
STATUTORY INSTRUMENTS

2008 No. 794

SOCIAL SECURITY

The Employment and Support Allowance Regulations 2008

Made - - - - - *25th March 2008*

Laid before Parliament *27th March 2008*

Coming into force in accordance with regulation 1

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 2(1) (a) and (c), (4)(a) and (c), 3(1)(c), (2)(b) and (d) and (3) ^{F1}, 4(2)(a), (3), (6)(a) and (c), 5(2) and (3), 8(1) to (3), (4)(a) and (b), (5) and (6), 9(1) to (3) and (4)(a) and (b), 11(1), (2)(a) to (g), (3) to (5), (6)(a) and (7)(c), 12(1), (2)(a) to (h), (3) to (7), 14(1) and (2)(a) and (b), 16(2)(a) and (4), 17, 18(1), (2) and (4), 20(2) to (7), 22 ^{F2}, 23(1) and (3), 24(1) ^{F3}, (2)(b) and (3), 25(1) to (5) and 26(2) of, and paragraphs 1(4), 3(2), 4(1)(a) and (c), (3) and (4) and 6(1)(b), (2) to (5) ^{F4}, (7) and (8) of Schedule 1 to, and paragraphs 1 to 7, 8(1), 9, 10, 12 and 14 of Schedule 2 to, the Welfare Reform Act 2007 ^{F5}, section 5(1) of the Social Security Administration Act 1992 ^{F6} and section 21(1)(a) of the Social Security Act 1998 ^{F7} makes the following Regulations, which are made by virtue of, or consequential on, the provisions of the Welfare Reform Act 2007 and which are made before the end of a period of 6 months beginning with the coming into force of those provisions:

Textual Amendments

- F1** Section 3(3) is cited for the power to prescribe a payment under paragraph (b) of the definition of “pension payment”.
- F2** Section 22 is cited insofar as it relates to paragraphs 1 to 3, 6, 7, 8(1), 9 and 10 of Schedule 2.
- F3** Section 24(1) is cited for the definition of “employment” and “employed”, “period of limited capability for work”, “prescribed”, “regulations” and “week”.
- F4** Paragraph 6(5) of Schedule 1 is cited for the definition of “couple”, “education” and “remunerative work”.
- F5** 2007 c. 5.
- F6** 1992 c. 5.
- F7** 1998 c. 14.

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.
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)

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance Regulations 2008 and shall come into force—

- (a) subject to paragraphs (b) and (c), on 27th October 2008;
- (b) in relation to regulation 128(6)(a) and paragraph 15(2) of Schedule 6, so far as it applies to a maintenance calculation, in relation to a particular case, on the day on which paragraph 11(20)(d) of Schedule 3 to the 2000 Act comes into force for the purposes of that type of case;
- (c) in relation to regulation 82 and paragraph 4 of Schedule 8, so far as it applies to additional statutory paternity pay, on the day on which regulations made under or by virtue of sections 171ZEA to 171ZEE of the Contributions and Benefits Act ^{F8} come into force.

Textual Amendments

F8 1992 c. 4. Sections 171ZEA to 171ZEE were inserted by sections 6 to 10 of the [Work and Families Act 2006](#) (c. 18).

Interpretation

2.—(1) In these Regulations—

“Abbeyfield Home” means an establishment run by the Abbeyfield Society including any body corporate or incorporate which is affiliated to that Society;

“the Act” means the Welfare Reform Act 2007 ^{F9};

“action plan” has the meaning given by regulation 58;

“adoption leave” means a period of absence from work on ordinary or additional adoption leave under section 75A or 75B of the Employment Rights Act 1996 ^{F10};

“aircraft worker” means a person who is, or has been, employed under a contract of service either as a pilot, commander, navigator or other member of the crew of any aircraft, or in any other capacity on board any aircraft where—

- (a) the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mail carried on that aircraft; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the aircraft is in flight,

but does not include a person who is in employment as a member of Her Majesty's forces;

“Armed Forces and Reserve Forces Compensation Scheme” means the scheme established under section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 ^{F11};

“attendance allowance” means—

- (a) an attendance allowance under section 64 of the Contributions and Benefits Act;
- (b) an increase of disablement pension under section 104 or 105 of that Act;
- (c) a payment under regulations made under section 111 of, and paragraph 7(2)(b) of Schedule 8 to, that Act;

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- (d) an increase in allowance which is payable in respect of constant attendance under section 111 of, and paragraph 4 of Schedule 8 to, that Act;
- (e) a payment by virtue of article 14, 15, 16, 43 or 44 of the Personal Injuries (Civilians) Scheme 1983^{F12} or any analogous payment;
- (f) any payment based on the need for attendance which is paid as an addition to a war disablement pension;

[^{F13}“basic rate” has the same meaning as in the Income Tax Act 2007 (see section 989 of that Act);]

“benefit Acts” means the Contributions and Benefits Act, Jobseekers Act and Part 1 of the Act;

“benefit week” means a period of 7 days ending on such day as the Secretary of State may direct but for the purposes of calculating any payment of income “benefit week” means the period of 7 days ending on the day before the first day of the first benefit week following the date of claim or the last day on which an employment and support allowance is paid if it is in payment for less than a week;

“board and lodging” means—

- (a) accommodation provided to a person or, if the person is a member of a family, to that person or any other member of that person's family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of that person's family) and are consumed in that accommodation or associated premises; or
- (b) accommodation provided to a person in a hotel, guest house, lodging house or some similar establishment,

except accommodation provided by a close relative of the person or any other member of the person's family, or other than on a commercial basis;

“care home” in England and Wales has the meaning assigned to it by section 3 of the Care Standards Act 2000^{F14}, and in Scotland means a care home service within the meaning assigned to it by section 2(3) of the Regulation of Care (Scotland) Act 2001^{F15};

“carer's allowance” means an allowance under section 70 of the Contributions and Benefits Act;

“child” means a person under the age of 16;

“child tax credit” means a child tax credit under section 8 of the Tax Credits Act;

“close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or if any of the preceding persons is one member of a couple, the other member of that couple;

“college of further education” means a college of further education within the meaning of Part 1 of the Further and Higher Education (Scotland) Act 1992^{F16};

“concessionary payment” means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged^{F17} ... to a Departmental Expenditure Vote to which payments of benefit or tax credits under the benefit Acts or the Tax Credits Act are charged;

“confinement” has the meaning given to it by section 171(1) of the Contributions and Benefits Act^{F18};

“co-ownership scheme” means a scheme under which a dwelling is let by a housing association and the tenant, or the tenant's personal representative, will, under the terms of the tenancy agreement or of the agreement under which the tenant became a member of the association,

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be entitled, on that tenant ceasing to be a member and subject to any condition stated in either agreement, to a sum calculated by reference directly or indirectly to the value of the dwelling and “co-ownership agreement” will be construed accordingly;

“councillor” means—

- (a) in relation to England and Wales, a member of a London borough council, a county 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
- (b) in relation to Scotland, a member of a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 ^{F19};

“councillor's allowance” means—

- (a) in England or Wales, an allowance under or by virtue of—
 - (i) section 173 or 177 of the Local Government Act 1972 ^{F20}; or
 - (ii) a scheme made by virtue of section 18 of the Local Government and Housing Act 1989 ^{F21},

other than such an allowance as is mentioned in section 173(4) of the Local Government Act 1972; or

- (b) in Scotland, an allowance or remuneration under or by virtue of—
 - (i) a scheme made by virtue of section 18 of the Local Government and Housing Act 1989; or
 - (ii) sections 11 and 16 of the Local Governance (Scotland) Act 2004 ^{F22};

“couple” means —

- (a) a man and woman who are married to each other and are members of the same household;
- (b) a man and woman who are not married to each other but are living together as husband and wife;
- (c) two people of the same sex who are civil partners of each other and are members of the same household; or
- (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners,

and for the purposes of paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex;

“Crown tenant” means a person who occupies a dwelling under a tenancy or licence where the interest of the landlord belongs to Her Majesty in right of the Crown or to a government department or is held in trust for Her Majesty for the purposes of a government department, except (in the case of an interest belonging to Her Majesty in right of the Crown) where the interest is under the management of the Crown Estate Commissioners;

“dependent child” means any child or qualifying young person who is treated as the responsibility of the claimant or the claimant's partner, where that child or young person is a member of the claimant's household;

“descriptor” means, in relation to an activity specified in column (1) of Schedule 2, a descriptor in column (2) of that Schedule which describes a person's ability to perform that activity;

“disability living allowance” means a disability living allowance under section 71 of the Contributions and Benefits Act;

“doctor” means a registered medical practitioner, or in the case of a medical practitioner practising outside the United Kingdom of whom the Secretary of State may request a medical

opinion, a person registered or recognised as such in the country in which the person undertakes medical practice;

“dwelling” means any residential accommodation, whether or not consisting of the whole or part of a building and whether or not comprising separate and self-contained premises;

“dwelling occupied as the home” means the dwelling together with any garage, garden and outbuildings, normally occupied by the claimant as the claimant's home including any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated;

“Eileen Trust” means the charitable trust of that name established on 29th March 1993 out of funds provided by the Secretary of State for the benefit of persons eligible for payment in accordance with its provisions;

“employed earner” is to be construed in accordance with section 2(1)(a) of the Contributions and Benefits Act;

“employment” includes any trade, business, profession, office or vocation and “employed” has a corresponding meaning;

“employment zone” means an area within Great Britain designated for the purposes of section 60 of the Welfare Reform and Pensions Act 1999 ^{F23} and an “employment zone programme” means a programme established for such an area or areas designed to assist claimants for a jobseeker's allowance to obtain sustainable employment;

“enactment” includes an enactment comprised in, or in an instrument made under—

- (a) an Act; or
- (b) an Act of the Scottish Parliament;

“failure determination” has the meaning given by regulation 63(1);

“family” means—

- (a) a couple;
- (b) a couple and a member of the same household for whom one of them is or both are responsible and who is a child or a young person;
- (c) a person who is not a member of a couple and a member of the same household for whom that person is responsible and who is a child or a young person;

“first contribution condition” means the condition set out in paragraph 1(1) of Schedule 1 to the Act;

“full-time student” has the meaning prescribed in regulation 131 (students: interpretation);

“the Fund” means monies made available from time to time by the Secretary of State for the benefit of persons eligible for payment in accordance with the provisions of a scheme established by the Secretary of State on 24th April 1992 or, in Scotland, on 10th April 1992;

“guaranteed income payment” means a payment made under article 14(1)(b) or 21(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 ^{F24};

“health care professional” means—

- (a) a registered medical practitioner;
- (b) a registered nurse; or
- (c) an occupational therapist or physiotherapist registered with a regulatory body established by an Order in Council under section 60 of the Health Act 1999 ^{F25};

“Health Service Act” means the National Health Service Act 2006 ^{F26};

“Health Service (Wales) Act” means the National Health Service (Wales) Act 2006 ^{F27};

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“housing association” has the meaning given to it by section 1(1) of the Housing Associations Act 1985 ^{F28};

“housing benefit expenditure” means expenditure in respect of which housing benefit is payable as specified in regulation 12(1) of the Housing Benefit Regulations 2006 ^{F29} but does not include any such expenditure in respect of which an additional amount is applicable under regulation 67(1)(c) or 68(1)(d)(housing costs);

“Immigration and Asylum Act” means the Immigration and Asylum Act 1999 ^{F30};

“income-related benefits” means the benefits listed in section 123(1) of the Contributions and Benefits Act;

“Income Support Regulations” means the Income Support (General) Regulations 1987 ^{F31};

“independent hospital” in England and Wales has the meaning assigned to it by section 2 of the Care Standards Act 2000, and in Scotland means an independent healthcare service as defined in section 2(5)(a) and (b) of the Regulation of Care (Scotland) Act 2001 ^{F32};

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“the Independent Living Fund (2006)” means the Trust of that name established by a deed dated 10th April 2006 and made between the Secretary of State for Work and Pensions of the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin of the other part;

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...

