage, that claimant is to be treated as having been in receipt of an income-related allowance for the same period as that claimant's partner had been or had been treated, for the purposes of this Schedule, as having been;

(f) where the claimant—

(i) is a member of a couple or a polygamous marriage and the claimant's partner was, immediately before the participation by any member of that couple or polygamous marriage in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations, in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations, in receipt of an income-related allowance and the claimant's applicable amount included an amount for the couple or for the partners of the polygamous marriage; and

(ii) has, immediately after that participation in that programme, begun to receive an income-related allowance as a result of an election under regulation 4(3) of the Social Security (Claims and Payments) Regulations 1987^{F51} by the members of the couple or polygamous marriage,

the claimant is to be treated as having been in receipt of an income-related allowance for the same period as that claimant's partner had been or had been treated, for the purposes of this Schedule, as having been;

(g) where—

(i) the claimant was a member of a family of a person (not being a former partner) entitled to an income-related allowance and at least one other member of that family was a child or young person;

(ii) the claimant becomes a member of another family which includes that child or young person; and

(iii) the claimant made a claim for an income-related allowance within 12 weeks or, as the case may be, 52 weeks, of the date on which the person entitled to an income-related allowance mentioned in paragraph (i) above ceased to be so entitled,

the claimant is to be treated as being in receipt of an income-related allowance for the same period as that person had been or had been treated, for the purposes of this Schedule, as having been.

(2) Where a claimant, with the care of a child, has ceased to be in receipt of an income-related allowance in consequence of the payment of child support maintenance under the Child Support Act and immediately before ceasing to be so in receipt an amount determined in accordance with paragraph 8(1)(a)(i) or paragraph 9(1)(a)(i) was applicable to that claimant, then—

(a) if the child support maintenance assessment or, as the case may be, maintenance calculation concerned is terminated or replaced by a lower assessment or, as the case may be, calculation in consequence of the coming into force on or after 18th April 1995 of regulations made under the Child Support Act; or

(b) where the child support maintenance assessment or, as the case may be, maintenance calculation concerned is an interim maintenance assessment or, as the case may be, interim maintenance decision or default maintenance decision and, in circumstances other than those referred to in paragraph (a), it is terminated or replaced after termination by another interim maintenance assessment or, as the case may be, interim maintenance decision or default maintenance decision or by a maintenance assessment or, as the case may be,

Status: Point in time view as at 03/11/2008.

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

calculation made in accordance with Part 1 of Schedule 1 to the Child Support Act, in either case of a lower amount than the assessment or, as the case may be, calculation concerned, sub-paragraph (1)(a)(ii) will apply to that claimant as if for the words “any period of 12 weeks or less” there were substituted the words “any period of 26 weeks or less”.

(3) For the purposes of this Schedule, where a claimant has ceased to be entitled to an income-related allowance because that claimant or that claimant's partner is—

(a) participating in arrangements for training made under section 2 of the Employment and Training Act 1973^{F52} or section 2 of the Enterprise and New Towns (Scotland) Act 1990^{F53}; or

(b) attending a course at an employment rehabilitation centre established under that section, the claimant is to be treated as if that claimant had been in receipt of an income-related allowance for the period during which that claimant or that claimant's partner was participating in such arrangements or attending such a course.

(4) For the purposes of this Schedule, a claimant who has ceased to be entitled to an income-related allowance because—

(a) that claimant or that claimant's partner was participating in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations, in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations or in an employment zone scheme; and

(b) in consequence of such participation the claimant or the claimant's partner was engaged in remunerative work or had an income in excess of the claimant's applicable amount as prescribed in Part 9,

will be treated as if the claimant had been in receipt of an income-related allowance for the period during which that claimant or that claimant's partner was participating in that programme or activity.

(5) Where, for the purposes of sub-paragraphs (1), (3) and (4), a claimant is treated as being in receipt of an income-related allowance, for a certain period, that claimant will, subject to sub-paragraph (6), be treated as being entitled to an income-related allowance for the same period.

(6) Where the appropriate amount of a loan exceeds the amount specified in paragraph 12(4), sub-paragraph (5) will not apply except—

(a) for the purposes of paragraph 8(1) or 9(1); or

(b) where a claimant has ceased to be in receipt of an income-related allowance for a period of 104 weeks or less because that claimant or that claimant's partner is a work or training beneficiary within the meaning of regulation 148 (work or training beneficiaries).

(7) For the purposes of this Schedule, in determining whether a claimant is entitled to or to be treated as entitled to an income-related allowance, entitlement to a contribution-based jobseeker's allowance immediately before a period during which that claimant or that claimant's partner is participating in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations, in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations is to be treated as entitlement to an income-related allowance for the purposes of any requirement that a claimant is, or has been, entitled to an income-related allowance for any period of time.

(8) For the purposes of this Schedule, sub-paragraph (9) applies where a claimant is not entitled to an income-related allowance by reason only that the claimant has—

(a) capital exceeding £16,000; or

(b) income exceeding the applicable amount which applies in that claimant's case; or

(c) both capital exceeding £16,000 and income exceeding the applicable amount which applies in that claimant's case.

(9) A claimant to whom sub-paragraph (8) applies is to be treated as entitled to an income-related allowance throughout any period of not more than 39 weeks which comprises only days—

- (a) on which that claimant is entitled to a contributory allowance, a contribution-based jobseeker's allowance, statutory sick pay or incapacity benefit; or
- (b) on which that claimant is, although not entitled to any of the benefits mentioned in paragraph (a) above, entitled to be credited with earnings equal to the lower earnings limit for the time being in force in accordance with regulation 8A or 8B of the Social Security (Credits) Regulations 1975 ^{F54}.

(10) Subject to sub-paragraph (11), a claimant to whom sub-paragraph (8) applies and who is either a lone parent or a person who is described in paragraph 4 or 5 of Schedule 1B of the Income Support Regulations (persons caring for another person) is, for the purposes of this Schedule, to be treated as entitled to an income-related allowance throughout any period of not more than 39 weeks following the refusal of a claim for an income-related allowance made by or on behalf of that claimant.

(11) Sub-paragraph (10) will not apply in relation to a claimant mentioned in that sub-paragraph who, during the period referred to in that sub-paragraph—

- (a) is engaged in, or is treated as engaged in, remunerative work or whose partner is engaged in, or is treated as engaged in, remunerative work;
- ^{F55}(b) is in full-time education and in receipt of disability living allowance;
- (c) is temporarily absent from Great Britain, other than in the circumstances specified in regulation 152 or 153(1)(c)(ii) (temporary absence from Great Britain).

(12) In a case where—

- (a) sub-paragraphs (9) and (10) apply solely by virtue of sub-paragraph (8)(b); and
- (b) the claimant's income includes payments under a policy taken out to insure against the risk that the policy holder is unable to meet any loan or payment which qualifies under paragraphs 16 to 18,

sub-paragraphs (9) and (10) will have effect as if for the words “throughout any period of not more than 39 weeks” there will be substituted the words “ throughout any period that payments are made in accordance with the terms of the policy ”.

