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STATUTORY RULES OF NORTHERN IRELAND

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**2008 No. 280**

The Employment and Support Allowance  
Regulations (Northern Ireland) 2008

PART 10

INCOME AND CAPITAL

CHAPTER 2

Income

**Calculation of income**

**90.**—(1) For the purposes of paragraph 6(1) of Schedule 1 to the Act (conditions of entitlement to an income-related allowance), the income of a claimant is to be calculated on a weekly basis—

- (a) by determining in accordance with this Part, other than Chapter 7, the weekly amount of the claimant's income; and
- (b) by adding to that amount the weekly income calculated under regulation 118 (calculation of tariff income from capital).

(2) For the purposes of paragraph (1) "income" includes capital treated as income under regulation 105 and income which a claimant is treated as possessing under regulations 106 to 109 (notional income).

(3) For the purposes of paragraph 10 of Schedule 2 to the Act (effect of work), the income which consists of earnings of a claimant is to be calculated on a weekly basis by determining the weekly amount of those earnings in accordance with regulations 91(2), 92 to 99 and 108(2) and (3) and Schedule 7.

(4) For the purposes of paragraph (3), "income which consists of earnings" includes income which a claimant is treated as possessing under regulation 108(2) and (3).

(5) For the purposes of pension payments, PPF periodic payments and a councillor's allowance to which section 3 of the Act applies, the income other than earnings of a claimant is to be calculated on a weekly basis by determining in accordance with regulation 94(1), (2), (5) and (6) the weekly amount of the pension payments, PPF periodic payments or a councillor's allowance paid to the claimant.

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**Commencement Information**

**II** Reg. 90 in operation at 27.10.2008, see **reg. 1(1)**

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*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Employment and Support Allowance Regulations (Northern Ireland) 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## **Calculation of earnings derived from employed earner's employment and income other than earnings**

**91.**—(1) Earnings derived from employment as an employed earner and income which does not consist of earnings are to be taken into account over a period determined in accordance with the following provisions of this regulation and at a weekly amount determined in accordance with regulation 94 (calculation of weekly amount of income).

(2) Subject to the following provisions of this regulation, the period over which a payment is to be taken into account is to be—

- (a) where the payment is monthly, a period equal to the number of weeks from the date on which the payment is treated as paid to the date immediately before the date on which the next monthly payment would have been so treated as paid whether or not the next monthly payment is actually paid;
- (b) where the payment is in respect of a period which is not monthly, a period equal to the length of the period for which payment is made;
- (c) in any other case, a period equal to such number of weeks as is equal to the number obtained (and any fraction is to be treated as a corresponding fraction of a week) by dividing—
  - (i) the net earnings, or
  - (ii) in the case of income which does not consist of earnings, the amount of that income less any amount paid by way of tax on that income which is disregarded under paragraph 1 of Schedule 8 (income other than earnings to be disregarded),

by the amount of an income-related allowance which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from that payment under Schedule 7 (earnings to be disregarded) or, as the case may be, any paragraph of Schedule 8 other than paragraph 1 of that Schedule, as is appropriate in the claimant's case,

and that period is to begin on the date on which the payment is treated as paid under regulation 93 (date on which income is treated as paid).

(3) Where grant income, as defined in Chapter 10, has been paid to a claimant who ceases to be a full-time student before the end of the period in respect of which that income is payable and, as a consequence, the whole or part of that income falls to be repaid by that claimant, that income is to be taken into account over the period beginning on the date on which that income is treated as paid under regulation 93 and ending—

- (a) on the date on which repayment is made in full;
- (b) where the grant is paid in instalments, on the day before the next instalment would have been paid had the claimant remained a full-time student; or
- (c) on the last date of the academic term or vacation during which that claimant ceased to be a full-time student,

whichever is the earlier.

