

## STATUTORY INSTRUMENTS

# 2013 No. 379

## The Employment and Support Allowance Regulations 2013

### PART 9

#### Amounts of Allowance

##### Prescribed amounts

**62.**—(1) Subject to regulation 63 (special cases) the amount prescribed for the purposes of the calculation of the amount of a claimant's employment and support allowance under section 2(1)(a) of the Act is—

- (a) where the claimant satisfies the conditions set out in section 2(2) or (3) of the Act, [<sup>F1</sup>£73.10]; or
  - (b) where the claimant does not satisfy the conditions set out in section 2(2) or (3) of the Act—
    - (i) where the claimant is aged not less than 25, [<sup>F2</sup>£73.10]; or
    - (ii) where the claimant is aged less than 25, [<sup>F3</sup>£57.90].
- (2) Subject to regulation 63, the amount of—
- (a) the work-related activity component is [<sup>F4</sup>£29.05]; and
  - (b) the support component is [<sup>F5</sup>£36.20.]

##### Textual Amendments

- F1** Sum in reg. 62(1)(a) substituted (with effect in accordance with art 1(2)(j) of the amending S.I.) by [The Welfare Benefits Up-rating Order 2015 \(S.I. 2015/30\)](#), art. 1(2)(j)(3), **12(1)(a)**
- F2** Sum in reg. 62(1)(b)(i) substituted (with effect in accordance with art 1(2)(j) of the amending S.I.) by [The Welfare Benefits Up-rating Order 2015 \(S.I. 2015/30\)](#), art. 1(2)(j)(3), **12(1)(a)**
- F3** Sum in reg. 62(1)(b)(ii) substituted (with effect in accordance with art 1(2)(j) of the amending S.I.) by [The Welfare Benefits Up-rating Order 2015 \(S.I. 2015/30\)](#), art. 1(2)(j)(3), **12(1)(b)**
- F4** Sum in reg. 62(2)(a) substituted (with effect in accordance with art 1(2)(j) of the amending S.I.) by [The Welfare Benefits Up-rating Order 2015 \(S.I. 2015/30\)](#), art. 1(2)(j)(3), **12(1)(c)**
- F5** Sum in Reg. 62(2)(b) substituted (coming into force in accordance with art. 1(2)(k)(1)(3) of the amending S.I.) by [The Social Security Benefits Up-rating Order 2015 \(S.I. 2015/457\)](#), **art. 23**

##### Modifications etc. (not altering text)

- C1** Reg. 62 modified (with effect in accordance with art. 1(2)(i)(3) of the amending S.I.) by [The Welfare Benefits Up-rating Order 2014 \(S.I. 2014/147\)](#), art. 1(2)(i)(3), **12(2)**
- C2** Reg. 62 modified by [Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) \(No. 2\) Regulations 2010 \(S.I. 2010/1907\)](#), **Sch. 2 para. 12** (as modified (24.4.2013) by S.I. 2013/983, art. 9, **Sch. 4** (as amended: (1.7.2013) by S.I. 2013/1511; (29.10.2013) by S.I. 2013/2657; (7.4.2014) by S.I. 2014/147, **art. 12(2)**; (16.6.2014) by S.I. 2014/1452; (30.6.2014) by S.I. 2014/1661; (28.7.2014) by S.I. 2014/1923; (15.9.2014) by

*Status: Point in time view as at 06/04/2015.*

*Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2013, PART 9. (See end of Document for details)*

S.I. 2014/2321; (17.11.2014) by S.I. 2014/3067; (21.11.2014) by S.I. 2014/3094; (19.1.2015) by S.I. 2015/32; (10.3.2015) by S.I. 2015/634; (6.4.2015) by S.I. 2015/30; (6.4.2020) by S.I. 2020/234; (12.4.2021) by S.I. 2021/162 art. 32(3); (10.4.2023) by S.I. 2023/316, arts. 1(3)(o), 32(3))

### Special cases

**63.**—(1) The amount prescribed for the purposes of the calculation of the amount of a claimant's employment and support allowance under section 2(1)(a) of the Act in respect of a claimant who—

- (a) satisfies either of the conditions in paragraphs (3) or (4); or
- (b) has been a patient for a continuous period of more than 52 weeks,

is the amount applicable under regulation 62(1) and the amount of nil under regulation 62(2).