“Jobseekers Act” means the Jobseekers Act 1995;

“Jobseeker's Allowance Regulations” means the Jobseeker's Allowance Regulations 1996 ^{F34};

“last day of the course” means the last day of the final academic term of the course in which the student is enrolled;

“limited capability for work assessment” means the assessment of whether a person has limited capability for work as set out in regulation 19(2) and in Schedule 2;

“London Bombings Relief Charitable Fund” means the company limited by guarantee (number 5505072) and registered charity of that name established on 11th July 2005 for the purpose of (amongst other things) relieving sickness, disability or financial need of victims (including families or dependants of victims) of the terrorist attacks carried out in London on 7th July 2005;

“lone parent” means a person who has no partner and who is responsible for, and a member of the same household as, a child or young person;

“long tenancy” means a tenancy granted for a term of years certain exceeding twenty one years, whether or not the tenancy is, or may become, terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture (or, in Scotland, irritancy) or otherwise and includes a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal unless it is a lease by sub-demise from one which is not a long tenancy;

“Macfarlane (Special Payments) Trust” means the trust of that name, established on 29th January 1990 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia;

“Macfarlane (Special Payments) (No. 2) Trust” means the trust of that name, established on 3rd May 1991 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia and other beneficiaries;

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“Macfarlane Trust” means the charitable trust, established partly out of funds provided by the Secretary of State to the Haemophilia Society, for the relief of poverty or distress among those suffering from haemophilia;

“main phase employment and support allowance” means an employment and support allowance where the calculation of the amount payable in respect of the claimant includes a component under section 2(1)(b) or 4(2)(b) of the Act;

“mariner” means a person who is or has been in employment under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—

- (a) the employment in that other capacity is for the purposes of that ship or vessel or her crew or any passengers or cargo or mails carried by the ship or vessel; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on her voyage;

but does not include a person who is in employment as a member of Her Majesty's forces;

“maternity allowance period” has the meaning it has in section 35(2) of the Contributions and Benefits Act;

“medical evidence” means—

- (a) evidence from a health care professional approved by the Secretary of State; and
- (b) evidence (if any) from any health care professional or a hospital or similar institution, or such part of such evidence as constitutes the most reliable evidence available in the circumstances;

“Medical Evidence Regulations” means the Social Security (Medical Evidence) Regulations 1976^{F35};

“medical examination centre” means premises which are equipped and suitable for conducting a medical examination;

“medical treatment” means medical, surgical or rehabilitative treatment (including any course or diet or other regimen), and references to a person receiving or submitting to medical treatment are to be construed accordingly;

“member of Her Majesty's forces” means a person, other than one mentioned in Part 2 of Schedule 1 who is—

- (a) over 16 years of age; and
- (b) a member of an establishment or organisation specified in Part 1 of that Schedule who gives full pay service,

but does not include any such person while absent on desertion;

“mobility supplement” means any supplement under article 20 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006^{F36} including such a supplement by virtue of any other scheme or order or under article 25A of the Personal Injuries (Civilians) Scheme 1983^{F37};

“net earnings” means such earnings as are calculated in accordance with regulation 96;

“net profit” means such profit as is calculated in accordance with regulation 98;

“New Deal options” means the employment programmes specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations and the training scheme specified in regulation 75(1)(b)(ii) of those Regulations;

“non-dependant” has the meaning prescribed in regulation 71;

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“non-dependant deduction” means a deduction that is to be made under regulation 67(1)(c) (prescribed amounts) and paragraph 19 of Schedule 6 (housing costs);

“occupational pension” means any pension or other periodical payment under an occupational pension scheme but does not include any discretionary payment out of a fund established for relieving hardship in particular cases;

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993^{F38};

“ordinary clothing or footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities;

“partner” means where a claimant—

- (a) is a member of a couple, the other member of that couple;
- (b) is a husband or wife by virtue of a polygamous marriage, the other party to the marriage or any spouse additional to either party to the marriage;

“passenger” means any person carried on a ship except—

- (a) a person employed or engaged in any capacity on board the ship on the business of the ship; or
- (b) a person on board the ship either in pursuance of the obligation to carry shipwrecked, distressed or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled;

“payment” includes a part of a payment;

“pay period” means the period in respect of which a claimant is, or expects to be, normally paid by the claimant's employer, being a week, a fortnight, four weeks, a month or other shorter or longer period as the case may be;

“pension fund holder” means in relation to a personal pension scheme or an occupational pension scheme, the trustees, managers or scheme administrators, as the case may be, of the scheme concerned;

“pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995^{F39};

“period of limited capability for work” means a period throughout which a person has, or is treated as having, limited capability for work;

“period of study” means the period beginning with the date on which a person starts attending or undertaking a course of study and ending with the last day of the course or such earlier date (if any) as that person finally abandons it or is dismissed from it;

“personal pension scheme” means—

- (a) a personal pension scheme as defined by section 1 of the Pension Schemes Act 1993^{F40};
- (b) an annuity contract or trust scheme approved under section 620 or 621 of the Income and Corporation Taxes Act 1988^{F41} or a substituted contract within the meaning of section 622(3) of that Act which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(f) of Schedule 36 to the Finance Act 2004^{F42};
- (c) a personal pension scheme approved under Chapter 4 of Part 14 of the Income and Corporation Taxes Act 1988 which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(g) of Schedule 36 to the Finance Act 2004;

“policy of life insurance” means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on

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human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;

“polygamous marriage” means any marriage entered into under a law which permits polygamy where—

- (a) either party has for the time being any spouse additional to the other party; and
- (b) the claimant, the other party to the marriage and the additional spouse are members of the same household;

“qualifying person” means a person in respect of whom payment has been made from the Fund, the Eileen Trust, the Skipton Fund or the London Bombings Relief Charitable Fund;

“qualifying remunerative work” has the meaning given by Part 1 of the Tax Credits Act;

“qualifying young person” has the meaning given by section 142 of the Contributions and Benefits Act (child and qualifying young person);

“relative” means close relative, grand-parent, grand-child, uncle, aunt, nephew or niece;

“relevant disease” means—

- (a) in England and Wales, any disease, food poisoning, infection, infectious disease or notifiable disease—

- (i) to which section 20(1) of the Public Health (Control of Disease) Act 1984 ^{F43} (stopping of work to prevent spread of disease) applies;

- (ii) to which—

- (aa) regulation 3 (public health enactments applied to certain diseases) of, and Schedule 1 to,

- (bb) regulation 9(1) (provisions for preventing the spread of typhus and relapsing fever) of, and Schedule 3 to, or

- (cc) regulation 9(2) (provisions for preventing the spread of food poisoning and food borne infections) of, and Schedule 4 to,

the Public Health (Infectious Diseases) Regulations 1988 ^{F44} apply;

- (iii) to which regulation 9 (powers in respect of persons leaving aircraft) of the Public Health (Aircraft) Regulations 1979 ^{F45} applies; or

- (iv) to which regulation 10 (powers in respect of certain persons on ships) of the Public Health (Ships) Regulations 1979 ^{F46} applies; and

- (b) in Scotland, any food poisoning or infectious disease—

- (i) to which section 71(1) of the Health Services and Public Health Act 1968 ^{F47} (compensation for stopping employment to prevent spread of disease in Scotland) applies; or

- (ii) to which—

- (aa) regulations 8 and 9 (examination, etc. of persons on aircraft and powers in respect of persons leaving aircraft) of the Public Health (Aircraft) (Scotland) Regulations 1971 ^{F48}; or

- (bb) regulations 9 and 10 (examination, etc. of persons on ships and powers in respect of certain persons on ships) of the Public Health (Ships) (Scotland) Regulations 1971 ^{F49},

apply;

“relevant enactment” means the Army Act 1955 ^{F50}, the Air Force Act 1955 ^{F51}, the Naval

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Discipline Act 1957^{F52}, the Matrimonial Proceedings Children Act 1958^{F53}, the Social Work (Scotland) Act 1968^{F54}, the Family Law Reform Act 1969^{F55}, the Children and Young Persons Act 1969^{F56}, the Matrimonial Causes Act 1973^{F57}, the Domestic Proceedings and Magistrates' Courts Act 1978^{F58}, the Adoption (Scotland) Act 1978^{F59}, the Family Law Act 1986^{F60}, the Children Act 1989^{F61} and the Adoption and Children Act 2002^{F62};

“remunerative work” has the meaning prescribed in regulations 41 and 42 except in relation to Schedules 6 and 7;

“second contribution condition” means the condition set out in paragraph 2(1) of Schedule 1 to the Act;

“self-employed earner” is to be construed in accordance with section 2(1)(b) of the Contributions and Benefits Act;

“self-employment route” means assistance in pursuing self-employed earner's employment whilst participating in—

- (a) an employment zone programme; or
- (b) a programme provided or other arrangements made under section 2 of the Employment and Training Act 1973^{F63} (functions of the Secretary of State) or section 2 of the Enterprise and New Towns (Scotland) Act 1990^{F64} (functions in relation to training for employment etc.);

“single claimant” means a claimant who neither has a partner nor is a lone parent;

“Skipton Fund” means the ex-gratia payment scheme administered by the Skipton Fund Limited, incorporated on 25th March 2004, for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with the scheme's provisions;

“sports award” means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc. Act 1993^{F65} out of sums allocated to it for distribution under that section;

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...

[^{F66}“state pension credit” means a state pension credit under the State Pension Credit Act 2002;]

“subsistence allowance” means an allowance which an employment zone contractor has agreed to pay to a person who is participating in an employment zone programme;

“the Tax Credits Act” means the Tax Credits Act 2002^{F67};

“terminally ill”, in relation to a claimant, means the claimant is suffering from a progressive disease and death in consequence of that disease can reasonably be expected within 6 months;

“training” means—

- (a) training in pursuance of arrangements made under section 2(1) of the Employment and Training Act 1973 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990; or
- (b) any training received on a course which a person attends for 16 hours or more a week, the primary purpose of which is the teaching of occupational or vocational skills;

“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State for Work and Pensions, Scottish Enterprise or Highlands and Islands Enterprise, the Learning and Skills Council for England or the Welsh Ministers;
- (b) to a person for that person's maintenance or in respect of a member of that person's family; and

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(c) for the period, or part of the period, during which the person is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to that person or so provided or approved by or on behalf of the Secretary of State for Work and Pensions, Scottish Enterprise or Highlands and Islands Enterprise, or the Welsh Ministers,

but does not include an allowance paid by any Government department to or in respect of a person by reason of the fact that that person is following a course of full-time education, other than under 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 is training as a teacher;

“voluntary organisation” means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit;

“war disablement pension” means any [^{F68}retired pay or pension or allowance payable] in respect of disablement under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003^{F69};

“war widow's pension” [^{F70}means any pension or allowance] payable to a woman as a widow under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 in respect of the death or disablement of any person;

“war widower's pension” [^{F70}means any pension or allowance] payable to a man as a widower or to a surviving civil partner under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 in respect of the death or disablement of any person;

“water charges” means—

(a) as respects England and Wales, any water and sewerage charges under Chapter 1 of Part 5 of the Water Industry Act 1991^{F71};

(b) as respects Scotland, any water and sewerage charges under Part 2 of the Local Government etc. (Scotland) Act 1994^{F72},

in so far as such charges are in respect of the dwelling which a person occupies as the home;

“week” means a period of 7 days except in relation to regulation 26;

“work or training beneficiary” has the meaning prescribed in regulation 148;

“working day” means any day except for a Saturday, Sunday, Christmas Day, Good Friday or bank holiday under the Banking and Financial Dealings Act 1971^{F73} in England, Wales or Scotland;

“working tax credit” means a working tax credit under section 10 of the Tax Credits Act;

“young person” is a person who, except where section 6 of the Children (Leaving Care) Act 2000^{F74} (exclusion from benefits) applies, falls within the definition of qualifying young person in section 142 of the Contributions and Benefits Act (child and qualifying young person).

(2) In ^{F75}... paragraph 15(2) of Schedule 6 (housing costs – linking rule)—

“child support maintenance” means such periodical payments as are referred to in section 3(6) of the Child Support Act 1991^{F76} and includes any payments made by the Secretary of State in lieu of such payments;

“the 1991 Act” means the Child Support Act 1991;

“the 2000 Act” means the Child Support, Pensions and Social Security Act 2000^{F77};

“maintenance assessment” has the same meaning as in the 1991 Act by virtue of section 54 of that Act as it has effect apart from the 2000 Act;

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“maintenance calculation” has the same meaning as in the 1991 Act by virtue of section 54 of that Act as amended by the 2000 Act.

(3) Any reference to the claimant's family is to be construed as if it included in relation to a polygamous marriage a reference to any partner and any child or young person who is a member of the claimant's household.

(4) For the purposes of paragraph 5 of Schedule 1 to the Act, “week” means a period of 7 days.

Textual Amendments

- F9** 2007 c. 5.
- F10** 1996 c. 18. Sections 75A and 75B were inserted by section 3 of the [Employment Act 2002 \(c. 22\)](#).
- F11** 2004 c. 32.
- F12** S.I. 1983/686. Article 14 was substituted by S.I. 2001/420, [article 15](#) was amended by S.I. 2001/420 and article 16 was amended by S.I. 1984/1675 and S.I. 2001/420.
- F13** Words in reg. 2(1) inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), [3\(a\)](#)
- F14** 2000 c. 14.
- F15** 2001 asp. 8.
- F16** 1992 c. 37.
- F17** Words in [reg. 2\(1\)](#) omitted (5.1.2009) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), [11\(2\)\(a\)](#)
- F18** 1992 c. 4. Section 171(1) was amended by the [Still-Birth \(Definition\) Act 1992 \(c. 29\)](#), [sections 2\(1\)](#) and 4(2).
- F19** 1994 c. 39.
- F20** 1972 c. 70. Section 173 was amended by the [Local Government, Planning and Land Act 1980 \(c. 65\)](#), [section 24\(1\)](#) and by the [Local Government and Housing Act 1989\(c. 42\)](#), section 194 and Schedule 11, paragraph 26 and S.I. 1977/1710, [article 3\(c\)](#). Section 177(1A) was inserted by the [School Standards and Framework Act 1998 \(c. 31\)](#), [section 140\(1\)](#) and Schedule 30, paragraph 3(3) and amended by the [Education and Inspections Act 2006 \(c. 40\)](#), [sections 30](#) and 184 and Schedule 3, paragraph 1 and Schedule 18, Part 3. Section 177(2) was substituted by, and section 177(4) was amended by the [Local Government and Housing Act 1989 \(c. 42\)](#), [section 194](#) and Schedule 11, paragraph 28(3) and (4), respectively.
- F21** 1989 c. 42. Section 18(1) was amended by the [Local Government Act 2000 \(c. 22\)](#) (“the 2000 Act”), section 99(3) and (4). Section 18(1A) was inserted by the 2000 Act, section 99(3) and (4). Section 18(2A) was inserted by the 2000 Act, section 99(3) and (5). Section 18(3) was amended by the 2000 Act, section 99(3) and (6). Section 18(3A) to (3G) were inserted by the 2000 Act, section 99(3) and (7). Section 18(4) was amended by the 2000 Act, section 99(3) and (8). Section 18(5) was amended by the [Police and Magistrates' Courts Act 1994 \(c. 29\)](#), [section 43](#) and Schedule 4, Part 1, paragraph 37 and the [Education Act 1996 \(c. 56\)](#), [section 582\(1\)](#) and Schedule 37, paragraph 97 and the 2000 Act, section 99(3) and (9).
- F22** 2004 asp. 9.
- F23** 1999 c. 30.
- F24** S.I. 2005/439.
- F25** 1999 c. 8. Section 60(1) was amended by the [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#), [section 26\(9\)](#). Section 60(2) was amended by S.I. 2002/253, [article 54\(3\)](#) and Schedule 5, paragraph 16(a) and S.I. 2002/254, [article 48\(3\)](#) and Schedule 4, paragraph 8(a).
- F26** 2006 c. 41.
- F27** 2006 c. 42.
- F28** 1985 c. 69.
- F29** S.I. 2006/213.
- F30** 1999 c. 33.