(4) Where, but for this paragraph—

- (a) earnings not of the same kind are derived from the same source; and
- (b) the periods in respect of which those earnings would fall to be taken into account overlap, wholly or partly,

those earnings are to be taken into account over a period equal to the aggregate length of those periods and that period is to begin with the earliest date on which any part of those earnings would otherwise be treated as paid under regulation 93.

(5) In a case to which paragraph (4) applies, earnings under regulation 95 (earnings of employed earners) are to be taken into account in the following order of priority—

- (a) earnings normally derived from the employment;
- (b) any payment to which paragraph (1)(b) or (c) of that regulation applies;
- (c) any payment to which paragraph (1)(j) of that regulation applies;
- (d) any payment to which paragraph (1)(d) of that regulation applies.

(6) Where earnings to which regulation 95(1)(b) to (d) applies are paid in respect of part of a day, those earnings are to be taken into account over a period equal to a day.

(7) Any earnings to which regulation 95(1)(j) applies which are paid in respect of, or on the termination of, part-time employment, are to be taken into account over a period equal to one week.

(8) In this regulation “part-time employment” means, if the claimant were entitled to income support, employment in which the claimant is not to be treated as engaged in remunerative work under regulation 5 or 6(1) and (4) of the Income Support Regulations<sup>(1)</sup> (persons treated, or not treated, as engaged in remunerative work).

(9) For the purposes of this regulation the claimant’s earnings and income which does not consist of earnings are to be calculated in accordance with Chapters 3 and 6 respectively.

#### Commencement Information

**I2** Reg. 91 in operation at 27.10.2008, see **reg. 1(1)**

### Calculation of earnings of self-employed earners

**92.**—(1) Except where paragraph (2) applies, where a claimant’s income consists of earnings from employment as a self-employed earner the weekly amount of the claimant’s earnings is to be determined by reference to the claimant’s average weekly earnings from that employment—

- (a) over a period of one year; or
- (b) where the claimant has recently become engaged in that employment or there has been a change which is likely to affect the normal pattern of business, over such other period as may, in any particular case, enable the weekly amount of the claimant’s earnings to be determined more accurately.

(2) Where the claimant’s earnings consist of—

- (a) royalties;
- (b) sums paid periodically for or in respect of any copyright; or
- (c) payments in respect of any book registered under the Public Lending Right Scheme 1982<sup>(2)</sup>,

those earnings are to be taken into account over a period equal to such number of weeks as is equal to the number obtained (and any fraction is to be treated as a corresponding fraction of a week) by dividing the earnings by the amount of an income-related allowance which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from the payment under Schedule 7 (sums to be disregarded in the calculation of earnings) as is appropriate in the claimant’s case.

(1) Relevant amending Rules are S.R. 1988 Nos. 146, 318 and 431, S.R. 1989 No. 365, S.R. 1990 No. 131, S.R. 1991 No. 338, S.R. 1992 Nos. 147 and 403, S.R. 1993 No. 373, S.R. 1994 No. 327, S.R. 1995 No. 86, S.R. 1996 No. 405, S.R. 1999 Nos. 342, 381 and 472 (C. 36), S.R. 2000 No. 74, S.R. 2001 No. 78, S.R. 2002 No. 363, S.R. 2004 No. 163 and S.R. 2005 No. 458

(2) See Appendix 2 to S.I. 1990/2360

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(3) For the purposes of this regulation the claimant's earnings are to be calculated in accordance with Chapter 4.

#### Commencement Information

**I3** Reg. 92 in operation at 27.10.2008, see **reg. 1(1)**

#### Date on which income is treated as paid

**93.**—(1) Except where paragraph (2) or (3) applies, a payment of income to which regulation 91 (calculation of earnings derived from employed earner's employment and income other than earnings) applies is to be treated as paid—

- (a) in the case of a payment which is due to be paid before the first benefit week pursuant to the claim, on the date on which it is due to be paid;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid or the first succeeding benefit week in which it is practicable to take it into account.