(13) This sub-paragraph applies—

- (a) to a person who claims an income-related allowance, or in respect of whom an income-related allowance is claimed and who—
 - (i) received payments under a policy of insurance taken out to insure against loss of employment, and those payments are exhausted; and
 - (ii) had a previous award of an income-related allowance where the applicable amount included an amount by way of housing costs; and
- (b) where the period in respect of which the previous award of an income-related allowance was payable ended not more than 26 weeks before the date the claim was made.

(14) Where sub-paragraph (13) applies, in determining—

- (a) for the purposes of paragraph 8(1) whether a claimant has been entitled to an income-related allowance for a continuous period of 26 weeks or more; or
- (b) for the purposes of paragraph 9(1) whether a claimant has been entitled to an income-related allowance for a continuous period of 39 weeks or more,

any week falling between the date of the termination of the previous award and the date of the new claim is to be ignored.

Status: Point in time view as at 03/11/2008.

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

(15) In the case of a claimant who is a work or training beneficiary, the references in sub-paragraphs (1)(a)(ii), (1)(c)(iv), (1)(d) and (1)(g)(iii) to a period of 12 weeks is to be treated as references to a period of 104 weeks.

(16) For the purposes of sub-paragraph (1)(a)(ii), (1)(c)(iv), (1)(d) and (1)(g)(iii), the relevant period will be—

- (a) 52 weeks in the case of a person to whom sub-paragraph (17) applies;
- (b) subject to sub-paragraph (15), 12 weeks in any other case.

(17) This sub-paragraph applies, subject to sub-paragraph (18), in the case of a claimant who, on or after 27th October 2008, has ceased to be entitled to an income-related allowance because that claimant or that claimant's partner—

- (a) has commenced employment as an employed earner or as a self-employed earner or has increased the hours in which that claimant or that claimant's partner is engaged in such employment;
- (b) is taking active steps to establish that claimant or that claimant's partner in employment as an employed earner or as a self-employed earner under any scheme for assisting persons to become so employed which is mentioned in regulation 19(1)(r)(i) to (iii) of the Jobseeker's Allowance Regulations; or
- (c) is participating in—
 - (i) a New Deal option;
 - (ii) an employment zone programme; or
 - (iii) the self-employment route; or
 - (iv) the Intensive Activity Period specified in regulation 75(1)(a)(iv) of the Jobseeker's Allowance Regulations,

and, as a consequence, that claimant or that claimant's partner was engaged in remunerative work or had income in excess of the applicable amount as prescribed in Part 9.

(18) Sub-paragraph (17) is only to apply to the extent that immediately before the day on which the claimant ceased to be entitled to an income-related allowance, that claimant's housing costs were being met in accordance with paragraph 8(1)(a), 8(1)(b) or 9(1)(a) or would have been so met but for any non-dependant deduction under paragraph 19.

(19) For the purpose of determining whether the linking rules set out in this paragraph apply in a case where a claimant's former partner was entitled to state pension credit, any reference to an income-related allowance in this Schedule is to be taken to include also a reference to state pension credit.

(20) Where a person is one to whom regulation 6(5) of the Income Support Regulations (persons not treated as engaged in remunerative work) applies, the period prescribed in paragraph (6) of that regulation is not to be included for the purposes of any linking rule or for determining whether any qualifying or other period is satisfied.

Textual Amendments

- F51** [S.I. 1987/1968](#), the relevant amending instruments are [S.I. 1996/2431](#) and [S.I. 2005/2877](#).
- F52** [1973 c. 50](#).
- F53** [1990 c. 35](#).
- F54** [S.I. 1975/556](#), the relevant amending instruments are [S.I. 1996/2367](#), [S.I. 2000/3120](#), [S.I. 2001/518](#), [S.I. 2001/1711](#), [S.I. 2002/490](#), [S.I. 2003/521](#) and [S.I. 2007/1749](#).
- F55** [Sch. 6 para. 15\(11\)\(b\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **16(g)**

Loans on residential property **E+W+S**

16.—(1) A loan qualifies under this paragraph where the loan was taken out to defray monies applied for any of the following purposes—

- (a) acquiring an interest in the dwelling occupied as the home; or
- (b) paying off another loan to the extent that the other loan would have qualified under paragraph (a) above had the loan not been paid off.

(2) For the purposes of this paragraph, references to a loan include also a reference to money borrowed under a hire purchase agreement for any purpose specified in paragraphs (a) and (b) of sub-paragraph (1).

(3) Where a loan is applied only in part for the purposes specified in paragraphs (a) and (b) of sub-paragraph (1), only that portion of the loan which is applied for that purpose will qualify under this paragraph.

Loans for repairs and improvements to the dwelling occupied as the home **E+W+S**

17.—(1) A loan qualifies under this paragraph where the loan was taken out, with or without security, for the purpose of—

- (a) carrying out repairs and improvements to the dwelling occupied as the home;
- (b) paying any service charge imposed to meet the cost of repairs and improvements to the dwelling occupied as the home;
- (c) paying off another loan to the extent that the other loan would have qualified under paragraph (a) or (b) of this sub-paragraph had the loan not been paid off,

and the loan was used for that purpose, or is used for that purpose within 6 months of the date of receipt or such further period as may be reasonable in the particular circumstances of the case.

(2) In sub-paragraph (1) “repairs and improvements” means any of the following measures undertaken with a view to maintaining the fitness of the dwelling for human habitation or, where the dwelling forms part of a building, any part of the building containing that dwelling—

- (a) provision of a fixed bath, shower, wash basin, sink or lavatory, and necessary associated plumbing, including the provision of hot water not connected to a central heating system;
- (b) repairs to existing heating systems;
- (c) damp proof measures;
- (d) provision of ventilation and natural lighting;
- (e) provision of drainage facilities;
- (f) provision of facilities for preparing and cooking food;
- (g) provision of insulation of the dwelling occupied as the home;
- (h) provision of electric lighting and sockets;
- (i) provision of storage facilities for fuel or refuse;
- (j) repairs of unsafe structural defects;
- (k) adapting a dwelling for the special needs of a disabled person; or
- (l) provision of separate sleeping accommodation for persons of different sexes aged 10 or over but under age 20 who live with the claimant and for whom the claimant or partner is responsible.

(3) Where a loan is applied only in part for the purposes specified in sub-paragraph (1), only that portion of the loan which is applied for that purpose will qualify under this paragraph.

Status: Point in time view as at 03/11/2008.

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

Other housing costs **E+W+S**

18.—(1) Subject to the deduction specified in sub-paragraph (2) and the reductions applicable in sub-paragraph (5), there are to be met under this paragraph the amounts, calculated on a weekly basis, in respect of the following housing costs—

- (a) payments by way of rent or ground rent relating to a long tenancy;
- (b) service charges;
- (c) payments by way of rentcharge within the meaning of section 1 of the Rentcharges Act 1977 ^{F56};
- (d) payments under a co-ownership scheme;
- (e) payments under or relating to a tenancy or licence of a Crown tenant;
- (f) where the dwelling occupied as the home is a tent, payments in respect of the tent and the site on which it stands.