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- F31** S.I. 1987/1967.
- F32** 2001 asp. 8. Section 2(5) was amended by section 29 of the [Smoking, Health and Social Care \(Scotland\) Act 2005](#) (asp. 13).
- F33** Words in reg. 2(1) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008](#) (S.I. 2008/2428), regs. 1(2), **3(b)**
- F34** S.I. 1996/1207.
- F35** S.I. 1976/615.
- F36** S.I. 2006/606.
- F37** S.I. 1983/686.
- F38** 1993 c. 48. Section 1(1) was amended by the [Pensions Act 2004](#) (c. 35), **section 239(1)** and (3), S.I. 1999/1820, **article 4** and Schedule 2, Part 1, paragraph 113(a) and (b) and S.I. 2007/3014, **regulation 2(b)** and paragraph 1(a) of the Schedule.
- F39** 2005 c. 26.
- F40** 1993 c. 48. Section 1(1) has been amended by the [Pensions Act 2004](#) (c. 35), **section 239(1)**, (2) and (3), S.I. 1999/1820, **article 4** and Schedule 2, Part 1, paragraph 113(a) and (b) and S.I. 2007/3014, **regulation 2(b)** and paragraph 1(a) of the Schedule. Section 1(2) to (6) was inserted by the [Pensions Act 2004](#) (c. 35), **section 239(1)** and (4).
- F41** 1988 c. 1. Sections 620, 621 and 622 were repealed by the [Finance Act 2004](#) (c. 12), **section 326** and Schedule 42, Part 3.
- F42** 2004 c. 12.
- F43** 1984 c. 22. Section 20 was amended by section 59 of, and Schedule 3 to, the [Food Safety Act 1990](#) (c. 16).
- F44** S.I. 1988/1546.
- F45** S.I. 1979/1434.
- F46** S.I. 1979/1435.
- F47** 1968 c. 46. Section 71 was amended by section 64 of, and Schedule 6 to, the [National Health Service \(Scotland\) Act 1972](#) (c. 58) and section 180 of, and Schedule 14 to, the [Local Government etc. \(Scotland\) Act 1994](#) (c. 39).
- F48** S.I. 1971/131.
- F49** S.I. 1971/132.
- F50** 1955 c. 18.
- F51** 1955 c. 19.
- F52** 1957 c. 53.
- F53** 1958 c. 40.
- F54** 1968 c. 49.
- F55** 1969 c. 46.
- F56** 1969 c. 54.
- F57** 1973 c. 18.
- F58** 1978 c. 22.
- F59** 1978 c. 28.
- F60** 1986 c. 55.
- F61** 1989 c. 41.
- F62** 2002 c. 38.
- F63** 1973 c. 50. Section 2 was substituted by the [Employment Act 1988](#) (c. 19), **section 25(1)**. Sections 2(3A) and (3B) were inserted by the [Trade Union Reform and Employment Rights Act 1993](#) (c. 19) section 47(1) and apply to Scotland only.
- F64** 1990 c. 35. Section 2(3) was amended by the [Trade Union Reform and Employment Rights Act 1993](#), sections 47(2) and (4)(a) and 51 and Schedule 10. Section 2(4) was amended by the [Trade Union Reform and Employment Rights Act 1993](#), section 47(2) and (4)(b). Section 2(6) was repealed by S.I. 1999/1820.
- F65** 1993 c. 39. Section 23(2) was amended by S.I. 1996/3095, **article 2** and S.I. 1999/1563, **article 2(1)** and (6). There are other amending instruments but none is relevant.

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- F66** Words in reg. 2(1) inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **3(c)**
- F67** 2002 c. 21.
- F68** Words in reg. 2(1) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **11(2)(b)**
- F69** 2003 c. 1.
- F70** Words in reg. 2(1) substituted (5.1.2009) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(1), **11(2)(c)**
- F71** 1991 c. 56.
- F72** 1994 c. 39.
- F73** 1971 c. 80.
- F74** 2000 c. 35.
- F75** Words in reg. 2(2) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(1)**
- F76** 1991 c. 48. Section 3(6) was amended by the Child Support, Pensions and Social Security Act (c. 19), section 1(2)(a).
- F77** 2000 c. 19.

Rounding of fractions

3. For the purposes of these Regulations—
- where any calculation under these Regulations results in a fraction of a penny that fraction is, if it would be to the claimant's advantage, to be treated as a penny, otherwise it must be disregarded;
 - where an employment and support allowance is awarded for a period which is not a complete benefit week and the applicable amount in respect of the period results in an amount which includes a fraction of a penny that fraction is to be treated as a penny.

PART 2

THE ASSESSMENT PHASE

The end of the assessment phase

4.—(1) Subject to paragraph (2) and regulations 5 and 6, the assessment phase in relation to a claimant ends on the last day of a period of 13 weeks beginning on the first day of the assessment phase as determined under section 24(2)(a) of the Act.

(2) If at the end of the period of 13 weeks referred to in paragraph (1), it has not yet been determined whether the claimant has limited capability for work—

- the claimant having been assessed in accordance with a limited capability for work assessment; or
- as a result of the claimant being treated as having limited capability for work in accordance with regulation 20, 25, 26, 29 or regulation 33(2) (persons to be treated as having limited capability for work),

the assessment phase will end when the limited capability for work determination is made.

The assessment phase – previous claimants

5.—(1) Where the circumstances in paragraph (2) apply in relation to a claimant the assessment phase —

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- (a) begins on the first day of the period for which the claimant was previously entitled to an employment and support allowance; and
 - (b) subject to paragraph (3) and regulation 6, ends on the day when the sum of the period for which the claimant was previously entitled to an employment and support allowance and the period for which the claimant is currently entitled to such an allowance is 13 weeks.
- (2) The circumstances are that—
- (a)
 - (i) the claimant's current period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 145(1) or (2);
 - (ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work; and
 - (iii) the assessment phase had not ended in the previous period for which the claimant was entitled to an employment and support allowance; or
 - (b)
 - (i) paragraph (3) or (5) of regulation 145 applies to the claimant; and
 - (ii) the assessment phase had not ended in the previous period for which the claimant was entitled to an employment and support allowance.
- (3) If, on the day referred to in paragraph (1)(b), it has not yet been determined whether the claimant has limited capability for work—
- (a) the claimant having been assessed in accordance with a limited capability for work assessment; or
 - (b) as a result of the claimant being treated as having limited capability for work in accordance with regulation 20, 25, 26, 29 or regulation 33(2) (persons to be treated as having limited capability for work),

the assessment phase will end when the limited capability for work determination is made.

The assessment phase – claimants appealing against a decision

6. Where the period for which the claimant is entitled to an employment and support allowance commences and the claimant has made and is pursuing an appeal against a decision which embodies a determination that that claimant does not have limited capability for work, the assessment phase in relation to that claimant ends when the appeal is determined by an appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998 ^{F78}.

Textual Amendments

F78 1998 c. 14.

Circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work-related activity component arises does not apply

7.—(1) Subject to paragraph (2), sections 2(2)(a), 2(3)(a), 4(4)(a) and 4(5)(a) of the Act do not apply where—

- (a) a claimant is terminally ill and has either—
 - (i) made a claim expressly on the ground of being terminally ill; or
 - (ii) made an application for supersession or revision in accordance with the Social Security and Child Support (Decisions and Appeals) Regulations 1999 ^{F79} which contains an express statement that the claimant is terminally ill; ^{F80} ...

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- (b) (i) a period of limited capability for work is to be treated as a continuation of an earlier period of limited capability for work under regulation 145(1) or (2);
 - (ii) the claimant was entitled to an employment and support allowance in the earlier period of limited capability for work; and
 - (iii) the assessment phase had ended in the previous period for which the claimant was entitled to an employment and support allowance [^{F81}or
 - (c) (i) the claimant's entitlement to an employment and support allowance commences within 12 weeks of the claimant's entitlement to income support coming to an end;
 - (ii) in relation to that entitlement to income support, immediately before it ended the claimant's applicable amount included the disability premium by virtue of satisfying the conditions in paragraphs 11 and 12 of Schedule 2 to the Income Support Regulations; and
 - (iii) that entitlement to income support ended solely by virtue of the coming into force, in relation to the claimant, of the Social Security (Lone Parents and Miscellaneous Amendments) Regulations 2008.]
- (2) Paragraph (1)(b) does not apply where the claimant is appealing a decision which embodies a determination that the claimant does not have limited capability for work.

Textual Amendments

F79 S.I. 1999/991.

F80 Word in reg. 7(1)(a) omitted (24.11.2008) by virtue of [The Social Security \(Lone Parents and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/3051\)](#), regs. 1(2), **12(2)(a)** (with reg. 13)

F81 Reg. 7(1)(c) and word inserted (24.11.2008) by [The Social Security \(Lone Parents and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/3051\)](#), regs. 1(2), **12(2)(b)** (with reg. 13)

PART 3

CONDITIONS OF ENTITLEMENT – CONTRIBUTORY ALLOWANCE

Relaxation of the first contribution condition

8.—(1) A claimant who satisfies any of the conditions in paragraph (2) is to be taken to satisfy the first contribution condition if—

- (a) the claimant paid Class 1 or Class 2 contributions before the relevant benefit week in respect of any one tax year; and
 - (b) the earnings factor is derived—
 - (i) from earnings, on which primary Class 1 contributions have been paid or treated as paid, which are not less than that year's lower earnings limit multiplied by 25; or
 - (ii) from Class 2 contributions multiplied by 25.
- (2) The conditions referred to in paragraph (1) are that the claimant—
- (a) was entitled to a carer's allowance in the last complete tax year immediately preceding the relevant benefit year;
 - (b) had been engaged in qualifying remunerative work for a period of more than 2 years immediately before the first day of the period of limited capability for work and who was entitled to working tax credit where the disability element or the severe disability element

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- of working tax credit specified in regulation 20(1)(b) or (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 ^{F82} was included in the award;
- (c) in respect of any week in any tax year preceding the relevant benefit year—
- (i) is entitled to be credited with earnings or contributions in accordance with regulation 9D of the Social Security (Credits) Regulations 1975 ^{F83} (credits for certain periods of imprisonment or detention in legal custody); or
 - (ii) would have been so entitled had an application to the Secretary of State been made for the purpose of that regulation; or
- (d) on the first day of the period of limited capability for work, had received a contributory allowance in the last complete tax year immediately preceding the relevant benefit year in which entitlement to a contributory allowance is now being decided.

Textual Amendments

F82 S.I. 2002/2005.

F83 S.I. 1975/556. Regulation 9D was inserted by S.I.2001/573, **regulation 2**.

Condition relating to youth – claimants aged 20 or over but under 25

9.—(1) For the purposes of paragraph 4(1)(a) of Schedule 1 to the Act, a claimant who satisfies the conditions specified in paragraph (2) falls within a prescribed case.

- (2) The conditions are that the claimant—
- (a) registered on a course of—
 - (i) full-time advanced or secondary education; or
 - (ii) training,at least 3 months before attaining the age of 20; and
 - (b) not more than one academic term immediately after registration attended one or more such courses in respect of a period referred to in paragraph (3).
- (3) The period mentioned in sub-paragraph (2)(b) is a period which—
- (a) began on or before a day at least 3 months before the day the claimant attained the age of 20; and
 - (b) ended no earlier than the beginning of the last two complete tax years before the relevant benefit year which would have applied if the claimant was entitled to an employment and support allowance having satisfied the first contribution condition and the second contribution condition.
- (4) For the purposes of this regulation a claimant is to be treated as attending a course on any day on which the course is interrupted by an illness or domestic emergency.
- (5) In this regulation—
- “advanced education” means education for the purposes of—
- (a) a course in preparation for a degree, a diploma of higher education, a higher national diploma, a higher national diploma of the Business and Technician Education Council or the Scottish Qualifications Authority, or a teaching qualification; or
 - (b) any other course which is of a standard above ordinary national diploma, a diploma of the Business and Technical Education Council or a higher or advanced higher national certificate of the Scottish Qualifications Authority or a general certificate of education (advanced level);

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“full-time” includes part-time where the person's disability prevents attendance at a full-time course;

“secondary education” means a course of education below a course of advanced education—

- (a) by attendance at an establishment recognised by the Secretary of State as being, or as comparable to, a university, college or school; or
- (b) elsewhere where the Secretary of State is satisfied that the education is equivalent to that given in an establishment recognised as being, or as comparable to, a university, college or school.

[^{F84}(6) A claimant is to be treated as not having limited capability for work on a day which is not, for the purposes of paragraph 4(1)(d)(ii) of Schedule 1 to the Act (period of 196 consecutive days preceding the relevant period of limited capability for work), part of any consecutive days of limited capability for work.]

Textual Amendments

F84 Reg. 9(6) added (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), 4

Condition relating to youth – previous claimants

10.—(1) Paragraph 4(1)(a) of Schedule 1 to the Act does not apply to a claimant—

- (a) who has previously ceased to be entitled to an employment and support allowance, entitlement for which was as a result of satisfying the condition set out in sub-paragraph (1) of that paragraph;
- (b) whose previous entitlement had not been ended by a decision which embodied a determination (other than a determination in the circumstances applicable to a claimant under paragraph (2)(a)) that the claimant did not have limited capability for work;
- (c) in relation to whom regulation 145 (linking rules) does not apply;
- (d) aged 20 or over, or, where regulation 9 would otherwise apply to the person, aged 25 or over; and
- (e) to whom paragraph (2) applies.