(2) The amount prescribed for those purposes in respect of a claimant who is a person in hardship, is the amount to which the claimant is entitled—

- (a) under regulation 62(1) reduced by 20%; and
- (b) under regulation 62(2).

(3) The first condition mentioned in paragraph (1)(a) is that—

- (a) the claimant is being detained under section 45A or 47 of the Mental Health Act 1983 (power of higher courts to direct hospital admission; removal to hospital of persons serving sentences of imprisonment etc) <sup>M1</sup>; and
- (b) in any case where there is in relation to the claimant a release date within the meaning of section 50(3) of that Act <sup>M2</sup>, the claimant is being detained on or before the day which the Secretary of State certifies to be that release date.

(4) The second condition mentioned in paragraph (1)(a) is that the claimant is being detained under—

- (a) section 59A of the Criminal Procedure (Scotland) Act 1995 (hospital direction) <sup>M3</sup>; or
- (b) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment of mental disorder) <sup>M4</sup>.

(5) In this regulation—

“patient” means a person (other than a prisoner) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005 <sup>M5</sup>;

“prisoner” means a person who—

- (a) is detained in custody pending trial or sentence on conviction or under a sentence imposed by a court; or
- (b) is on temporary release in accordance with the provisions of the Prison Act 1952 <sup>M6</sup> or the Prisons (Scotland) Act 1989 <sup>M7</sup>,

other than a person who is detained in hospital under the provisions of the Mental Health Act 1983 or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995 <sup>M8</sup>.

(6) For the purposes of this regulation—

- (a) except where sub-paragraph (b) applies, a person is a “person in hardship” if they satisfy regulation 94; and
- (b) where a person satisfies regulation 94 for more than six weeks, they are a “person in hardship” only for the first six weeks.

#### Marginal Citations

- M1** 1983 c.20. Section 45A was inserted by section 46 of the [Crime \(Sentences\) Act 1997 \(c.43\)](#). Section 45A was amended by paragraph 39 of Schedule 37 to the [Criminal Justice Act 2003 \(c.44\)](#) and sections 4 and 10 of, and paragraph 9 of Schedule 1 and Schedule 11 to, the [Mental Health Act 2007 \(c.12\)](#). Section 47 was amended by section 4 of, and paragraph 10 of Schedule 1 and Schedule 11 to, the [Mental Health Act 2007](#), paragraphs 97 and 98 of Schedule 16 to the [Armed Forces Act 2006 \(c.52\)](#), [paragraph 18](#) of Schedule 10 to the [Domestic Violence, Crime and Victims Act 2004 \(c.28\)](#) and Schedule 6 to the [Crime \(Sentences\) Act 1997](#). [S.I. 1999/672](#) transferred functions under sections 45A and 47 to the National Assembly for Wales.
- M2** Section 50(3) was substituted by section 294 of the [Criminal Justice Act 2003](#).
- M3** 1995 c.46. Section 59A was inserted by section 6(1) of the [Crime and Punishment \(Scotland\) Act 1997 \(c.48\)](#) and substituted by paragraph 8(6) of Schedule 4 to the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#).
- M4** 2003 asp 13.
- M5** [S.I. 2005/3360](#).
- M6** 1952 c.52.
- M7** 1989 c.45.
- M8** 1995 c.46.

#### Permanent health insurance

**64.** For the purposes of sections 2(1)(c) and 3(3) of the Act (deductions from an employment and support allowance) “pension payment” is to include a permanent health insurance payment.

#### Financial Assistance Scheme

**65.—**(1) For the purposes of sections 2(1)(c) and 3(3) of the Act (deductions from an employment and support allowance) “pension payment” is to include a Financial Assistance Scheme payment.

(2) In this regulation “Financial Assistance Scheme payment” means a payment made under the Financial Assistance Scheme Regulations 2005 <sup>M9</sup>.

#### Marginal Citations

- M9** [S.I. 2005/1986](#).

#### Councillor's allowance

**66.** For the purposes of section 3(1)(c) of the Act—

- (a) a councillor's allowance is a payment of a prescribed description; and
- (b) the prescribed bodies carrying out public or local functions are—
  - (i) in relation to England and Wales, a London borough council, a county council, a county borough council, a district council, a parish or community council, the Common Council of the City of London or the Council of the Isles of Scilly; and
  - (ii) in relation to Scotland, a council constituted under section 2 of the [Local Government etc. \(Scotland\) Act 1994](#).