(2) Subject to sub-paragraph (3), the deductions to be made from the weekly amounts to be met under this paragraph are—

- (a) where the costs are inclusive of any of the items mentioned in paragraph 6(2) of Schedule 1 to the Housing Benefit Regulations 2006 ^{F57} (payment in respect of fuel charges), the deductions prescribed in that paragraph unless the claimant provides evidence on which the actual or approximate amount of the service charge for fuel may be estimated, in which case the estimated amount;
- (b) where the costs are inclusive of ineligible service charges within the meaning of paragraph 1 of Schedule 1 to the Housing Benefit Regulations 2006 (ineligible service charges) the amounts attributable to those ineligible service charges or where that amount is not separated from or separately identified within the housing costs to be met under this paragraph, such part of the payments made in respect of those housing costs which are fairly attributable to the provision of those ineligible services having regard to the costs of comparable services;
- (c) any amount for repairs and improvements, and for this purpose the expression “repairs and improvements” has the same meaning it has in paragraph 17(2).

(3) Where arrangements are made for the housing costs, which are met under this paragraph and which are normally paid for a period of 52 weeks, to be paid instead for a period of 53 weeks, or to be paid irregularly, or so that no such costs are payable or collected in certain periods, or so that the costs for different periods in the year are of different amounts, the weekly amount will be the amount payable for the year divided by 52.

(4) Where the claimant or a member of the claimant's family—

- (a) pays for reasonable repairs or redecorations to be carried out to the dwelling they occupy; and
- (b) that work was not the responsibility of the claimant or any member of the claimant's family; and
- (c) in consequence of that work being done, the costs which are normally met under this paragraph are waived,

then those costs will, for a period not exceeding 8 weeks, be treated as payable.

(5) Where in England and Wales an amount calculated on a weekly basis in respect of housing costs specified in sub-paragraph (1)(e) includes water charges, that amount is to be reduced—

- (a) where the amount payable in respect of water charges is known, by that amount;
- (b) in any other case, by the amount which would be the likely weekly water charge had the property not been occupied by a Crown tenant.

Textual Amendments

F56 1977 c. 30.

F57 S.I. 2006/213, the relevant amending instrument is S.I. 2007/688.

Non-dependant deductions **E+W+S**

19.—(1) Subject to the following provisions of this paragraph, the following deductions from the amount to be met under the preceding paragraphs of this Schedule in respect of housing costs are to be made—

- (a) in respect of a non-dependant aged 18 or over who is engaged in any remunerative work, £47.75;
- (b) in respect of a non-dependant aged 18 or over to whom paragraph (a) does not apply, £7.40.

(2) In the case of a non-dependant aged 18 or over to whom sub-paragraph (1)(a) applies because that non-dependant is in remunerative work, where the claimant satisfies the Secretary of State that the non-dependant's gross weekly income is—

- (a) less than £116.00, the deduction to be made under this paragraph will be the deduction specified in sub-paragraph (1)(b);
- (b) not less than £116.00 but less than £172.00, the deduction to be made under this paragraph will be £17.00;
- (c) not less than £172.00 but less than £223.00, the deduction to be made under this paragraph will be £23.35;
- (d) not less than £223.00 but less than £296.00, the deduction to be made under this paragraph will be £38.20;
- (e) not less than £296.00 but less than £369.00, the deduction to be made under this paragraph will be £43.50.

(3) Only one deduction is to be made under this paragraph in respect of a couple or, as the case may be, the members of a polygamous marriage, and where, but for this sub-paragraph, the amount that would fall to be deducted in respect of one member of a couple or polygamous marriage is higher than the amount (if any) that would fall to be deducted in respect of the other, or any other, member, the higher amount is to be deducted.

(4) In applying the provisions of sub-paragraph (2) in the case of a couple or, as the case may be, a polygamous marriage, regard will be had, for the purpose of sub-paragraph (2), to the couple's or, as the case may be, all the members of the polygamous marriage's, joint weekly income.

(5) Where a person is a non-dependant in respect of more than one joint occupier of a dwelling (except where the joint occupiers are a couple or members of a polygamous marriage), the deduction in respect of that non-dependant is to be apportioned between the joint occupiers (the amount so apportioned being rounded to the nearest penny) having regard to the number of joint occupiers and the proportion of the housing costs in respect of the dwelling occupied as the home payable by each of them.

(6) No deduction is to be made in respect of any non-dependants occupying the dwelling occupied as the home of the claimant, if the claimant or any partner of the claimant is—

- (a) registered as blind in a register compiled under section 29 of the National Assistance Act 1948^{F58} (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a regional or islands council, or who is within 28 weeks of ceasing to be so registered;
- (b) receiving in respect of that claimant or that claimant's partner either—

Status: Point in time view as at 03/11/2008.

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

- (i) an attendance allowance; or
 - (ii) the care component of the disability living allowance.
- (7) No deduction is to be made in respect of a non-dependant—
- (a) if, although the non-dependant resides with the claimant, it appears to the Secretary of State that the dwelling occupied as the non-dependant's home is normally elsewhere;
 - (b) if the [F59 non-dependant] is in receipt of a training allowance paid in connection with youth training;
 - (c) if the non-dependant is a full-time student during a period of study or, if the non-dependant is not in remunerative work, during a recognised summer vacation appropriate to the non-dependant's course;
 - (d) if the non-dependant is aged under 25 and in receipt of income support, an income-based jobseeker's allowance or an income-related allowance which does not include an amount under section 4(2)(b) of the Act;
 - (e) in respect of whom a deduction in the calculation of a rent rebate or allowance falls to be made under regulation 74 of the Housing Benefit Regulations 2006 (non-dependant deductions);
 - [F60](f) to whom, but for paragraph (5) of regulation 71 (definition of non-dependant) paragraph (4) of that regulation would apply;
 - (g) if the non-dependant is not residing with the claimant because the non-dependant has been a patient for a period in excess of 52 weeks, or is a prisoner, and for these purposes—
 - (i) “patient” has the meaning given in paragraph 5(13) and “prisoner” has the meaning given in regulation 69(2) (special cases); and
 - (ii) in calculating a period of 52 weeks as a patient, any two or more distinct periods separated by one or more intervals each not exceeding 28 days is to be treated as a single period; or
 - (h) if the non-dependant is in receipt of state pension credit;
 - (i) in sub-paragraph (b)—
- “youth training” means—
- (i) arrangements made under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990; or
 - (ii) arrangements made by the Secretary of State for persons enlisted in Her Majesty's forces for any special term of service specified in regulations made under section 2 of the Armed Forces Act 1966 (power of Defence Council to make regulations as to engagement of persons in regular forces),
- for purposes which include the training of persons who, at the beginning of their training, are under the age of 18.
- (8) In the case of a non-dependant to whom sub-paragraph (2) applies because that non-dependant is in remunerative work, there is to be disregarded from that non-dependant's gross income—
- (a) any attendance allowance or disability living allowance received by that non-dependant;
 - (b) any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or [F61 the Independent Living Fund (2006)] which, had that non-dependant's income fallen to be calculated under regulation 104 (calculation of income other than earnings), would have been disregarded under paragraph 22 of Schedule 8 (income in kind); and

- (c) any payment which, had that non-dependant's income fallen to be calculated under regulation 104 would have been disregarded under paragraph 41 of Schedule 8 (payments made under certain trusts and certain other payments).