(2) This paragraph applies to a claimant—

- (a) whose previous entitlement to an employment and support allowance ended solely with a view to that person taking up employment or training;
- (b) whose earnings factor from an employment or series of employments pursued in the period from the end of the previous entitlement to the beginning of the period of limited capability for work, was below the lower earnings limit multiplied by 25 in any of the last three complete tax years before the beginning of the relevant benefit year; and
- (c) who—
 - (i) in respect of the last two complete tax years before the beginning of the relevant benefit year has either paid or been credited with earnings equivalent in each of those years to the year's lower earnings limit multiplied by 50, of which at least one, in the last tax year, was in respect of the disability element or severe disability element of working tax credit; or
 - (ii) makes a claim for an employment and support allowance within a period of 12 weeks after the day on which the last such employment pursued in accordance with sub-paragraph (b) ceased.

Condition relating to youth – residence or presence

11.—(1) The prescribed conditions for the purposes of paragraph 4(1)(c) of Schedule 1 to the Act as to residence or presence in Great Britain are that the claimant—

- (a) is ordinarily resident in Great Britain;
- (b) is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act or is a person to whom paragraph (3) applies;
- (c) is present in Great Britain; and
- (d) has been present in Great Britain for a period of, or for periods amounting in aggregate to, not less than 26 weeks in the 52 weeks immediately preceding the relevant benefit week.

(2) For the purposes of paragraph (1), a claimant is to be treated as being resident and present in Great Britain where the claimant is absent from Great Britain by reason only of being—

- (a) the spouse, civil partner, son, daughter, father, father-in-law, mother or mother-in-law of, and living with, a member of Her Majesty's forces who is abroad in that capacity;
- (b) in employment prescribed for the purposes of paragraph 7(1)(c) of Schedule 2 to the Act in connection with continental shelf operations; or
- (c) abroad in the capacity of being an aircraft worker or mariner.

(3) This paragraph applies where a person is—

- (a) a member of a family of a national of an European Economic Area state;
- (b) a person who is lawfully working in Great Britain and is a national of a State with which the Community has concluded an agreement under Article 310 of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families;
- (c) a person who is a member of a family of, and living with, a person specified in subparagraph (b); or
- (d) a person who has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules within the meaning of the Immigration Act 1971^{F85} to be responsible for that person's maintenance and accommodation.

(4) A person is to be treated as having satisfied the residence or presence conditions in paragraph (1) throughout a period of limited capability for work where those conditions are satisfied on the first day of that period of limited capability for work.

Textual Amendments

F85 1971 c. 77.

Condition relating to youth – full-time education

12.—(1) For the purposes of paragraph 4(4) of Schedule 1 to the Act, a claimant is to be treated as receiving full-time education for any period during which the claimant—

- (a) is at least 16 years old but under the age of 19; and
- (b) attends a course of education for 21 hours or more a week.

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(2) For the purposes of paragraph (1)(b), in calculating the number of hours a week during which a claimant attends a course, no account is to be taken of any instruction or tuition which is not suitable for persons of the same age who do not have a disability.

(3) In determining the duration of a period of full-time education under paragraph (1) any temporary interruption of that education may be disregarded.

(4) A claimant who is 19 years of age or over is not to be treated for the purposes of paragraph 4(1)(b) of Schedule 1 to the Act as receiving full-time education.

Modification of the relevant benefit year

13.—(1) Where paragraph (2) applies, sub-paragraph (1)(f) of paragraph 3 of Schedule 1 to the Act has effect as if “relevant benefit year” is the benefit year which includes the day which would be the beginning of the period of limited capability for work if regulation 145 did not apply.

(2) This paragraph applies where a claimant does not satisfy—

- (a) the first contribution condition;
- (b) the second contribution condition; or
- (c) both contribution conditions,

but would satisfy those conditions if the modified definition of “relevant benefit year” provided in paragraph (1) applied.

PART 4

CONDITIONS OF ENTITLEMENT – INCOME-RELATED ALLOWANCE

Meaning of education

14.—(1) Subject to regulations 15 and 16, for the purposes of paragraph 6 of Schedule 1 to the Act, “education” means a course of study to which paragraph (2) applies which is being undertaken at an educational establishment.

(2) This paragraph applies to a course of study which is—

- (a) a full-time course which is not funded in whole or in part by—
 - (i) the Learning and Skills Council for England;
 - (ii) the Welsh Ministers; or
 - (iii) the Scottish Ministers at a college of further education;
- (b) a full-time course of higher education which is funded in whole or in part by the Scottish Ministers;
- (c) funded in whole or in part by the Learning and Skills Council for England or by the Welsh Ministers if it involves more than 16 guided learning hours per week for the student in question, according to the number of guided learning hours per week for that student set out—
 - (i) in the case of a course funded by the Learning and Skills Council for England, in the student's learning agreement signed on behalf of the establishment which is funded by that Council for the delivery of that course; or
 - (ii) in the case of a course funded by the Welsh Ministers, in a document signed on behalf of the establishment which is funded by those Ministers for the delivery of that course;

- (d) not a course of higher education and which is funded in whole or in part by the Scottish Ministers at a college of further education and involves—
- (i) more than 16 hours per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff according to the number of hours set out in a document signed on behalf of the college; or
 - (ii) 16 hours or less per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff and it involves additional hours using structured learning packages supported by the teaching staff where the combined total of hours exceeds 21 per week according to the number of hours set out in a document signed on behalf of the college; or
- (e) a sandwich course within the meaning prescribed in regulation 2(9) of the Education (Student Support) Regulations 2007 ^{F86}, regulation 4(2) of the Education (Student Loans) (Scotland) Regulations 2007 ^{F87} or regulation 2(8) of the Education (Student Support) Regulations (Northern Ireland) 2007 ^{F88}.
- (3) In this regulation “higher education” means higher education within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992 ^{F89}.

Textual Amendments

- F86** [S.I. 2007/176](#).
F87 [S.S.I. 2007/154](#).
F88 [S.R. 2007/195](#).
F89 [1992 c. 37](#), amended by the [Further and Higher Education \(Scotland\) Act 2005 \(asp. 6\)](#).

Claimants to be treated as receiving education

15. Subject to regulation 18, a qualifying young person is to be treated as receiving education for the purposes of paragraph 6(1)(g) of Schedule 1 to the Act.

Claimants not to be treated as receiving education

16. Where a claimant is under 19 but not a qualifying young person, that claimant is not to be treated as receiving education where the course of study is not—

- (a) a course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a diploma of higher education or a higher national diploma; or
- (b) any other course which is of a standard above advanced GNVQ or equivalent, including a course which is of a standard above a general certificate of education (advanced level) or above a Scottish national qualification (higher or advanced higher).

Courses of study

17.—(1) For the purposes of the definition of “education” in regulation 14, a person is to be regarded as undertaking a course of study—

- (a) subject to paragraph (2), in the case of a person undertaking a part of a modular course that would be a course of study for the purposes of these Regulations, for the period beginning on the day on which that part of the course starts and ending—
 - (i) on the last day on which the person is registered with the educational establishment as attending or undertaking that part as a full-time course of study; or

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- (ii) on such earlier date (if any) as the person finally abandons the course or is dismissed from it;
 - (b) in any other case, throughout the period beginning on the date on which the person starts undertaking the course and ending on the last day of the course or on such earlier date (if any) as the person finally abandons it or is dismissed from it.
- (2) For the purpose of sub-paragraph (a) of paragraph (1), the period referred to in that sub-paragraph includes—
- (a) where a person has failed examinations or has failed to successfully complete a module relating to a period when the person was attending or undertaking a part of the course as a course of study, any period in respect of which the person attends or undertakes the course for the purpose of retaking those examinations or that module;
 - (b) any period of vacation within the period specified in that paragraph or immediately following that period except where the person has registered with the educational establishment to attend or undertake the final module in the course and the vacation immediately follows the last day on which the person is required to attend or undertake the course.
- (3) In paragraph (1), “modular course” means a course of study which consists of two or more modules, the successful completion of a specified number of which is required before a person is considered by the educational establishment to have completed the course.

Circumstances in which the condition that the claimant is not receiving education does not apply

18. Paragraph 6(1)(g) of Schedule 1 to the Act does not apply where the claimant is entitled to a disability living allowance.

PART 5

LIMITED CAPABILITY FOR WORK

Determination of limited capability for work

19.—(1) For the purposes of Part 1 of the Act, whether a claimant's capability for work is limited by the claimant's physical or mental condition and, if it is, whether the limitation is such that it is not reasonable to require the claimant to work is to be determined on the basis of a limited capability for work assessment of the claimant in accordance with this Part.

(2) The limited capability for work assessment is an assessment of the extent to which a claimant who has some specific disease or bodily or mental disablement is capable of performing the activities prescribed in Schedule 2 or is incapable by reason of such disease or bodily or mental disablement of performing those activities.

(3) Subject to paragraph (6), for the purposes of Part 1 of the Act a claimant has limited capability for work if, by adding the points listed in column (3) of Schedule 2 against any descriptor listed in that Schedule, the claimant obtains a total score of at least—

- (a) 15 points whether singly or by a combination of descriptors specified in Part 1 of that Schedule;
- (b) 15 points whether singly or by a combination of descriptors specified in Part 2 of that Schedule; or
- (c) 15 points by a combination of descriptors specified in Parts 1 and 2 of that Schedule.

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(4) In assessing the extent of a claimant's capability to perform any activity listed in Part 1 of Schedule 2, the claimant is to be assessed as if wearing any prosthesis with which the claimant is fitted or, as the case may be, wearing or using any aid or appliance which is normally worn or used.

(5) In assessing the extent of a claimant's capability to perform any activity listed in Schedule 2, it is a condition that the claimant's incapability to perform the activity arises from—

- (a) a specific bodily disease or disablement;
- (b) a specific mental illness or disablement; or
- (c) as a direct result of treatment provided by a registered medical practitioner, for such a disease, illness or disablement.

(6) Where more than one descriptor specified for an activity apply to a claimant, only the descriptor with the highest score in respect of each activity which applies is to be counted.

(7) Where a claimant—

- (a) has been determined to have limited capability for work; or
- (b) is to be treated as having limited capability for work under regulations 20, 25, 26, 29 or 33(2),

the Secretary of State may, if paragraph (8) applies, determine afresh whether the claimant has or is to be treated as having limited capability for work.

(8) This paragraph applies where—

- (a) the Secretary of State wishes to determine whether there has been a relevant change of circumstances in relation to the claimant's physical or mental condition;
- (b) the Secretary of State wishes to determine whether the previous determination of limited capability for work or that the claimant is to be treated as having limited capability for work, was made in ignorance of , or was based on a mistake as to, some material fact; or
- (c) at least 3 months have passed since the date on which the claimant was determined to have limited capability for work or to be treated as having limited capability for work.

Certain claimants to be treated as having limited capability for work

20. A claimant is to be treated as having limited capability for work if—

- (a) the claimant is terminally ill;
- (b) the claimant is—
 - (i) receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy; or
 - (ii) recovering from that treatment and the Secretary of State is satisfied the claimant should be treated as having limited capability for work;
- (c) the claimant is—
 - (i) excluded or abstains from work, or from work of such a kind, pursuant to a request or notice in writing lawfully made under an enactment; or
 - (ii) otherwise prevented from working pursuant to an enactment, by reason of the claimant being a carrier, or having been in contact with a case, of a relevant disease;
- (d) in the case of a pregnant woman, there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work;
- (e) in the case of a pregnant woman, she—
 - (i) is within the maternity allowance period; and

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- (ii) is entitled to a maternity allowance under section 35(1) of the Contributions and Benefits Act ^{F90};
- (f) in the case of a pregnant woman whose expected or actual date of confinement has been certified in accordance with the Medical Evidence Regulations, on any day in the period—
 - (i) beginning with the first date of the 6th week before the expected week of her confinement or the actual date of her confinement, whichever is earlier; and
 - (ii) ending on the 14th day after the actual date of her confinement,
 if she would have no entitlement to a maternity allowance or statutory maternity pay were she to make a claim in respect of that period.

Textual Amendments

F90 1992 c. 4. Amended by section 53 of the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#).

Information required for determining capability for work

21.—(1) Subject to paragraphs (2) and (3), the information or evidence required to determine whether a claimant has limited capability for work is—

- (a) evidence of limited capability for work in accordance with the Medical Evidence Regulations (which prescribe the form of doctor's statement or other evidence required in each case);
- (b) any information relating to a claimant's capability to perform the activities referred to in Schedule 2 as may be requested in the form of a questionnaire; and
- (c) any such additional information as may be requested.

(2) Where the Secretary of State is satisfied that there is sufficient information to determine whether a claimant has limited capability for work without the information specified in paragraph (1) (b), that information will not be required for the purposes of making the determination.

(3) Paragraph (1) does not apply in relation to a determination whether a claimant is to be treated as having limited capability for work under any of regulations 20 (certain claimants to be treated as having limited capability for work), 25 (hospital in-patients), 26 (claimants receiving certain regular treatment) and 33(2) (additional circumstances in which a claimant is to be treated as having limited capability for work).

Failure to provide information in relation to limited capability for work

22.—(1) Where a claimant fails without good cause to comply with the request referred to in regulation 21(1)(b), that claimant is, subject to paragraph (2), to be treated as not having limited capability for work.

(2) Paragraph (1) does not apply unless—

- (a) at least 6 weeks have passed since the claimant was sent the first request for the information; and
- (b) the claimant was sent a further request at least 4 weeks after the date of the first request, and at least 2 weeks have passed since the further request was sent.