#### Deductions for pension payment and PPF payment

**67.—**(1) Where—

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- (a) a claimant is entitled to an employment and support allowance in respect of any period of a week or part of a week;
  - (b) there is—
    - (i) a pension payment;
    - (ii) a PPF periodic payment; or
    - (iii) both of the payments specified in paragraphs (i) and (ii),
 payable to that person in respect of that period (or a period which forms part of that period or includes that period or part of it); and
  - (c) the amount of the payment, or payments when taken together, exceeds—
    - (i) if the period in question is a week, £85; or
    - (ii) if that period is not a week, such proportion of £85 as falls to be calculated in accordance with regulation 79(1) or (5) (calculation of weekly amount of income),
 the amount of that allowance is to be reduced by an amount equal to 50% of the excess.
- (2) For the purposes of regulations 67 to 72 “payment” means a payment or payments, as the case may be, referred to in paragraph (1)(b).

### **Payments treated as not being payments to which section 3 applies**

**68.** The following payments are to be treated as not being payments to which section 3 of the Act applies—

- (a) any pension payment made to a claimant as a beneficiary on the death of a member of any pension scheme;
- (b) any PPF periodic payment made to a claimant as a beneficiary on the death of a person entitled to such a payment;
- (c) where a pension scheme is in deficit or has insufficient resources to meet the full pension payment, the extent of the shortfall;
- (d) any pension payment made under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 <sup>M10</sup>;
- (e) any guaranteed income payment (which means a payment made under article 15(1)(a) or 29(1)(a) of the Armed Forces and Reserved Forces (Compensation Schemes) Order 2011 <sup>M11</sup>);
- (f) any permanent health insurance payment in respect of which the employee had contributed to the premium to the extent of more than 50%.

#### **Marginal Citations**

**M10** 2003 c.1. Section 639(2) was inserted by section 19 of the [Finance Act 2005 \(c.7\)](#).

**M11** [S.I. 2011/517](#).

### **Deductions for councillor's allowance**

**69.—(1)** Where the net amount of councillor's allowance to which a claimant is entitled in respect of any week exceeds 16 multiplied by the National Minimum Wage, subject to paragraph (3), an amount equal to the excess is to be deducted from the amount of an employment and support allowance to which that claimant is entitled in respect of that week, and only the balance remaining (if any) is to be payable.

(2) In paragraph (1) “net amount”, in relation to any councillor's allowance to which a claimant is entitled, means the aggregate amount of the councillor's allowance or allowances, or remuneration to which that claimant is entitled for the week in question, reduced by the amount of any payment in respect of expenses wholly, exclusively and necessarily incurred by that claimant, in that week, in the performance of the duties of a councillor.

(3) Where the amount determined by the calculation in paragraph (1) would, but for this paragraph, include an amount of—

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

#### **Date from which payments are to be taken into account**

**70.** Where regulation 67(1) or 69(1) applies, a deduction must have effect, calculated where appropriate in accordance with regulation 79(1) or (5), from the first day of the benefit week in which the payment or councillor's allowance is paid to a claimant who is entitled to an employment and support allowance in that week.

#### **Date from which a change in the rate of the payment takes effect**

**71.** Where a payment or councillor's allowance is already being made to a claimant and the rate of that payment or that allowance changes, the deduction at the new rate must take effect, calculated where appropriate in accordance with regulation 79(1) or (5), from the first day of the benefit week in which the new rate of the payment or councillor's allowance is paid.

#### **Calculation of payment made other than weekly**

**72.—(1)** Where the period in respect of which a payment or councillor's allowance is paid is otherwise than weekly, an amount calculated or estimated in accordance with regulation 79(1) or (5) is to be regarded as the weekly amount of that payment or allowance.

(2) In determining the weekly payment, where two or more payments are payable to a claimant, each payment is to be calculated separately in accordance with regulation 79(1) or (5) before aggregating the sum of those payments for the purposes of the reduction of an employment and support allowance in accordance with regulation 67.

#### **Effect of statutory maternity pay on an employment and support allowance**

**73.—(1)** This regulation applies where—

- (a) a woman is entitled to statutory maternity pay and, on the day immediately preceding the first day in the maternity pay period, she—
  - (i) is in a period of limited capability for work; and
  - (ii) satisfies the conditions of entitlement to an employment and support allowance in accordance with section 1(2)(a) of the Act; and
- (b) on any day during the maternity pay period—
  - (i) she is in a period of limited capability for work; and
  - (ii) that day is not a day where she is treated as not having limited capability for work.