Textual Amendments

- F58** 1948 c. 29.
- F59** Words in Sch. 6 para. 19(7)(a) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **16(h)(i)**
- F60** Sch. 6 para. 19(7)(f) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **16(h)(ii)**
- F61** Words in Sch. 6 para. 19(8)(b) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **16(i)**

Continuity with income support, an income-based jobseeker's allowance or state pension credit **E+W+S**

20.—(1) For the purpose of providing continuity between income support, an income-based jobseeker's allowance or state pension credit and an employment and support allowance—

- (a) any housing costs which would, had the claimant been entitled to income support, an income-based jobseeker's allowance or state pension credit, have been existing housing costs and not new housing costs will, despite the preceding provisions of this Schedule, be treated as existing housing costs, and any qualifications or limitations which would have applied to those costs had the award been an award of income support, an income-based jobseeker's allowance or state pension credit will likewise apply to the costs in so far as they are met in an employment and support allowance;
- (b) had the award of an employment and support allowance been an award of income support or an income-based jobseeker's allowance and the housing costs which would then have been met would have included an additional amount met in accordance with paragraph 7 of Schedule 3 to the Income Support Regulations or, as the case may be, paragraph 18(1)(b) of Schedule 2 to the Jobseeker's Allowance Regulations (add back), an amount equal to that additional amount must be added to the housing costs to be met under this Schedule, but that amount must be subject to the same qualifications and limitations as it would have been had the award been of income support or an income-based jobseeker's allowance; and
- (c) subject to paragraph 15(20), for the purposes of any linking rule or for determining whether any qualifying or other period is satisfied, any reference to an employment and support allowance in this Schedule must be taken also to include a reference to income support, an income-based jobseeker's allowance or state pension credit.

(2) Any loan which, had the claimant been entitled to income support and not an employment and support allowance, would have been a qualifying loan for the purposes of Schedule 3 to the Income Support Regulations by virtue of regulation 3 of the Income Support (General) Amendment and Transitional Regulations 1995 ^{F62} (transitional protection) must be treated also as a qualifying loan for the purposes of paragraph 16 or 17, (loans on residential property and loans for repairs and improvements to the dwelling occupied as the home) and for the purpose of determining whether a claimant would satisfy the provision of regulation 3(2) of those Regulations, a claimant in receipt of an income-related allowance must be treated as being in receipt of income support.

Textual Amendments

- F62** [S.I. 1995/2287](#), these regulations were superseded by [S.I. 1995/3320](#).

Status: Point in time view as at 03/11/2008.

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

SCHEDULE 7 **E+W+S**

Regulations 96(2), 98(2)

SUMS TO BE DISREGARDED IN THE CALCULATION OF EARNINGS

1.—(1) In the case of a claimant who has been engaged in remunerative work as an employed earner or, had the employment been in Great Britain, would have been so engaged—

- (a) any earnings, other than items to which sub-paragraph (2) applies, paid or due to be paid from that employment which terminated before the first day of entitlement to an income-related allowance;
- (b) any earnings, other than a payment of the nature described in regulation 95(1)(e) (earnings of employed earners), paid or due to be paid from that employment which has not been terminated where the claimant is not—
 - (i) engaged in remunerative work; or
 - (ii) suspended from employment.

(2) This sub-paragraph applies to—

- (a) any payment of the nature described in regulation 95(1)(e); and
- (b) any award, sum or payment of the nature described in—
 - (i) regulation 95(1)(g) or (i); or
 - (ii) section 34 or 70 of the Employment Rights Act 1996 ^{F63} (guarantee payments and suspension from work: complaints to employment tribunals),

including any payment made following the settlement of a complaint to an employment tribunal or of court proceedings.

Textual Amendments

F63 1996 c. 18. Sections 34 and 70 were amended by section 1(2) of the [Employment Rights \(Dispute Resolution\) Act 1998 \(c. 8\)](#).

2.—(1) In the case of a claimant to whom this paragraph applies, any earnings (other than a payment of the nature described in regulation 95(1)(e)) which relate to employment which ceased before the first day of entitlement to an income-related allowance whether or not that employment has terminated.

(2) This paragraph applies to a claimant who has been engaged in part-time employment as an employed earner or, had the employment been in Great Britain, would have been so engaged; but it does not apply to a claimant who has been suspended from employment.

3. If the claimant's partner has been engaged in remunerative work as an employed earner or, had the employment been in Great Britain, would have been so engaged, any earnings paid or due to be paid on termination of that employment by way of retirement but only if—

- (a) on retirement the partner is entitled to a retirement pension under the Contributions and Benefits Act; or
- (b) the only reason the partner is not entitled to a retirement pension under the Contribution and Benefits Act is because the contribution conditions are not satisfied.

4. In the case of a claimant who has been engaged in remunerative work or part-time employment as a self-employed earner or, had the employment been in Great Britain, would have been so engaged and who has ceased to be so employed, from the date of the cessation of the claimant's employment

any earnings derived from that employment except earnings to which regulation 92(2) (royalties etc.) applies.

5. In the case of a claimant who is undertaking work which falls within one of the categories in regulation 45(2) to (4) any earnings derived from that work which do not exceed the limits specified for that work of £20 in regulation 45(2) or, as the case may be, [^{F64}£92.00] in regulation 45(3) or (4).

Textual Amendments

F64 Word in Sch. 7 para. 5 substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), 17

6. Where regulation 45(2) to (4) applies to the claimant and that claimant's earnings are less than—

- (a) in a case to which regulation 45(2) applies, £20;
- (b) in a case to which regulation 45(3) and (4) applies, [^{F65}£92.00]

the earnings of the claimant's partner are to be disregarded to the extent that the claimant's earnings are less than £20 or, as the case may be, [^{F65}£92.00], but only up to a maximum of £20.

Textual Amendments

F65 Word in Sch. 7 para. 6 substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), 17

7.—(1) In a case to which this paragraph applies, £20; but notwithstanding regulation 83 (calculation of income and capital of members of claimant's family and of a polygamous marriage), if this paragraph applies to a claimant it will not apply to the claimant's partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this paragraph are less than £20.

(2) Subject to sub-paragraph (3), this paragraph applies in the case of a claimant to whom regulation 40(2)(a), (b) or (e), 43(1)(a), (d), (e) or (f), or (2) or 45(5) applies.

(3) Where a claimant is doing the work set out in regulation 40(2)(b) and is also undertaking any of the categories of work set out in regulation 45(2) to (4), this paragraph applies only to the extent that the claimant's earnings are less than the limit of—

- (a) £20 set out in regulation 45(2); or
- (b) [^{F66}£92.00] set out in regulation 45(3) and (4),

as the case may be.

(4) This paragraph applies, in a case where the claimant's partner is in part-time employment and paragraph 6 does not apply.

Textual Amendments

F66 Word in Sch. 7 para. 7(3)(b) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), 17

8. Notwithstanding the foregoing provisions of this Schedule, where two or more payments of earnings of the same kind and from the same source are to be taken into account in the same benefit week, because it has not been practicable to treat the payments under regulation 93(1)(b) (date on

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

which income treated as paid) as paid on the first day of the benefit week in which they were due to be paid, there is to be disregarded from each payment the sum that would have been disregarded if the payment had been taken into account on the date on which it was due to be paid.

9. Any earnings derived from employment which are payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of those earnings.