Claimant may be called for a medical examination to determine whether the claimant has limited capability for work

23.—(1) Where it falls to be determined whether a claimant has limited capability for work, that claimant may be called by or on behalf of a health care professional approved by the Secretary of State to attend for a medical examination.

(2) Subject to paragraph (3), where a claimant fails without good cause to attend for or to submit to an examination listed in paragraph (1), the claimant is to be treated as not having limited capability for work.

(3) Paragraph (2) does not apply unless written notice of the time and place for the examination was sent to the claimant at least 7 days in advance, or unless that claimant agreed to accept a shorter period of notice whether given in writing or otherwise.

Matters to be taken into account in determining good cause in relation to regulations 22 or 23

24. The matters to be taken into account in determining whether a claimant has good cause under regulations 22 (failure to provide information in relation to limited capability for work) or 23 (failure to attend a medical examination to determine limited capability for work) include—

- (a) whether the claimant was outside Great Britain at the relevant time;
- (b) the claimant's state of health at the relevant time; and
- (c) the nature of any disability the claimant has.

Hospital in-patients

25.—(1) A claimant is to be treated as having limited capability for work on any day on which that claimant is undergoing medical or other treatment as an in-patient in a hospital or similar institution, or which is a day of recovery from that treatment.

(2) For the purposes of this regulation, “day of recovery” means a day on which a claimant is recovering from treatment as an in-patient in a hospital or equivalent under paragraph (1) and the Secretary of State is satisfied that the claimant should be treated as having limited capability for work on that day.

Claimants receiving certain regular treatment

26.—(1) Subject to paragraph (2), a claimant receiving—

- (a) regular weekly treatment by way of haemodialysis for chronic renal failure;
- (b) treatment by way of plasmapheresis or by way of radiotherapy; or
- (c) regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function,

is to be treated as having limited capability for work during any week in which that claimant is engaged in that treatment or has a day of recovery from that treatment.

[^{F91}(2) A claimant who receives the treatment referred to in paragraph (1) is only to be treated as having limited capability for work from the first week of treatment in which the claimant undergoes no fewer than—

- (a) two days of treatment;
- (b) two days of recovery from any of the forms of treatment listed in paragraph 1(a) to (c); or
- (c) one day of treatment and one day of recovery from that treatment,

but the days of treatment or recovery from that treatment or both need not be consecutive.]

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(3) For the purpose of this regulation “day of recovery” means a day on which a claimant is recovering from any of the forms of treatment listed in paragraph (1)(a) to (c) and the Secretary of State is satisfied that the claimant should be treated as having limited capability for work on that day.

Textual Amendments

F91 Reg. 26(2) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **5(1)**

Claimant to be treated as having limited capability for work throughout a day

27. A claimant who at the commencement of any day has, or thereafter develops, limited capability for work as determined in accordance with the limited capability for work assessment is to be treated as having limited capability for work throughout that day.

Night workers

28.—(1) Where a claimant works for a continuous period which extends over midnight into the following day, that claimant is to be treated as having limited capability for work on the day on which the lesser part of that period falls if that claimant had limited capability for work for the remainder of that day.

(2) Where, in relation to a period referred to in paragraph (1), the number of hours worked before and after midnight is equal—

- (a) if the days in question fall at the beginning of a period of limited capability for work, the claimant is to be treated as having limited capability on the second day; and
- (b) if the days in question fall at the end of a period of limited capability for work, the claimant is to be treated as having limited capability for work on the first day.

Exceptional circumstances

29.—(1) A claimant who does not have limited capability for work as determined in accordance with the limited capability for work assessment is to be treated as having limited capability for work if paragraph (2) applies to the claimant.

(2) This paragraph applies if—

- (a) the claimant is suffering from a life threatening disease in relation to which—
 - (i) there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure; and
 - (ii) in the case of a disease that is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure; or
- (b) the claimant suffers from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if the claimant were found not to have limited capability for work.

Conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made

30.—(1) A claimant is, if the conditions set out in paragraph (2) are met, to be treated as having limited capability for work until such time as it is determined—

- (a) whether or not the claimant has limited capability for work;

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- (b) whether or not the claimant is to be treated as having limited capability for work otherwise than in accordance with this regulation; or
 - (c) whether the claimant falls to be treated as not having limited capability for work in accordance with regulation 22 (failure to provide information in relation to limited capability for work) or 23 (failure to attend a medical examination to determine limited capability for work).
- (2) The conditions are—
- (a) that the claimant provides evidence of limited capability for work in accordance with the Medical Evidence Regulations; and
 - (b) that it has not, within the 6 months preceding the date of claim, been determined, in relation to the claimant's entitlement to any benefit, allowance or advantage which is dependent on the claimant having limited capability for work, that the claimant does not have limited capability for work or is to be treated as not having limited capability for work under regulation 22 or 23 unless—
 - (i) the claimant is suffering from some specific disease or bodily or mental disablement from which the claimant was not suffering at the time of that determination;
 - (ii) a disease or bodily or mental disablement from which the claimant was suffering at the time of that determination has significantly worsened; or
 - (iii) in the case of a claimant who was treated as not having limited capability for work under regulation 22 (failure to provide information), the claimant has since provided the information requested under that regulation.
- (3) Paragraph (2)(b) does not apply where a claimant has made and is pursuing an appeal against a decision that embodies a determination that the claimant does not have limited capability for work and that appeal has not yet been determined by an appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998 ^{F92}.

Textual Amendments

F92 1998 c. 14.

Claimant who claims jobseeker's allowance to be treated as not having limited capability for work

- 31.**—(1) A claimant who—
- (a) claims a jobseeker's allowance; and
 - (b) is able to show a reasonable prospect of obtaining employment,
- is, throughout the period of that claim, to be treated as not having limited capability for work.
- (2) Paragraph (1) applies even though it has been determined that the claimant—
- (a) has limited capability for work; or
 - (b) is to be treated as having limited capability for work under any of regulations 20 (certain claimants to be treated as having limited capability for work), 25 (hospital in-patients), 26 (claimants undergoing certain regular treatment) or 29 (exceptional circumstances).

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Certain claimants to be treated as not having limited capability for work

32.—^{F93}(1) A claimant ^{F94}who is or has been a member of Her Majesty's forces] is to be treated as not having limited capability for work on any day which is recorded by the Secretary of State for Defence as a day of sickness absence from duty.

^{F95}(2) A claimant is to be treated as not having limited capability for work on any day on which the claimant attends a training course in respect of which the claimant is paid a training allowance or premium pursuant to arrangements made under section 2 of the Employment and Training Act 1973 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990.

(3) Paragraph (2) is not to apply—

- (a) for the purposes of any claim to employment and support allowance for a period commencing after the claimant ceased attending the training course in question; or
- (b) where any training allowance or premium paid to the claimant is paid for the sole purpose of travelling or meal expenses incurred or to be incurred under the arrangement made under section 2 of the Employment and Training Act 1973 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990.]

Textual Amendments

- F93** Reg. 32(1): reg 32 renumbered as reg. 32(1) (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **5(2)(a)**
- F94** Words in reg. 32(1) inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **5(2)(b)**
- F95** Reg. 32(2)(3) added (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **5(2)(c)**

Additional circumstances where claimants are to be treated as having limited capability for work

33.—(1) For the purposes of paragraph 4(1)(d)(ii) of Schedule 1 to the Act, a claimant is to be treated as having limited capability for work on any day in respect of which that claimant is entitled to statutory sick pay.

(2) For the purposes of an income-related allowance, a claimant is to be treated as having limited capability for work where—

- (a) that claimant is not a qualifying young person;
- (b) that claimant is receiving education; and
- (c) paragraph 6(1)(g) of Schedule 1 to the Act does not apply in accordance with regulation 18.

PART 6

LIMITED CAPABILITY FOR WORK-RELATED ACTIVITY

Determination of limited capability for work-related activity

34.—(1) For the purposes of Part 1 of the Act, where, by reason of a claimant's physical or mental condition, at least one of the descriptors set out in Schedule 3 applies to the claimant, the claimant's capability for work-related activity will be limited and the limitation will be such that it is not reasonable to require that claimant to undertake such activity.

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(2) A descriptor applies to a claimant if that descriptor applies to the claimant for the majority of the time or, as the case may be, on the majority of the occasions on which the claimant undertakes or attempts to undertake the activity described by that descriptor.

(3) In determining whether a descriptor applies to a claimant, the claimant is to be assessed as if the claimant were wearing any prosthesis with which the claimant is fitted or, as the case may be, wearing or using any aid or appliance which the claimant normally wears or uses.

(4) Where a determination has been made about whether a claimant—

- (a) has limited capability for work-related activity;
- (b) is to be treated as having limited capability for work-related activity; or
- (c) is to be treated as not having limited capability for work-related activity,

the Secretary of State may, if paragraph (5) applies, determine afresh whether the claimant has or is to be treated as having limited capability for work-related activity.

(5) This paragraph applies where—

- (a) the Secretary of State wishes to determine whether there has been a relevant change of circumstances in relation to the claimant's physical or mental condition;
- (b) the Secretary of State wishes to determine whether the previous determination about limited capability for work-related activity or about treating the claimant as having or as not having limited capability for work-related activity, was made in ignorance of, or was based on a mistake as to, some material fact; or
- (c) at least 3 months have passed since the date of the previous determination about limited capability for work-related activity or about treating the claimant as having or as not having limited capability for work-related activity.

Certain claimants to be treated as having limited capability for work-related activity

35.—(1) A claimant is to be treated as having limited capability for work-related activity if—

- (a) the claimant is terminally ill;
- (b) the claimant is—
 - (i) receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy; or
 - (ii) recovering from that treatment and the Secretary of State is satisfied that the claimant should be treated as having limited capability for work-related activity; or
- (c) in the case of a woman, she is pregnant and there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work-related activity.

(2) A claimant who does not have limited capability for work-related activity as determined in accordance with regulation 34(1) is to be treated as having limited capability for work-related activity if—

- (a) the claimant suffers from some specific disease or bodily or mental disablement; and
- (b) by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if the claimant were found not to have limited capability for work-related activity.

Information required for determining capability for work-related activity

36.—(1) Subject to paragraph (2), the information or evidence required to determine whether a claimant has limited capability for work-related activity is—

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- (a) any information relating to the descriptors set out in Schedule 3 as may be requested in the form of a questionnaire; and
- (b) any such additional information as may be requested.

(2) Where the Secretary of State is satisfied that there is sufficient information to determine whether a claimant has limited capability for work-related activity without the information specified in paragraph (1)(a), that information will not be required for the purposes of making the determination.

Failure to provide information in relation to work-related activity

37.—(1) Where a claimant fails without good cause to comply with the request referred to in regulation 36(1)(a), the claimant is, subject to paragraph (2), to be treated as not having limited capability for work-related activity.

(2) Paragraph (1) does not apply unless—

- (a) at least 6 weeks have passed since the claimant was sent the first request for the information; and
- (b) the claimant was sent a further request at least 4 weeks after the date of the first request, and at least 2 weeks have passed since the further request was sent.

Claimant may be called for a medical examination to determine whether the claimant has limited capability for work-related activity

38.—(1) Where it falls to be determined whether a claimant has limited capability for work-related activity, that claimant may be called by or on behalf of a health care professional approved by the Secretary of State to attend for a medical examination.

(2) Subject to paragraph (3), where a claimant fails without good cause to attend for or to submit to an examination listed in paragraph (1), the claimant is to be treated as not having limited capability for work-related activity.

(3) Paragraph (2) does not apply unless written notice of the time and place for the examination was sent to the claimant at least 7 days in advance, or unless the claimant agreed to accept a shorter period of notice whether given in writing or otherwise.

Matters to be taken into account in determining good cause in relation to regulations 37 or 38

39. The matters to be taken into account in determining whether a claimant has good cause under regulations 37 (failure to provide information in relation to work-related activity) or 38 (failure to attend a medical examination to determine limited capability for work-related activity) include—

- (a) whether the claimant was outside Great Britain at the relevant time;
- (b) the claimant's state of health at the relevant time; and
- (c) the nature of any disability the claimant has.

PART 7

EFFECT OF WORK ON ENTITLEMENT TO AN EMPLOYMENT AND SUPPORT ALLOWANCE

A claimant who works to be treated as not entitled to an employment and support allowance

40.—(1) Subject to the following paragraphs, a claimant is to be treated as not entitled to an employment and support allowance in any week in which that claimant does work.

(2) Paragraph (1) does not apply to—

(a) work as a councillor;

(b) duties undertaken on either one full day or two half-days a week as—

(i) a member of the Disability Living Allowance Advisory Board; or

[^{F96}(ii) a member of the First-tier Tribunal where the member is eligible for appointment to be such a member in accordance with article 2(3) of the Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008.]

(c) domestic tasks carried out in the claimant's own home or the care of a relative;

(d) duties undertaken in caring for another person who is accommodated with the claimant by virtue of arrangements made under any of the provisions referred to in paragraphs 28 or 29 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) where the claimant is in receipt of any payment specified in those paragraphs;

(e) any activity the claimant undertakes during an emergency to protect another person or to prevent serious damage to property or livestock; or

(f) any of the categories of work set out in regulation 45 (exempt work).

(3) This regulation is subject to regulation 46 (effect of work on entitlement to contributory allowance where claimant is receiving certain regular treatment).

(4) A claimant who does work to which this regulation applies in a week which is—

(a) the week in which the claimant first becomes entitled to a benefit, allowance or advantage on account of the claimant's limited capability for work in any period; or

(b) the last week in any period in which the claimant has limited capability for work or is treated as having limited capability for work,

is to be treated as not entitled to an employment and support allowance by virtue of paragraph (1) only on the actual day or days in that week on which the claimant does that work.