(2) Where this regulation applies, notwithstanding section 20(2) of the Act, a woman who is entitled to statutory maternity pay is to be entitled to an employment and support allowance in respect of any day that falls within the maternity pay period.

*Status: Point in time view as at 06/04/2015.*

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(3) Where by virtue of paragraph (2) a woman is entitled to an employment and support allowance for any week (including part of a week), the total amount of employment and support allowance payable to her for that week is to be reduced by an amount equivalent to any statutory maternity pay to which she is entitled in accordance with Part 12 of the Contributions and Benefits Act for the same week (or equivalent part of a week where entitlement to an employment and support allowance is for part of a week), and only the balance, if any, of the employment and support allowance is to be payable to her.

**Effect of statutory adoption pay on an employment and support allowance**

74.—(1) This regulation applies where—

- (a) a claimant is entitled to statutory adoption pay and, on the day immediately preceding the first day in the adoption pay period, she—
  - (i) is in a period of limited capability for work; and
  - (ii) satisfies the conditions of entitlement to an employment and support allowance in accordance with section 1(2)(a) of the Act; and
- (b) on any day during the adoption pay period—
  - (i) that claimant is in a period of limited capability for work; and
  - (ii) that day is not a day where that claimant is treated as not having limited capability for work.

(2) Where this regulation applies, notwithstanding section 20(4) of the Act, a claimant who is entitled to statutory adoption pay is to be entitled to an employment and support allowance in respect of any day that falls within the adoption pay period.

(3) Where by virtue of paragraph (2) a claimant is entitled to an employment and support allowance for any week (including part of a week), the total amount of employment and support allowance payable to that claimant for that week is to be reduced by an amount equivalent to any statutory adoption pay to which that claimant is entitled in accordance with Part 12ZB of the Contributions and Benefits Act<sup>M12</sup> for the same week (or equivalent part of a week where entitlement to an employment and support allowance is for part of a week), and only the balance, if any, of the employment and support allowance is to be payable to that claimant.

**Marginal Citations**

**M12** Part 12ZB was inserted by section 4 of the [Employment Act 2002 \(c.22\)](#).

**Effect of additional statutory paternity pay on an employment and support allowance**

<sup>F6</sup>75. ....

**Textual Amendments**

**F6** [Reg. 75](#) omitted (5.4.2015) by virtue of [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(3), **30(2)** (with art. 35(1))

**[<sup>F7</sup>Effect of statutory shared parental pay on an employment and support allowance**

75A.—(1) This regulation applies where—

- (a) a claimant is entitled to statutory shared parental pay and, on the day immediately preceding the first day in the shared parental pay period the claimant—
  - (i) is in a period of limited capability for work; and
  - (ii) satisfies the conditions of entitlement to an employment and support allowance in accordance with section 1(2)(a) of the Act; and
- (b) on any day during the statutory shared parental pay period—
  - (i) that claimant is in a period of limited capability for work; and
  - (ii) that day is not a day where that claimant is treated as not having limited capability for work.

(2) Where this regulation applies, notwithstanding section 20(6) of the Act, a claimant who is entitled to statutory shared parental pay is to be entitled to an employment and support allowance in respect of any day that falls within the shared parental pay period.

(3) Where by virtue of paragraph (2) a person is entitled to an employment and support allowance for any week (including part of a week), the total amount of such benefit payable to that claimant for that week is to be reduced by an amount equivalent to any statutory shared parental pay to which that claimant is entitled in accordance with Part 12ZC of the Contributions and Benefits Act for the same week (or equivalent part of a week where entitlement to an employment and support allowance is for part of a week), and only the balance, if any, of the employment and support allowance is to be payable to that claimant.

(4) In this regulation “statutory shared parental pay period” means the weeks in respect of which statutory shared parental pay is payable to a person under section 171ZY(2) of the Social Security Contributions and Benefits Act 1992.]

#### **Textual Amendments**

- F7** [Reg. 75A](#) inserted (31.12.2014) by [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(2), **30(3)**

**Status:**

Point in time view as at 06/04/2015.

**Changes to legislation:**

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2013, PART 9.