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

11. Any earnings which are due to be paid before the date of claim and 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.

12. In the case of a claimant who—

- (a) has been engaged in employment as a member of any territorial or reserve force prescribed in Part 1 of Schedule 6 to the Social Security (Contributions) Regulations 2001 ^{F67}; and
- (b) by reason of that employment has failed to satisfy any of the conditions for entitlement to an income-related allowance other than paragraph 6(1)(a) of Schedule 1 to the Act (income not in excess of the applicable amount),

any earnings from that employment paid in respect of the period in which the claimant was not entitled to an income-related allowance.

Textual Amendments

F67 S.I. 2001/1004.

13. In the case of a person to whom paragraph (5) of regulation 6 of the Income Support Regulations applies, any earnings.

14. In this Schedule—

“part-time employment” means, if the person were entitled to income support, employment in which the person is not to be treated as engaged in remunerative work under regulation 5 or 6(1) and (4) of the Income Support Regulations (persons treated, or not treated, as engaged in remunerative work);

“remunerative work”, for the purposes of this paragraph and paragraphs 1, 3 and 4, has the meaning prescribed in regulation 5, except for paragraphs (3B) and (4) of that regulation, of the Income Support Regulations.

SCHEDULE 8 **E+W+S**

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).

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 ^{F68} 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

F68 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 ^{F69}, 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.

Textual Amendments

F69 1992 c. 7.

6. Any guardian's allowance.

7.—(1) Any child tax credit.

(2) Any child benefit.

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 [^{F70}income-related] employment and support allowance, income support or [^{F71}an income-based jobseeker's allowance].

Textual Amendments

F70 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\(a\)\(i\)](#)

Status: Point in time view as at 03/11/2008.

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

F71 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 ^{F72};

(ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980 ^{F73}, or

(iii) directions made under section 73ZA of the Education (Scotland) Act 1980 ^{F74} and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992 ^{F75}, or

(b) corresponding to such an education maintenance allowance, made pursuant to—

(i) section 14 or section 181 of the Education Act 2002 ^{F76}; 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

F72 1996 c. 56. Section 518 was substituted by the School Standards and Framework Act 1998 (c. 31), section 129.

F73 1980 c. 44.

F74 Section 73ZA was inserted by the Further and Higher Education (Scotland) Act 2005 asp. 6, section 19.

F75 1992 c. 37.

F76 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 ^{F77}.

Textual Amendments

F77 S.I. 2002/2086.

15.—(1) Any payment made pursuant to section 2 of the Employment and Training Act 1973 ^{F78} (functions of the Secretary of State) or section 2 of the Enterprise and New Towns (Scotland) Act 1990 ^{F79} (functions in relation to training for employment etc.) except a payment—

- (a) made as a substitute for an employment and support 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.

Textual Amendments

F78 1973 c. 50.

F79 1990 c. 35.

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;

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- (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;
- (d) a guaranteed income payment;
- (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 ^{F80}.

Textual Amendments

F80 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 ^{F81} (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 ^{F82};
- (ii) in any other case the interest which is payable on the loan without deduction of such a sum.

Textual Amendments

F81 1988 c. 1.

F82 Subsection (1A) of section 369 was inserted by the [Finance Act 1999 \(c. 16\)](#), [Schedule 4](#), paragraph 4.

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 or [^{F83}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

F83 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.

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

- (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^{F84} or in accordance with a scheme approved by the Scottish Ministers under section 51A of the Adoption (Scotland) Act 1978^{F85} (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^{F86} (local authority contribution to a child's maintenance where the child is living with a person as a result of a residence order);
- (c) which is a payment made by an authority, as defined in Article 2 of the Children (Northern Ireland) Order 1995^{F87}, 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^{F88} (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^{F89}.

Textual Amendments

F84 2002 c. 38.

F85 1978 c. 28.

F86 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).

F87 S.I. 1995/755 (N.I. 2).

F88 Section 14F was inserted by the [Adoption and Children Act 2002 \(c. 38\)](#), [section 115\(1\)](#).

F89 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
- (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 ^{F90} 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 ^{F91} (payment of allowances).

Textual Amendments

F90 1995 c. 36.

F91 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 ^{F92};
- (e) a Primary Care Trust established under section 16A of the National Health Service Act 1977 ^{F93} 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

F92 1948 c. 29. Section 26(3A) was inserted by the [National Health Service and Community Care Act 1990 \(c. 19\)](#), [section 42\(4\)](#).

F93 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 ^{F94};
- (b) section 12 of the Social Work (Scotland) Act 1968 ^{F95}; 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—

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- (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

- F94** 1989 c. 41. Sections 23B, 23C and 24A were substituted by the [Children \(Leaving Care\) Act 2000 \(c. 35\)](#), sections 2 and 4.
- F95** 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 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 ^{F96} 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 ^{F97}.

(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

F96 1974 c. 39.

F97 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.

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41.—(1) Any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust (“the Trusts”), the Fund, the Eileen Trust or [^{F98}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 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 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 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 any of the Trusts to which sub-paragraph (1) refers, where—

- (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, the Skipton Fund and the London Bombings Relief Charitable Fund.

Textual Amendments

F98 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)**

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 ^{F99} (reduction of liability for council tax).

Textual Amendments

F99 [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 ^{F100} (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 ^{F101};
- (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 ^{F102} (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

F100 [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](#).

F101 [S.I. 2007/1104](#) (W. 116).

F102 [S.S.I. 2003/460](#).

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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 ^{F103} 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

F103 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 ^{F104} to assist disabled persons to obtain or retain employment despite their disability.

Textual Amendments

F104 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 ^{F105} (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

F105 S.I. 2006/606.

50. Where the claimant is in receipt of any benefit under Parts II, III or V of the Contributions and Benefits Act or pension under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006, any increase in the rate of that benefit arising under Part 4 (increases for dependants) or section 106(a) (unemployability supplement) of that Act or the rate of that pension under that Order where the dependant in respect of whom the increase is paid is not a member of the claimant's family.

51. In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983 ^{F106} (pensions to widows, widowers or surviving civil partners), the sum specified in paragraph 1(c) of Schedule 4 to that scheme.

Textual Amendments

F106 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, [^{F107}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

F107 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 under the Community Care (Direct Payments) Act 1996 ^{F108} or under section 12B of the Social Work (Scotland) Act 1968 ^{F109} or under regulations made under section 57 of the Health and Social Care Act 2001 ^{F110} (direct payments).

Textual Amendments

F108 1996 c 30.

F109 1968 c 49.

F110 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 ^{F111} or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ^{F112} or the provision of accommodation or welfare services to which Part 3 of the National Assistance Act 1948 ^{F113} refers or to which the Social Work (Scotland) Act 1968 ^{F114} refers, which falls to be treated as notional income under paragraph (6) of regulation 107

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(payments made in respect of a person living in a care home, an Abbeyfield Home or an independent hospital).

Textual Amendments

F111 1983 c. 20.

F112 2003 asp. 13.

F113 1948 c. 29.

F114 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.

60.—(1) Subject to sub-paragraph (3), any payment of child maintenance 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) For the purposes of sub-paragraph (1), where more than one payment of child maintenance—

- (a) in respect of more than one child or young person; or
- (b) made by more than one person in respect of a child or young person,

falls to be taken into account in any week, all such payments are to be aggregated and treated as if they were a single payment.