(5) Regulation 145 (linking rules) does not apply for the purposes of calculating the beginning or end of any period of limited capability for work under paragraph (4).

(6) The day or days in a week on which a night worker works, for the purposes of [^{F97}paragraph (4)], are to be calculated by reference to regulation 28 (night workers).

(7) In this regulation—

“week” means a week in respect of which a claimant is entitled to an employment and support allowance;

“work” means any work which a claimant does, whether or not that claimant undertakes it in expectation of payment;

“work as a councillor” is to be taken to include any work which a claimant undertakes as a member of any of the bodies referred to in section 177(1) of the Local Government Act 1972 ^{F98} or sub-sections 49(1) or 49(1A) of the Local Government (Scotland) Act 1973 ^{F99}, of which the claimant is a member by reason of being a councillor.

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Textual Amendments

- F96** Reg. 40(2)(b)(ii) substituted (3.11.2008) by [The Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#), art. 1, [Sch. 1 para. 342](#)
- F97** Words in reg. 40(6) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), [6\(1\)](#)
- F98** 1972 c. 70. Subsection (1) was substituted by the [Local Government and Housing Act 1989 \(c. 42\)](#), [section 194](#) and Schedule 11, paragraph 28(2). Subsection (1) was amended by the School Standards and Framework Act 1998, section 140(1) and (3), Schedule 30, paragraph 3(2) and Schedule 31.
- F99** 1973 c. 65. Subsections 49(1)(b) and (f) were repealed by Schedule 7 of the Local Government (Scotland) Act 1975. Section 49(1A) was inserted by Local Government (Scotland) Act 1975. Section 49(1)(a) was repealed by regulation 2(4) of the Local Governance (Scotland) Act 2004 (Allowances and Expenses) Regulations 2007.

Meaning of “remunerative work” for the purposes of paragraph 6(1)(e) of Schedule 1 to the Act

41.—(1) For the purposes of paragraph 6(1)(e) of Schedule 1 to the Act (conditions of entitlement to an income-related allowance), “remunerative work” means any work which a claimant does for which payment is made or which is done in expectation of payment, other than work listed in paragraph (2) of regulation 40.

(2) Subject to paragraph (3), a claimant who was, or who was being treated as—

(a) engaged in remunerative work; and

(b) in respect of that work earnings to which regulation 95(1)(b) and (d) applies are paid,

is to be treated as being engaged in remunerative work for the period for which those earnings are taken into account in accordance with Part 10 of these Regulations.

(3) Paragraph (2) does not apply to earnings disregarded under paragraph 1 of Schedule 7 (sums to be disregarded in the calculation of earnings).

Meaning of “remunerative work” for the purposes of paragraph 6(1)(f) of Schedule 1 to the Act

42.—(1) For the purposes of paragraph 6(1)(f) of Schedule 1 to the Act, (conditions of entitlement to an income-related allowance where a claimant must not be a member of a couple the other member of which is engaged in remunerative work), “remunerative work” means work in which the claimant's partner is engaged or, where the partner's hours of work fluctuate, the partner is engaged on average, for not less than 24 hours a week, being work for which payment is made or which is done in expectation of payment.

(2) In calculating the number of hours for which a claimant's partner is engaged in work so as to determine whether that partner is engaged in remunerative work, the number of hours are to be determined in accordance with paragraphs (8) and (9) of regulation 45 and those paragraphs are to be read as though they referred to the claimant's partner.

(3) The claimant's partner is to be treated as engaged in remunerative work during any period for which that partner is absent from work referred to in paragraph (1) if the absence is either without good cause or by reason of a recognised, customary or other holiday.

(4) Subject to paragraph (5), a claimant's partner who was, or who was being treated as—

(a) engaged in remunerative work; and

(b) in respect of that work earnings to which regulation 95(1)(b) and (d) applies are paid,

is to be treated as being engaged in remunerative work for the period for which those earnings are taken into account in accordance with Part 10 of these Regulations.

(5) Paragraph (4) does not apply to earnings disregarded under paragraph 1 of Schedule 7 (sums to be disregarded in the calculation of earnings).

(6) For the purposes of this regulation, in determining the number of hours in which a claimant's partner is engaged or treated as engaged in remunerative work, no account is to be taken of any hours in which the claimant's partner is engaged in an employment or a scheme to which regulation 43(1) or (2) (claimants' partners not treated as engaged in remunerative work) applies.

Circumstances under which partners of claimants entitled to an income-related allowance are not to be treated as engaged in remunerative work

43.—(1) A claimant's partner is not to be treated as engaged in remunerative work in so far as—

- (a) the partner is engaged in child minding in the partner's home;
- (b) the partner is engaged by a charity or voluntary organisation, or is a volunteer, where the only payment received by the partner or due to be paid to the partner, is a payment which is to be disregarded under regulation 104(2) (calculation of income other than earnings) and paragraph 2 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings);
- (c) the partner is engaged on a scheme for which a training allowance is being paid;
- (d) the partner is receiving assistance under the self-employment route;
- (e) the partner is engaged in employment as any one of the following—
 - (i) a part-time fireman in a fire brigade maintained in pursuance of the Fire and Rescue Services Act 2004 ^{F100};
 - (ii) a part-time fire-fighter employed by a fire and rescue authority;
 - (iii) a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005 ^{F101} or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;
 - (iv) an auxiliary coastguard in respect of coast rescue activities;
 - (v) a person engaged part-time in the manning or launching of a life boat;
 - (vi) a member of any territorial or reserve force prescribed in Part 1 of Schedule 6 to the Social Security (Contributions) Regulations 2001 ^{F102}; or
- (f) the partner is undertaking work as a councillor;
- (g) the partner is engaged in caring for a person who is accommodated with the partner by virtue of arrangements made under any of the provisions referred to in paragraphs 28 or 29 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) and the partner is in receipt of any payment specified in those paragraphs;
- (h) the partner is engaged in an activity in respect of which—
 - (i) a sports award has been made, or is to be made, to the partner; and
 - (ii) no other payment is made or is expected to be made to the partner.

(2) A claimant's partner is not to be treated as engaged in remunerative work, where the partner is—

- (a) a person who is mentally or physically disabled and by reason of that disability—
 - (i) the person's earnings are reduced to 75% or less of what a person without that disability and working the same number of hours would reasonably be expected to earn in that employment or in comparable employment in the area; or

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- (ii) the person's number of hours are 75% or less of what a person without that disability would reasonably be expected to undertake in that employment or in comparable employment in the area;
 - (b) subject to regulation 42(4) (partners treated as engaged in remunerative work), a person who would otherwise have satisfied section 126(1) of the Contributions and Benefits Act (trade disputes) ^{F103} or in respect of whom section 124(1) of that Act (conditions of entitlement to income support) ^{F104} would otherwise have had effect as modified by section 127(b) of that Act (effect of return to work) ^{F105};
 - (c) a person who would otherwise satisfy the conditions set out in paragraph 4 of Schedule 1B to the Income Support Regulations ^{F106};
 - (d) a person who—
 - (i) is in employment;
 - (ii) lives in, or is temporarily absent from, a care home, an Abbeyfield Home or an independent hospital; and
 - (iii) requires personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, past or present mental disorder or a terminal illness.
- (3) The claimant's partner is not to be treated as engaged in remunerative work on any day on which that partner is on maternity leave, paternity leave or adoption leave or is absent from work because the partner is ill.
- (4) In this regulation—
- “work as a councillor” has the same meaning as in regulation 40;
- “volunteer” means a person who is engaged in voluntary work otherwise than for a relative, where the only payment received or due to be paid to the person by virtue of being so engaged is in respect of any expenses reasonably incurred by the person in connection with that work.

Textual Amendments

F100 2004 c. 21.

F101 2005 asp. 5.

F102 S.I. 2001/1004.

F103 Section 126(1) was amended by paragraph 31 of Schedule 1 to the [Incapacity Act 1994 \(c. 18\)](#) and paragraph 31(a) and (b) of Schedule 2 to the [Jobseekers Act 1995 \(c. 18\)](#).

F104 Section 124(1) was amended by paragraph 30(2) to (5) of Schedule 2 to the [Jobseekers Act 1995](#) and by section 14 of and paragraphs 1, 2(1) and (2) of Part 1 of Schedule 2 to the [State Pension Credit Act 2002 \(c. 16\)](#).

F105 Section 127(b) was amended by paragraph 44 of Schedule 24 to the [Civil Partnership Act 2004 \(c. 33\)](#).

F106 Schedule 1B to the [Income Support Regulations](#) was inserted by regulation 22 of and Schedule 1 to the [Income Support \(Jobseeker's Allowance Consequential Amendments\) Regulations 1996 \(S.I. 1996/206\)](#). Paragraph 4 was amended by regulation 33 of the [Jobseekers Allowance and Income Support \(General\) \(Amendment\) Regulations 1996 \(S.I. 1996/1517\)](#), by paragraph 2 of Schedule 2 to the [Social Security Amendment \(Carer's Allowance\) Regulations 2002 \(S.I. 2002/2497\)](#) and by regulation 4(1) of the [Social Security \(Loss of Benefit\) \(Consequential Amendments\) Regulations 2002 \(S.I. 2002/490\)](#).

Claimants who are treated as not entitled to any allowance at all by reason of regulation 40(1) are to be treated as not having limited capability for work

44.—(1) Where a claimant is treated as not entitled to an employment and support allowance by reason of regulation 40(1), subject to paragraph (2), the claimant is to be treated as not having limited capability for work.

(2) Paragraph (1) does not apply where the claimant remains entitled to a contributory allowance, but is not entitled to an income-related allowance by reason of regulation 40(1).

(3) Paragraph (1) applies even if—

- (a) it has been determined that the claimant has or is to be treated as having, under any of regulations 20 (certain claimants to be treated as having limited capability for work), 25 (hospital in-patients), 26 (claimants undergoing certain regular treatment) or 29 (exceptional circumstances), limited capability for work; or
- (b) the claimant meets the conditions set out in regulation 30(2) for being treated as having limited capability for work until a determination is made in accordance with the limited capability for work assessment.

Exempt work

45.—(1) The categories of work referred to in regulation 40(2)(f) are set out in the following paragraphs.

(2) Work for which the earnings in any week do not exceed £20.00.

(3) Work for which the earnings in any week do not exceed [^{F107}£92.00] and which—

- (a) is part of the claimant's treatment programme and is done under medical supervision while the claimant is an in-patient, or is regularly attending as an out-patient, of a hospital or similar institution; or
- (b) is supervised by a person employed by a public or local authority or voluntary organisation engaged in the provision or procurement of work for persons who have disabilities.

(4) Work which is done for less than 16 hours a week, for which earnings in any week do not exceed [^{F108}£92.00] and which—

- (a) is done during a 52 week period beginning on the first day on which the work is done, provided that—
 - (i) the claimant has not previously done specified work;
 - (ii) since the beginning of the last period of specified work, the claimant has ceased to be entitled to a relevant benefit for a continuous period exceeding 12 weeks;
 - (iii) not less than 52 weeks have elapsed since the claimant previously did the specified work; or
- (b) done by a claimant who has or is treated as having limited capability for work-related activity.

(5) Work done in the course of receiving assistance in pursuing self-employed earner's employment whilst participating in a programme provided or other arrangements made under section 2 of the Employment and Training Act 1973 ^{F109} (functions of the Secretary of State) or section 2 of the Enterprise and New Towns (Scotland) Act 1990 ^{F110} (functions in relation to training for employment etc.).

(6) Work done where the claimant receives no payment of earnings and where the claimant—

- (a) is engaged by a charity or voluntary organisation; or
- (b) is a volunteer,

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where the Secretary of State is satisfied in any of those cases that it is reasonable for the claimant to provide the service free of charge.

(7) Work done in the course of participating in a work placement approved in writing by the Secretary of State before the placement starts.

(8) The number of hours for which a claimant is engaged in work is to be determined—

- (a) where no recognisable cycle has been established in respect of a claimant's work, by reference to the number of hours or, where those hours are likely to fluctuate, the average of the hours, which the claimant is expected to work in a week;
- (b) where the number of hours for which the claimant is engaged fluctuate, by reference to the average of hours worked over—
 - (i) if there is a recognisable cycle of work, 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);
 - (ii) in any other case, the period of five weeks immediately before the date of claim or the date on which a superseding decision is made under section 10 (decisions superseding earlier decisions) of the Social Security Act 1998 ^{F111}, or such other length of time as may, in the particular case, enable the claimant's average hours of work to be determined more accurately.

(9) For the purposes of determining the number of hours for which a claimant is engaged in work, that number is to include any time allowed to that claimant by the claimant's employer for a meal or for refreshment, but only where that claimant is, or expects to be, paid earnings in respect of that time.

(10) In this regulation—

“relevant benefit” means—

- (a) an employment and support allowance; or
- (b) credits under regulations made under section 22(5) of the Contributions and Benefits Act ^{F112},

in respect of which the question of the claimant's limited capability for work arises under the Act;

“specified work” means work done in accordance with paragraph (4);

“supervised work” means work done in accordance with paragraph (3)(a) or (b);

“volunteer” has the same meaning it has in regulation 43;

“work placement” means practical work experience with an employer, which is neither paid nor undertaken in expectation of payment.

Textual Amendments

F107 Word in [reg. 45\(3\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), [regs. 1\(2\)](#), **6(2)**

F108 Word in [reg. 45\(4\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), [regs. 1\(2\)](#), **6(2)**

F109 [1973 c. 50](#). Section 2 was substituted by section 25(1) of the Employment Act 1988. Subsections (4) and (6) of section 2 were repealed by section 29(4) of and Schedule 7 to the Employment Act 1989. Subsections (3A) and (3B) of section 2, which apply to Scotland only, inserted by the Trade Union Reform and Employment Rights Act 1993.