(2) Employment and support allowance, income support, jobseeker's allowance, maternity allowance, short-term or long-term incapacity benefit or severe disablement allowance is to be treated as paid on the day of the benefit week in respect of which it is payable.

(3) Working tax credit or child tax credit is to be treated as paid—

- (a) where the award of that tax credit begins on the first day of a benefit week, on that day;
- (b) on the first day of the benefit week that follows the date on which the award begins; or
- (c) on the first day of the first benefit week that follows the date on which an award of an income-related allowance begins, if later,

until the last day of the last benefit week that coincides with or immediately follows the last day for which the award of that tax credit is made.

#### Commencement Information

**I4** Reg. 93 in operation at 27.10.2008, see **reg. 1(1)**

#### Calculation of weekly amount of income

**94.**—(1) For the purposes of regulation 91 (calculation of earnings derived from employed earner's employment and income other than earnings) and Chapter 2 of Part 9 (deductions from contributory allowance), subject to paragraphs (2) to (8), where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount is to be the amount of that payment;
- (b) exceeds a week, the weekly amount is to be determined—
  - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52,
  - (ii) in a case where that period is 3 months, by multiplying the amount of the payment by 4 and dividing the product by 52,
  - (iii) in a case where that period is a year by dividing the amount of the payment by 52,
  - (iv) in any other case by multiplying the amount of the payment by 7 and dividing the product by the number equal to the number of days in the period in respect of which it is made.

(2) Where a payment for a period not exceeding a week is treated under regulation 93(1)(a) (date on which income is treated as paid) as paid before the first benefit week and a part is to be taken into account for some days only in that week (“relevant days”), the amount to be taken into account for the relevant days is to be calculated by multiplying the amount of the payment by the number equal to the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.

(3) Where a payment is in respect of a period equal to or in excess of a week and a part thereof is to be taken into account for some days only in a benefit week (“relevant days”), the amount to be taken into account for the relevant days is, except where paragraph (4) applies, to be calculated by multiplying the amount of the payment by the number equal to the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.

(4) In the case of a payment of—

- (a) maternity allowance, short-term or long-term incapacity benefit or severe disablement allowance, the amount to be taken into account for the relevant days is to be the amount of benefit payable in respect of those days;
- (b) an employment and support allowance, income support or a jobseeker’s allowance the amount to be taken into account for the relevant days is to be calculated by multiplying the weekly amount of the benefit by the number of relevant days and dividing the product by 7.

(5) Except 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, where a payment of income from a particular source is or has been paid regularly and that payment falls to be taken into account in the same benefit week as a payment of the same kind and from the same source, the amount of that income to be taken into account in any one benefit week is not to exceed the weekly amount determined under paragraph (1)(a) or (b) of the payment which under regulation 93(1)(b) is treated as paid first.

(6) Where the amount of the claimant’s income fluctuates and has changed more than once, or a claimant’s regular pattern of work is such that the claimant does not work every week, the foregoing paragraphs may be modified so that the weekly amount of the claimant’s income is determined by reference to the claimant’s average weekly income—

- (a) if there is a recognisable cycle of work, over the period of one complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences);
- (b) in any other case, over a period of 5 weeks or such other period as may, in the particular case, enable the claimant’s average weekly income to be determined more accurately.

(7) Where income is taken into account under paragraph (3) of regulation 91 over the period specified in that paragraph, the amount of that income to be taken into account in respect of any week in that period is to be an amount equal to the amount of that income which would have been taken into account under regulation 132 (calculation of grant income) had the person to whom that income was paid not ceased to be a full-time student.

(8) Where any payment of earnings is taken into account under paragraph (7) of regulation 91 (calculation of earnings derived from employed earner’s employment and income other than earnings), over the period specified in that paragraph, the amount to be taken into account is to be equal to the amount of the payment.

**Commencement Information**

**I5** Reg. 94 in operation at 27.10.2008, see **reg. 1(1)**

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