[^{F115}(3) No more than £20 shall be disregarded in respect of each week to which any payment of child maintenance is attributed in accordance with regulations 120 to 125 (child maintenance and liable relatives).]

[^{F115}(4) In this paragraph, “child maintenance” shall have the same meaning as in regulation 119.]

Textual Amendments

F115 Sch. 8 para. 60(3)(4) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(10)**

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 ^{F116}.

Textual Amendments

F116 [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.

SCHEDULE 9 **E+W+S**

Regulation 111(2)

CAPITAL TO BE DISREGARDED

1. The dwelling occupied as the home but, notwithstanding regulation 83 (calculation of income and capital of members of claimant's family and of a polygamous marriage), only one dwelling is to be disregarded under this paragraph.

2. Any premises acquired for occupation by the claimant which that claimant intends to occupy as the home within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the claimant to obtain possession and commence occupation of the premises.

3. Any sum directly attributable to the proceeds of sale of any premises formerly occupied by the claimant as the home which is to be used for the purchase of other premises intended for such occupation within 26 weeks of the date of sale or such longer period as is reasonable in the circumstances to enable the claimant to complete the purchase.

4. Any premises occupied in whole or in part by—

(a) a partner or relative of a single claimant or any member of the family as the home where that person is aged 60 or over or is incapacitated;

(b) the former partner of a claimant as the home; but this provision is not to apply where the former partner is a person from whom the claimant is estranged or divorced or with whom the person formed a civil partnership that has been dissolved.

5. Where a claimant has ceased to occupy what was formerly the dwelling occupied as the home following the claimant's estrangement or divorce from, or dissolution of the claimant's civil partnership with, the claimant's former partner, that dwelling for a period of 26 weeks from the date on which the claimant ceased to occupy that dwelling or, where that dwelling is occupied as the home by the former partner who is a lone parent, for as long as it is so occupied.

6. Any premises where the claimant is taking reasonable steps to dispose of those premises, for a period of 26 weeks from the date on which the claimant first took such steps, or such longer period as is reasonable in the circumstances to enable the claimant to dispose of those premises.

7. Any premises which the claimant intends to occupy as the home, and in respect of which that claimant is taking steps to obtain possession and has sought legal advice or has commenced legal

Status: Point in time view as at 03/11/2008.

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

proceedings, with a view to obtaining possession, for a period of 26 weeks from the date on which the claimant first sought such advice or first commenced such proceedings whichever is earlier, or such longer period as is reasonable in the circumstances to enable the claimant to obtain possession and commence occupation of those premises.

8. Any premises which the claimant intends to occupy as the home to which essential repairs or alterations are required in order to render them fit for such occupation, for a period of 26 weeks from the date on which the claimant first takes steps to effect those repairs or alterations, or such longer period as is reasonable in the circumstances to enable those repairs or alterations to be carried out and the claimant to commence occupation of the premises.

9. Any future interest in property of any kind, other than land or premises in respect of which the claimant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.

10.—(1) The assets of any business owned in whole or in part by the claimant and for the purposes of which that claimant is engaged as a self-employed earner or, if the claimant has ceased to be so engaged, for such period as may be reasonable in the circumstances to allow for disposal of any such asset.

- (2) The assets of any business owned in whole or in part by the claimant where that claimant—
- (a) is not engaged as self-employed earner in that business by reason of some disease or bodily or mental disablement; but
 - (b) intends to become engaged (or, as the case may be, re-engaged) as a self-employed earner in that business as soon as the claimant recovers or is able to become engaged, or re-engaged, in that business,

for a period of 26 weeks from the date on which the claim for an income-related allowance is made, or is treated as made, or, if it is unreasonable to expect the claimant to become engaged or re-engaged in that business within that period, for such longer period as is reasonable in the circumstances to enable the claimant to become so engaged or re-engaged.

(3) In the case of a person who is receiving assistance under the self-employment route, the assets acquired by that person for the purpose of establishing or carrying on the commercial activity in respect of which such assistance is being received.

(4) In the case of a person who has ceased carrying on the commercial activity in respect of which assistance was received as specified in sub-paragraph (3), the assets relating to that activity for such period as may be reasonable in the circumstances to allow for disposal of any such asset.

11.—(1) Subject to sub-paragraph (2), any arrears of, or any concessionary payment made to compensate for arrears due to the non-payment of—

- (a) any payment specified in paragraph 8, 10 or 11 of Schedule 8 (other income to be disregarded);
- (b) an income-related allowance, an income-related benefit or an income-based jobseeker's allowance, child tax credit or working tax credit;
- (c) any discretionary housing payment paid pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001,

but only for a period of 52 weeks from the date of the receipt of the arrears or of the concessionary payment.

(2) In a case where the total of any arrears and, if appropriate, any concessionary payment referred to in sub-paragraph (1) relating to any one of the specified payments, benefits or allowances, amounts to £5,000 or more (referred to in this sub-paragraph and in sub-paragraph (3) as the “relevant sum”) and is—

(a) paid in order to rectify, or to compensate for, an official error as defined in regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999; and

(b) received by the claimant in full on or after 14th October 2001,

sub-paragraph (1) is to have effect in relation to such arrears or concessionary payment either for a period of 52 weeks from the date of receipt, or, if the relevant sum is received in its entirety during the award of an income-related allowance, for the remainder of that award if that is a longer period.

(3) For the purposes of sub-paragraph (2), “the award of an income-related allowance” means—

(a) the award either of an income-related allowance, income support or of an income-based jobseeker's allowance in which the relevant sum (or first part thereof where it is paid in more than one instalment) is received; and

(b) where that award is followed by one or more further awards which in each case may be either of an income-related allowance, income support or of an income-based jobseeker's allowance and which, or each of which, begins immediately after the end of the previous award, such further awards until the end of the last such award, provided that for any such further awards the claimant—

(i) is the person who received the relevant sum;

(ii) is the partner of the person who received the relevant sum, or was that person's partner at the date of that person's death; or

(iii) in the case of a joint-claim jobseeker's allowance, is a joint-claim couple either member or both members of which received the relevant sum.

12. Any sum—

(a) paid to the claimant in consequence of damage to, or loss of, the home or any personal possession and intended for its repair or replacement; or

(b) acquired by the claimant (whether as a loan or otherwise) on the express condition that it is to be used for effecting essential repairs or improvements to the home,

and which is to be used for the intended purpose, for a period of 26 weeks from the date on which it was so paid or acquired or such longer period as is reasonable in the circumstances to enable the claimant to effect the repairs, replacement or improvements.

13. Any sum—

(a) deposited with a housing association as defined in section 1(1) of the Housing Associations Act 1985 ^{F117} or section 338(1) of the Housing (Scotland) Act 1987 ^{F118} as a condition of occupying the home;

(b) which was so deposited and which is to be used for the purchase of another home, for the period of 26 weeks or such longer period as is reasonable in the circumstances to complete the purchase.

Textual Amendments

F117 1985 c. 69.

F118 1987 c. 26.

14. Any personal possessions except those which had or have been acquired by the claimant with the intention of reducing that claimant's capital in order to secure entitlement to an employment and support allowance, a jobseeker's allowance or to income support or to increase the amount of those benefits.