F110 [1990 c. 35](#). Section 2 amended by sections 47(4)(a) and (b) and 51 of and Schedule 10 to the Trade Union Reform and Employment Rights Act 1993. Section 2 also amended by articles 1(2) and 4 of and

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paragraph 100(2) of Schedule 2 to Scotland Act 1998 (Consequential Modifications) Order (No. 2) 1999.

F111 1998 c. 14. Section 10 was amended by sections 18 and 26(3) of and by paragraph 23 of Schedule 7 to and by Schedule 10 to the Transfer of Functions Act 1999.

F112 1992 c. 4. Section 22 was amended by Paragraph 22 of Schedule 2 to the Jobseeker's Act 1995.

Effect of work on entitlement to contributory allowance where claimant is receiving certain regular treatment

46. Where a claimant who is entitled to a contributory allowance and is treated as having limited capability for work by virtue of regulation 26 works on any day during a week when the claimant is, in accordance with regulation 26, receiving certain regular treatment or recovering from that treatment, that work is to have no effect on the claimant's entitlement to the contributory allowance.

PART 8

CONDITIONALITY

CHAPTER 1

Work-focused health-related assessment

Requirement to take part in a work-focused health-related assessment

47.—(1) The Secretary of State may require a claimant who satisfies the requirements in paragraph (2) to take part in one or more work-focused health-related assessments as a condition of continuing to be entitled to the full amount of employment and support allowance payable to the claimant.

(2) The requirements referred to in paragraph (1) are that the claimant—

(a) is either—

(i) entitled to an employment and support allowance; or

(ii) a person who has made a claim for an employment and support allowance to which regulations under section 5(1)(c) of the Administration Act apply;

(b) is not a member of the support group; and

(c) has not reached the age at which a woman of the same age as the claimant would attain pensionable age.

(3) Any requirement to take part in a work-focused health-related assessment ceases to have effect if the claimant ceases to satisfy the requirements in paragraph (2).

Work-focused health-related assessment

48. For the purposes of section 11(7)(c) of the Act, matters to be assessed in the work-focused health-related assessment include—

(a) difficulties which are likely to be experienced as a result of the claimant's physical or mental condition in relation to obtaining or remaining in work and how these might be managed or alleviated; and

(b) the claimant's views on the impact of the claimant's physical or mental condition in relation to obtaining or remaining in work and any aspirations in relation to work in the light of that condition.

Notification of assessment

49.—(1) The health care professional who is to carry out the work-focused health-related assessment, or a person acting on the health care professional's behalf, must notify the claimant of the requirement to attend the work-focused health-related assessment including details of the date, time and place of the assessment.

(2) Notification under paragraph (1) must be given in writing at least 7 days before the claimant is required to attend the work-focused health-related assessment unless the claimant agrees to accept a shorter period of notice whether given in writing or otherwise.

Determination of the place of the work-focused health-related assessment

50.—(1) Subject to paragraph (2), the work-focused health-related assessment must be carried out in a medical examination centre.

(2) A work-focused health-related assessment may take place at the claimant's home if the Secretary of State is of the opinion that requiring the claimant to attend elsewhere would cause the claimant undue inconvenience or endanger the claimant's health.

Taking part in a work-focused health-related assessment

51. A claimant is to be regarded as having taken part in a work-focused health-related assessment if the claimant—

- (a) attends for the assessment at the date, time and place notified in accordance with regulation 49;
- (b) provides all information which the Secretary of State requests as being necessary for the work-focused health-related assessment; and
- (c) participates in discussions to the extent the Secretary of State considers necessary for the work-focused health-related assessment.

Deferral of requirement to take part in a work-focused health-related assessment

52.—(1) Where—

- (a) a health care professional has conducted an assessment in relation to the claimant for the purpose of enabling the Secretary of State to determine whether the claimant has limited capability for work-related activity;
- (b) it appears to the health care professional that—
 - (i) at least one of the descriptors set out in Schedule 3 applies to the claimant; or
 - (ii) regulation 35 applies to the claimant; and
- (c) the Secretary of State has not made a determination about whether the claimant has limited capability for work-related activity,

the requirement to take part in the work-focused health-related assessment does not apply until such time after the Secretary of State has made a determination in relation to the claimant's limited capability for work-related activity as the Secretary of State may decide.

(2) Where paragraph (1) applies, the health care professional must notify the claimant that the requirement to take part in the work-focused health-related assessment has been deferred, pending determination by the Secretary of State of the claimant's capability for work-related activity.

Failure to take part in a work-focused health-related assessment

53.—(1) A claimant who is required to take part in a work-focused health-related assessment but fails to do so must show good cause for that failure within 5 working days of the date on which the Secretary of State gives notification of that failure.

(2) The Secretary of State must determine whether a claimant who is required to take part in a work-focused health-related assessment has failed to do so and, if so, whether the claimant has shown good cause for that failure in accordance with paragraph (1).

(3) In determining whether a claimant has shown good cause for the failure to participate in a work-focused health-related assessment, the Secretary of State must take the following matters into account—

- (a) whether the claimant was outside Great Britain at the time of the notification;
- (b) the claimant's state of health at the time of the work-focused health-related assessment;
- (c) the nature of any disability which the claimant has; and
- (d) any other matter which the Secretary of State considers appropriate.

CHAPTER 2

Work-focused interviews

Requirement to take part in a work-focused interview

54.—(1) The Secretary of State may require a claimant who satisfies the requirements in paragraph (2) to take part in one or more work-focused interviews as a condition of continuing to be entitled to the full amount of employment and support allowance payable to the claimant.

(2) The requirements referred to in paragraph (1) are that the claimant—

- (a) is either—
 - (i) entitled to an employment and support allowance; or
 - (ii) a person in respect of whom the Secretary of State has made an award under regulation 146(1);
- (b) is not a member of the support group;
- (c) has not reached the age at which a woman of the same age as the claimant would attain pensionable age; and
- (d) is not only entitled to a contributory allowance payable at a nil rate.

(3) Any requirement to take part in a work-focused interview ceases to have effect if the claimant ceases to satisfy the requirements in paragraph (2).

Work-focused interview

55. The purposes of a work-focused interview are any or all of the following—

- (a) assessing the claimant's prospects for remaining in or obtaining work;
- (b) assisting or encouraging the claimant to remain in or obtain work;
- (c) identifying activities that the claimant may undertake that will make remaining in or obtaining work more likely;
- (d) identifying training, educational or rehabilitation opportunities for the claimant which may make it more likely that the claimant will remain in or obtain work or be able to do so;
- (e) identifying current or future work opportunities, including self-employment opportunities, for the claimant, that are relevant to the claimant's needs and abilities.

Notification of interview

56.—(1) The Secretary of State must notify the claimant of the requirement to attend the work-focused interview including details of the date, time and place of the interview.

(2) A work-focused interview may take place at a claimant's home if it is determined that requiring the claimant to attend elsewhere would cause undue inconvenience to, or endanger the health of, the claimant.

(3) The notification referred to in paragraph (1) may be in writing or otherwise.

Taking part in a work-focused interview

57.—(1) A claimant is regarded as having taken part in a work-focused interview if the claimant—

- (a) attends for the interview at the place and at the date and time notified in accordance with regulation 56;
- (b) provides information, if requested by the Secretary of State, about any or all of the matters set out in paragraph (2);
- (c) participates in discussions to the extent the Secretary of State considers necessary, about any or all of the matters set out in paragraph (3);
- (d) assists the Secretary of State in the completion of an action plan.

(2) The matters referred to in paragraph (1)(b) are—

- (a) the claimant's educational qualifications and vocational training;
- (b) the claimant's work history;
- (c) the claimant's aspirations for future work;
- (d) the claimant's skills that are relevant to work;
- (e) the claimant's work-related abilities;
- (f) the claimant's caring or childcare responsibilities; and
- (g) any paid or unpaid work that the claimant is undertaking.

(3) The matters referred to in paragraph (1)(c) are—

- (a) any activity the claimant is willing to undertake which may make obtaining or remaining in work more likely;
- (b) any such activity that the claimant may have previously undertaken;
- (c) any progress the claimant may have made towards remaining in or obtaining work;
- (d) any work-focused health-related assessment the claimant may have taken part in; and
- (e) the claimant's opinion as to the extent to which the ability to remain in or obtain work is restricted by the claimant's physical or mental condition.

Action plan

58.—(1) An action plan is a document that is completed by the Secretary of State and contains—

- (a) a record of a work-focused interview;
- (b) a record of any activity that the claimant is willing to take which may make obtaining or remaining in work more likely or which may make it more likely that the claimant will be able to do so;
- (c) any other information that the Secretary of State considers to be appropriate.

(2) An action plan must be in writing.

(3) The Secretary of State must provide a claimant who attends a work-focused interview with an action plan.

Deferral of requirement to take part in a work-focused interview

59.—(1) A requirement to take part in a work-focused interview may be deferred or treated as having been deferred if at the time the work-focused interview is to take place, or was due to take place, such an interview would not at that time be or have been—

- (a) of assistance to the claimant; or
- (b) appropriate in the circumstances.

(2) A decision under paragraph (1) may be made at any time after the requirement to take part in the work-focused interview is imposed, including after the time that the work-focused interview was due to take place or took place.

(3) Where a requirement to take part in a work-focused interview is deferred, or treated as having been deferred, then the time that the work-focused interview is to take place must be re-determined.

Requirement to take part in a work-focused interview not to apply

60. The Secretary of State may determine that a requirement on a claimant to take part in a work-focused interview is not to apply, or is to be treated as not having applied, if that interview would not be, or would not have been, of assistance because the claimant is or was likely to be starting or returning to work.

Failure to take part in a work-focused interview

61.—(1) A claimant who is required to take part in a work-focused interview but fails to do so must show good cause for that failure within 5 working days of the date on which the Secretary of State gives notification of that failure.

(2) The Secretary of State must determine whether a claimant who is required to take part in a work-focused interview has failed to do so and, if so, whether the claimant has shown good cause for that failure in accordance with paragraph (1).

(3) In determining whether a claimant has shown good cause for the failure to take part in a work-focused interview, the Secretary of State may take the following matters into account—

- (a) that the claimant misunderstood the requirement to take part in the work-focused interview due to learning, language or literacy difficulties or any misleading information given or sent by the Secretary of State;
- (b) that the claimant had transport difficulties and that no reasonable alternative was available;
- (c) that the claimant was attending an interview with an employer with a view to remaining in or obtaining work;
- (d) that the claimant was pursuing employment opportunities as a self-employed earner;
- (e) that the claimant was attending a medical or dental appointment and that it would have been unreasonable in the circumstances to re-arrange the appointment;
- (f) that the claimant was accompanying another person for whom the claimant has caring responsibilities to a medical or dental appointment and that it would have been unreasonable for that other person to re-arrange the appointment;
- (g) that the claimant, a dependant or another person for whom the claimant provides care suffered an accident, sudden illness or relapse of a physical or mental condition;
- (h) that the claimant was attending the funeral of a relative or close friend on the day of the work-focused interview;

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- (i) that the physical or mental condition of the claimant made it impossible to attend at the time and place fixed for the interview;
- (j) that the established customs and practices of the religion to which the claimant belongs prevented attendance on that day or at that time;
- (k) any other matter which the Secretary of State considers appropriate.

Contracting out certain functions relating to work-focused interviews

62.—(1) Any function of the Secretary of State specified in paragraph (2) may be exercised by, or by employees of, such person (if any) as may be authorised by the Secretary of State.

- (2) The functions are any function under—
 - (a) regulation 54(1) (requirement to take part in a work-focused interview);
 - (b) regulation 56(1) and (2) (notification requirement);
 - (c) regulation 57(1)(b) and (c) (taking part in a work-focused interview);
 - (d) regulation 58(1) and (3) (action plan);
 - (e) regulation 59(1) and (3) (deferral of requirement to take part in a work-focused interview);
 - (f) regulation 60 (requirement to take part in a work-focused interview not to apply).

CHAPTER 3

Reduction of employment and support allowance

Reduction of employment and support allowance

63.—(1) Where the Secretary of State has determined that a claimant who was required to take part in—

- (a) a work-focused health-related assessment; or
- (b) a work-focused interview,

has failed to do so and has failed to show good cause for that failure in accordance with regulation 53 or 61, as the case may be (“a failure determination”), the amount of the employment and support allowance payable to the claimant is to be reduced in accordance with this regulation.

(2) Subject to paragraph (3), the amount of the reduction in relation to each failure determination is—

- (a) 50% of the amount of the work-related activity component as set out in Part 4 of Schedule 4 for the first 4 benefit weeks to which, by virtue of section 10(5) of the Social Security Act 1998^{F113} or regulations made under section 10(6) of that Act, the reduction applies; and
- (b) 100% of the amount of that component for each subsequent benefit week.

(3) In any benefit week, the amount of an employment and support allowance payable to a claimant is not, by virtue of this regulation, to be reduced—

- (a) below 10 pence;
- (b) in relation to more than—
 - (i) one failure determination relating to a work-focused health-related assessment; and
 - (ii) one failure determination relating to a work-focused interview; and
- (c) by more than 100% of the amount of the work-related activity component as set out in Part 4 of Schedule 4 in any circumstances.

(4) Where a claimant is entitled to both a contributory allowance and an income-related allowance, any reduction in the claimant's allowance must first be applied to the part of that

allowance treated as attributable to the claimant's contributory allowance and only if there is any amount outstanding is it to be applied to the part of that allowance treated as attributable to the claimant's income-related allowance.

(5) For the purposes of determining the amount of any income-related allowance payable, a claimant is to be treated as receiving the amount of any contributory allowance which would have been payable but for any reduction made in accordance with this regulation.