Status: Point in time view as at 03/11/2008.

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

15. The value of the right to receive any income under an annuity and the surrender value (if any) of such an annuity.

16. Where the funds of a trust are derived from a payment made in consequence of any personal injury to the claimant or the claimant's partner, the value of the trust fund and the value of the right to receive any payment under that trust.

17.—(1) Any payment made to the claimant or the claimant's partner in consequence of any personal injury to the claimant or, as the case may be, the claimant's partner.

(2) But sub-paragraph (1)—

- (a) applies only for the period of 52 weeks beginning with the day on which the claimant first receives any payment [^{F119}in consequence of that personal injury];
- (b) does not apply to any subsequent payment made to the claimant in consequence of that injury (whether it is made by the same person or another);
- (c) ceases to apply to the payment or any part of the payment from the day on which the claimant no longer possesses it;
- (d) does not apply to any payment from a trust where the funds of the trust are derived from a payment made in consequence of any personal injury to the claimant.

(3) For the purpose of sub-paragraph (2)(c), the circumstances in which a claimant no longer possesses a payment or a part of it include where the claimant has used a payment or part of it to purchase an asset.

Textual Amendments

F119 Words in [Sch. 9 para. 17\(2\)\(a\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **19(a)**

18. The value of the right to receive any income under a life interest or from a life rent.

19. The value of the right to receive any income which is disregarded under paragraph 9 of Schedule 7 or paragraph 24 of Schedule 8 (earnings or other income to be disregarded).

20. The surrender value of any policy of life insurance.

21. Where any payment of capital falls to be made by instalments, the value of the right to receive any outstanding instalments.

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

- (a) section 17, 23B, 23C or 24A of the Children Act 1989 ^{F120};
- (b) section 12 of the Social Work (Scotland) Act 1968 ^{F121}; 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

F120 1989 c. 41. Sections 23B, 23C and 24A were substituted by the [Children \(Leaving Care\) Act 2000 \(c. 35\), sections 2](#) and 4.

F121 1968 c. 49.

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

24. Any refund of tax which falls to be deducted under section 369 of the Income and Corporation Taxes Act 1988 ^{F122} (mortgage interest payable under deduction of tax) on a payment of relevant loan interest for the purpose of acquiring an interest in the home or carrying out repairs or improvements in the home.

Textual Amendments

F122 1988 c. 1.

25. Any capital which under regulation 105 or 137 (capital treated as income or treatment of student loans) is to be treated as income.

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

27.—(1) Any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust (“the Trusts”), the Fund, the Eileen Trust, [^{F123}the Independent Living Fund (2006)], the Skipton Fund or the London Bombings Relief Charitable Fund.

(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 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 the person is not, or where that person has died was not, estranged or divorced or with whom the 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 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

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- (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 any of the Trusts to which sub-paragraph (1) refers, where—
- (a) that person has no partner or former partner from whom the person is not estranged or divorced or with whom the 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 any of the Trusts to which sub-paragraph (1) refers, where—

- (a) that person at the date of that person's death (the relevant date) had no partner or former partner from whom the person was not estranged or divorced or with whom the 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 capital resource 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, the Skipton Fund or the London Bombings Relief Charitable Fund.

Textual Amendments

F123 Words in [Sch. 9 para. 27\(1\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **19(b)**

- 28.** The value of the right to receive an occupational or personal pension.
- 29.** The value of any funds held under a personal pension scheme.
- 30.** The value of the right to receive any rent except where the claimant has a reversionary interest in the property in respect of which rent is due.
- 31.** Any payment in kind made by a charity or under the Macfarlane Trust, Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or the ^{F124}the Independent Living Fund (2006)].

Textual Amendments

F124 Words in Sch. 9 para. 31 substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **19(c)**

32. Any payment made pursuant to section 2 of the Employment and Training Act 1973 ^{F125} or section 2 of the Enterprise and New Towns (Scotland) Act 1990 ^{F126}, but only for the period of 52 weeks beginning on the date of receipt of the payment.

Textual Amendments

F125 1973 c. 50.

F126 1990 c. 35.

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

34. 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.

35. Any payment [^{F127} in consequence of a reduction] of council tax under section 13 or, as the case may be, section 80 of the Local Government Finance Act 1992 ^{F128} (reduction of liability for council tax), but only for a period of 52 weeks from the date of the receipt of the payment.

Textual Amendments

F127 Words in Sch. 9 para. 35 substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **19(d)**

F128 1992 c. 14. Section 80 was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), **Schedule 13**, paragraph 176(4).

36. Any grant made to the claimant in accordance with a scheme under section 129 of the Housing Act 1988 or section 66 of the Housing (Scotland) Act 1988 ^{F129} (schemes for payments to assist local housing authorities and local authority tenants to obtain other accommodation) which is to be used—

- (a) to purchase premises intended for occupation as the claimant's home; or
- (b) to carry out repairs or alterations which are required to render premises fit for occupation as the claimant's home,

for a period of 26 weeks from the date on which the claimant received such a grant or such longer period as is reasonable in the circumstances to enable the purchase, repairs or alterations to be completed and the claimant to commence occupation of those premises as the claimant's home.

Textual Amendments

F129 1988 c. 43.

37.—(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 ^{F130} (travelling expenses and health service supplies);

Status: Point in time view as at 03/11/2008.

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- (b) as respects Wales, under regulation 5, 6 or 11 of the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007 ^{F131};
- (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 ^{F132} (travelling expenses and health service supplies);

but only for a period of 52 weeks from the date of receipt of the payment or repayment.

(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); but only for a period of 52 weeks from the date of receipt of the payment or repayment.

Textual Amendments

F130 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.

F131 S.I. 2007/1104 (W. 116).

F132 S.S.I. 2003/460, the relevant amending instruments are S.S.I. 2004/102, S.S.I. 2004/166, S.S.I. 2006/183 and S.S.I. 2007/259.

38. 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 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) but only for a period of 52 weeks from the date of receipt of the payment.

39. 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, but only for a period of 52 weeks from the date of receipt of the payment.

40. Any arrears of supplementary pension which is disregarded under paragraph 49 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) or of any amount which is disregarded under paragraphs 51 or 52 of that Schedule, but only for a period of 52 weeks from the date of receipt of the arrears.

41. 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 ^{F133} to assist disabled persons to obtain or retain employment despite their disability.

Textual Amendments

F133 1944 c. 10.

42. Any payment made by a local authority under section 3 of the Disabled Persons (Employment) Act 1958 ^{F134} to homeworkers assisted under the Blind Homeworkers' Scheme.

Textual Amendments

F134 1958 c. 33.

43.—(1) Any sum to which sub-paragraph (2) applies and—

- (a) which is administered on behalf of a person by the High Court or the County Court under Rule 21.11(1) of the Civil Procedure Rules 1998 ^{F135} or by the Court of Protection;

- (b) which can only be disposed of by order or direction of any such court; or
 - (c) where the person concerned is under the age of 18, which can only be disposed of by order or direction prior to that person attaining age 18.
- (2) This sub-paragraph applies to a sum which is derived from—
- (a) an award of damages for a personal injury to that person; or
 - (b) compensation for the death of one or both parents where the person concerned is under the age of 18.

Textual Amendments

F135 [S.I. 1998/3122](#), the relevant amending instrument is [S.I. 2007/2204](#)

44. Any sum administered on behalf of a person in accordance with an order made under section 13 of the Children (Scotland) Act 1995, or under Rule 36.14 of the Ordinary Cause Rules 1993 or under Rule 128 of the Ordinary Cause Rules, where such sum derives from—

- (a) an award of damages for a personal injury to that person; or
- (b) compensation for the death of one or both parents where the person concerned is under the age of 18.

45. Any payment to the claimant as holder of the Victoria Cross or George Cross.

46. In the case of a person who is receiving, or who has received, assistance under the self-employment route, any sum which is acquired by that person for the purpose of establishing or carrying on the commercial activity in respect of which such assistance is or was received but only for a period of 52 weeks from the date on which that sum was acquired.

47.—(1) [^{F136}Any payment of a sports award] for a period of 26 weeks from the date of receipt of that payment 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.

Textual Amendments

F136 Words in [Sch. 9 para. 47\(1\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **19(e)**

48. 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, but only for the period of 52 weeks from the date of receipt of the payment.

49. Any arrears of subsistence allowance paid as a lump sum but only for the period of 52 weeks from the date of receipt of the payment.

Status: Point in time view as at 03/11/2008.

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

50. Where an ex-gratia payment of £10,000 has been made by the Secretary of State on or after 1st February 2001 in consequence of the imprisonment or internment of—

- (a) the claimant;
- (b) the claimant's partner;
- (c) the claimant's deceased spouse or deceased civil partner; or
- (d) the claimant's partner's deceased spouse or deceased civil partner,

by the Japanese during the Second World War, £10,000.

51. 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 the claimant's capital.

52.—(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 ^{F137};
 - (ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980 ^{F138};
 - (iii) directions made under section 73ZA of the Education (Scotland) Act 1980 ^{F139} and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992 ^{F140}, or
- (b) corresponding to such an education maintenance allowance, made pursuant to—
 - (i) section 14 or section 181 of the Education Act 2002 ^{F141}; 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

F137 1996 c. 56. Section 518 was substituted by the [School Standards and Framework Act 1998 \(c. 31\), section 129](#).

F138 1980 c. 44.

F139 Section 73ZA was inserted by the [Further and Higher Education \(Scotland\) Act 2005 \(asp. 6\), section 19](#).

F140 1992 c. 37.

F141 2002 c. 32.

53.—(1) Subject to sub-paragraph (2), the amount of any trust payment made to a claimant or a member of a claimant's family who is—

- (a) a diagnosed person;
- (b) the diagnosed person's partner or the person who was the diagnosed person's partner at the date of the diagnosed person's death;
- (c) a parent of a diagnosed person, a person acting in the place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death; or

- (d) a member of the diagnosed person's family (other than that person's partner) or a person who was a member of the diagnosed person's family (other than that person's partner) at the date of the diagnosed person's death.

(2) Where a trust payment is made to—

- (a) a person referred to in sub-paragraph (1)(a) or (b), that sub-paragraph will apply for the period beginning on the date on which the trust payment is made and ending on the date on which that person dies;
- (b) a person referred to in sub-paragraph (1)(c), that sub-paragraph will apply for the period beginning on the date on which the trust payment is made and ending two years after that date;
- (c) a person referred to in sub-paragraph (1)(d), that sub-paragraph will apply for the period beginning on the date on which the trust payment is made and ending—
 - (i) two years after that date; or
 - (ii) on the day before the day on which that person—
 - (aa) ceases receiving full-time education; or
 - (bb) attains the age of 20,

whichever is the latest.

(3) Subject to sub-paragraph (4), the amount of any payment by a person to whom a trust payment has been made, or of any payment out of the estate of a person to whom a trust payment has been made, which is made to a claimant or a member of a claimant's family who is—

- (a) the diagnosed person's partner or the person who was the diagnosed person's partner at the date of the diagnosed person's death;
- (b) a parent of a diagnosed person, a person acting in the place of the diagnosed person's parents or a person who was so acting at the date of the diagnosed person's death; or
- (c) a member of the diagnosed person's family (other than that person's partner) or a person who was a member of the diagnosed person's family (other than that person's partner) at the date of the diagnosed person's death,

but only to the extent that such payments do not exceed the total amount of any trust payments made to that person.

(4) Where a payment as referred to in sub-paragraph (3) is made to—

- (a) a person referred to in sub-paragraph (3)(a), that sub-paragraph will apply for the period beginning on the date on which that payment is made and ending on the date on which that person dies;
- (b) a person referred to in sub-paragraph (3)(b), that sub-paragraph will apply for the period beginning on the date on which that payment is made and ending two years after that date;
- (c) a person referred to in sub-paragraph (3)(c), that sub-paragraph will apply for the period beginning on the date on which that payment is made and ending—
 - (i) two years after that date; or
 - (ii) on the day before the day on which that person—
 - (aa) ceases receiving full-time education; or
 - (bb) attains the age of 20,

whichever is the latest.

(5) In this paragraph, a reference to a person—

- (a) being the diagnosed person's partner;

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- (b) being a member of the diagnosed person's family; or
- (c) acting in the place of the diagnosed person's parents,

at the date of the diagnosed person's death will include a person who would have been such a person or a person who would have been so acting, but for the diagnosed person residing in a care home, an Abbeyfield Home or an independent hospital on that date.

(6) In this paragraph—

“diagnosed person” means a person who has been diagnosed as suffering from, or who, after that person's death, has been diagnosed as having suffered from, variant Creutzfeldt-Jakob disease;

“relevant trust” means a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions;

“trust payment” means a payment under a relevant trust.

54. The amount of a payment, other than a war pension within the meaning in section 25 of the Social Security Act 1989 ^{F142}, to compensate for the fact that the claimant, the claimant's partner, the claimant's deceased spouse or deceased civil partner or the claimant's partner's deceased spouse or deceased civil partner—

- (a) was a slave labourer or a forced labourer;
- (b) had suffered property loss or had suffered personal injury; or
- (c) was a parent of a child who had died,

during the Second World War.

Textual Amendments

F142 1989 c. 24. Section 25(4) was amended by [S.I. 2001/3506](#).

55.—(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.

56. Any payment made under the Community Care (Direct Payments) Act 1996 ^{F143}, regulations made under section 57 of the Health and Social Care Act 2001 ^{F144} or under section 12B of the Social Work (Scotland) Act 1968 ^{F145}.

Textual Amendments

F143 1996 c. 30.

F144 2001 c. 15.

F145 1968 c. 49.

57. Any payment made to the claimant pursuant to regulations under section 2(6)(b), 3 or 4 of the Adoption and Children Act 2002 ^{F146}.

Textual Amendments

F146 2002 c. 38.

58. Any payment made to the claimant in accordance with regulations made pursuant to section 14F of the Children Act 1989 ^{F147} (special guardianship support services).

Textual Amendments

F147 1989 c. 41. Section 14F was inserted by the [Adoption and Children Act 2002 \(c. 38\)](#), [section 115\(1\)](#).

Status:

Point in time view as at 03/11/2008.

Changes to legislation:

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