Textual Amendments

F113 1998 c. 14.

Cessation of reduction

64.—(1) Any reduction imposed as a result of a failure determination which resulted from a failure to take part in a work-focused health-related assessment ceases to have effect if—

- (a) the claimant complies with a requirement to attend a work-focused health-related assessment; or
- (b) the claimant subsequently ceases to meet the requirements set out in regulation 47(2).

(2) Any reduction imposed as a result of a failure determination which resulted from a failure to take part in a work-focused interview ceases to have effect if—

- (a) the claimant complies with a requirement to attend a work-focused interview; or
- (b) the claimant subsequently ceases to meet the requirements set out in regulation 54(2).

CHAPTER 4

Notification

Notification under this Part

65.—(1) Where written notification is to be given in accordance with this Part, such notification may be sent by post.

(2) Any notification sent by post is to be taken to have been received on the second working day after posting.

CHAPTER 5

Modification of the Act in relation to claims to which section 5(1)(c) of the Administration Act applies

Modifications of the Act

66.—(1) Where a person has made a claim for an employment and support allowance to which section 5(1)(c) of the Administration Act applies, the Act applies with the following modifications.

(2) Section 11(1) of the Act applies—

(a) as if for sub-paragraph (a) there were substituted—

“(a) either—

(i) entitled to an employment and support allowance; or

(ii) a person who has made a claim for an employment and support allowance to which regulations under section 5(1)(c) of the Administration Act apply; and”;

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- (b) as if for “continuing to be” there were substituted “ being ”.
- (3) Section 12(1) of the Act applies—
 - (a) as if for sub-paragraph (a) there were substituted—
 - “(a) either—
 - (i) entitled to an employment and support allowance; or
 - (ii) a person who has made a claim to which section 5 applies; and”;
 - (b) as if for “continuing to be” there were substituted “ being ”.

PART 9

AMOUNTS OF ALLOWANCE

CHAPTER 1

Prescribed amounts

Prescribed amounts

67.—(1) Subject to regulations 68, 69 and 163 (amounts in other cases, special cases and urgent cases), the amounts prescribed for the purposes of the calculation of the amount of an income-related allowance under section 4(2)(a) of the Act in relation to a claimant are such of the following amounts as may apply in the claimant's case—

- (a) an amount in respect of the claimant or, if the claimant is a member of a couple, an amount in respect of both of them determined in accordance with paragraph 1(1), (2) or (3) of Schedule 4 (amounts) as the case may be;
- (b) the amount of any premiums which may be applicable to the claimant determined in accordance with Parts 2 and 3 of that Schedule (premiums);
- (c) any amounts determined in accordance with Schedule 6 (housing costs) which may be applicable to the claimant in respect of mortgage interest repayments or such other housing costs as are prescribed in that Schedule.

(2) Subject to regulation 69 (special cases) the amount prescribed for the purposes of the calculation of the amount of a claimant's contributory allowance under section 2(1)(a) of the Act is the amount determined in accordance with paragraph 1(1) of Schedule 4 as may apply in the claimant's case.

(3) Subject to regulation 69, the amount of the work-related activity component and the support component are prescribed in Part 4 of Schedule 4.

Polygamous marriages

68.—(1) Subject to regulation 69 and 163 (special cases and urgent cases), where a claimant is a husband or wife by virtue of a polygamous marriage the amounts prescribed for the purposes of the calculation of the amount of an income-related allowance under section 4(2)(a) of the Act are such of the following amounts as may apply in the claimant's case—

- (a) an amount in respect of the claimant and the other party to the marriage determined in accordance with paragraph 1(3) of Schedule 4;
- (b) an amount equal to the difference between the amounts specified in paragraph 1(3)(a) (couple where both aged 18 and over) and 1(1)(b) (single claimant aged 25 and over) of Schedule 4 in respect of each spouse additional to the marriage;

- (c) the amount of any premiums which are applicable to the claimant determined in accordance with Parts 2 and 3 of that Schedule (premiums);
 - (d) any amounts determined in accordance with Schedule 6 (housing costs) which may be applicable to the claimant in respect of mortgage interest payments or such other housing costs as are prescribed in that Schedule.
- (2) In the case of a partner who is aged less than 18, the amount which applies in respect of that partner is nil unless—
- (a) that partner is treated as responsible for a child; or
 - (b) that partner is a person who—
 - (i) had that partner not been a member of a polygamous marriage would have qualified for an income-related allowance; or
 - (ii) satisfies the requirements of section 3(1)(f)(iii) of the Jobseekers Act (prescribed circumstances for persons aged 16 but less than 18); or
 - (iii) is the subject of a direction under section 16^{F114} of that Act (persons under 18: severe hardship).

Textual Amendments

F114 Section 16 was amended by paragraph 139(1) and (2) of Schedule 7 to the [Social Security Act 1998](#) (c. 14).

Special cases

69.—(1) In the case of a claimant to whom any paragraph in column (1) of Schedule 5 applies (amounts in special cases), the amount in respect of the claimant is to be the amount in the corresponding paragraph in column (2) of that Schedule.

(2) In Schedule 5—

“partner of a person subject to immigration control” means a person—

- (a) who is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act; or
- (b) 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^{F115}; and
- (c) who is a member of a couple and the member's partner is subject to immigration control within the meaning of section 115(9) of that Act and section 115 of that Act applies to the partner for the purposes of exclusion from entitlement to an income-related allowance;

“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^{F116};

“person from abroad” has the meaning given in regulation 70;

“person in hardship” means a person who satisfies regulation 158 but only for a period not exceeding 6 weeks;

“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

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- (b) is on temporary release in accordance with the provisions of the Prison Act 1952^{F117} or the Prisons (Scotland) Act 1989^{F118},
other than a person who is detained in hospital under the provisions of the Mental Health Act 1983^{F119} or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003^{F120} or the Criminal Procedure (Scotland) Act 1995^{F121}.

Textual Amendments

F115 S.I. 2000/636.

F116 S.I. 2005/3360.

F117 1952 c. 52.

F118 1989 c. 45.

F119 1983 c. 20.

F120 2003 asp. 13.

F121 1995 c. 46.

Special cases: supplemental – persons from abroad

70.—(1) “Person from abroad” means, subject to the following provisions of this regulation, a claimant who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(2) A claimant must not be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless the claimant has a right to reside in (as the case may be) the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland other than a right to reside which falls within paragraph (3).

(3) A right to reside falls within this paragraph if it is one which exists by virtue of, or in accordance with, one or more of the following—

- (a) regulation 13 of the Immigration (European Economic Area) Regulations 2006^{F122};
 - (b) regulation 14 of those Regulations, but only in a case where the right exists under that regulation because the claimant is—
 - (i) a jobseeker for the purpose of the definition of “qualified person” in regulation 6(1) of those Regulations; or
 - (ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker;
 - (c) Article 6 of Council Directive No. 2004/38/EC^{F123}; or
 - (d) Article 39 of the Treaty establishing the European Community (in a case where the claimant is a person seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland).
- (4) A claimant is not a person from abroad if the claimant is—
- (a) a worker for the purposes of Council Directive No. 2004/38/EC;
 - (b) a self-employed person for the purposes of that Directive;
 - (c) a person who retains a status referred to in sub-paragraph (a) or (b) pursuant to Article 7(3) of that Directive;
 - (d) a person who is a family member of a person referred to in sub-paragraph (a), (b) or (c) within the meaning of Article 2 of that Directive;

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- (e) a person who has a right to reside permanently in the United Kingdom by virtue of Article 17 of that Directive;
- (f) a person who is treated as a worker for the purpose of the definition of “qualified person” in regulation 6(1) of the Immigration (European Economic Area) Regulations 2006 pursuant to—
 - (i) regulation 5 of the Accession (Immigration and Worker Registration) Regulations 2004 ^{F124} (application of the 2006 Regulations in relation to a national of the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia or the Slovak Republic who is an “accession State worker requiring registration”); or
 - (ii) regulation 6 of the Accession (Immigration and Worker Authorisation) Regulations 2006 ^{F125} (right of residence of a Bulgarian or Romanian who is an “accession State national subject to worker authorisation”);
- (g) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 ^{F126}, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967 ^{F127};
- (h) a person who has exceptional leave to enter or remain in the United Kingdom granted outside the rules made under section 3(2) of the Immigration Act 1971 ^{F128};
- (i) a person who has humanitarian protection granted under those rules;
- (j) a person who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and who is in the United Kingdom as a result of deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom; or
- (k) a person in Great Britain who left the territory of Montserrat after 1st November 1995 because of the effect on that territory of a volcanic eruption.

Textual Amendments

F122 S.I. 2006/1003.

F123 OJL 158, 30.4.04, p. 77.

F124 S.I. 2004/1219.

F125 S.I. 2006/3317.

F126 Cmnd. 9171.

F127 Cmnd. 3906.

F128 1971 c. 77.

Definition of non-dependant

71.—(1) In these Regulations, “non-dependant” means any person, except someone to whom paragraph (2), (3) or (4) applies, who normally resides with a claimant or with whom a claimant normally resides.

- (2) This paragraph applies to—
 - (a) any member of the claimant's family;
 - (b) a child or young person who is living with the claimant but who is not a member of the claimant's household;
 - (c) a person who lives with the claimant in order to care for the claimant or for the claimant's partner and who is engaged for that purpose by a charitable or voluntary organisation

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which makes a charge to the claimant or the claimant's partner for the care provided by that person;

(d) the partner of a person to whom sub-paragraph (c) applies.

(3) This paragraph applies to a person, other than a close relative of the claimant or the claimant's partner—

(a) who is liable to make payments on a commercial basis to the claimant or the claimant's partner in respect of the person's occupation of the claimant's dwelling;

(b) to whom the claimant or the claimant's partner is liable to make payments on a commercial basis in respect of the claimant's occupation of that person's dwelling;

(c) who is a member of the household of a person to whom sub-paragraph (a) or (b) applies.

(4) Subject to paragraph (5), this paragraph applies to—

(a) a person who jointly occupies the claimant's dwelling and who is either—

(i) a co-owner of that dwelling with the claimant or the claimant's partner (whether or not there are other co-owners); or

(ii) jointly liable with the claimant or the claimant's partner to make payments to a landlord in respect of the person's occupation of that dwelling;

(b) a partner of a person to whom sub-paragraph (a) applies.

(5) Where a person is a close relative of the claimant or the claimant's partner, paragraph (4) applies to that person only if the claimant's, or the claimant's partner's, co-ownership, or joint liability to make payments to a landlord in respect of occupation of the dwelling arose either before 11th April 1988 or, if later, on or before the date on which the claimant or the claimant's partner first occupied the dwelling in question.

(6) For the purposes of this regulation a person resides with another only if they share any accommodation except a bathroom, a lavatory or a communal area but not if each person is separately liable to make payments in respect of occupation of the dwelling to the landlord.

(7) In this regulation “communal area” means any area (other than rooms) of common access (including halls and passageways) and rooms of common use in sheltered accommodation.

CHAPTER 2

Deductions from the contributory allowance

Permanent health insurance

72.—(1) For the purposes of sections 2(1)(c) and 3 of the Act (deductions from contributory allowance) pension payment is to include a permanent health insurance payment.

(2) In this regulation “permanent health insurance payment” means any periodical payment arranged by an employer under an insurance policy providing benefits in connection with physical or mental illness or disability, in relation to a former employee on the termination of that person's employment.

[^{F129}Financial Assistance Scheme

72A.—(1) For the purposes of sections 2(1)(c) and 3 of the Act (deductions from contributory 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.]

Textual Amendments

F129 Reg. 72A inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **7(1)**

Councillor's allowance

73. 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 those councils referred to in the definition of “councillor”.

Deductions for pension payment and PPF payment

74.—(1) Where—

- (a) [^{F130}a claimant] is entitled to a contributory 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) any combination 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, £85.00; or
 - (ii) if that period is not a week, such proportion of the amount mentioned in paragraph (i) as falls to be calculated in accordance with regulation 94(1) or (6) (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 this Chapter “payment” means a payment or payments, as the case may be, referred to in paragraph (1)(b).

Textual Amendments

F130 Words in [reg. 74\(1\)\(a\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **7(2)**

Payments treated as not being payments to which section 3 applies

75. The following payments are to be treated as not being payments to which section 3 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;

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- (d) any pension payment made under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 ^{F131};
- (e) any guaranteed income payment;
- (f) any permanent health insurance payment in respect of which the employee had contributed to the premium to the extent of more than 50%.

Textual Amendments

F131 2003 c. 1.

Deductions for councillor's allowance

76.—(1) Where the net amount of councillor's allowance to which a claimant is entitled in respect of any week exceeds [^{F132}£92.00], an amount equal to the excess is to be deducted from the amount of a contributory allowance to which that person 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.

Textual Amendments

F132 Word in [reg. 76\(1\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), [regs. 1\(2\), 7\(3\)](#)

Date from which payments are to be taken into account

77. Where regulations 74(1) and 76(1) apply, deductions must have effect, calculated where appropriate in accordance with regulation 94(1) or (6), 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 a contributory allowance in that week.

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

78. 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 94(1) or (6), 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

79.—(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 94(1) or (6) 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 94(1) or (6) before aggregating the sum of those payments for the purposes of the reduction of a contributory allowance in accordance with regulation 74.

CHAPTER 3

Statutory payments

Effect of statutory maternity pay on a contributory allowance

80.—(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—
 - (i) is in a period of limited capability for work; and
 - (ii) satisfies the conditions of entitlement to a contributory 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 a contributory allowance in respect of any day that falls within the maternity pay period.

(3) Where by virtue of paragraph (2) a woman is entitled to a contributory allowance for any week (including part of a week), the total amount of such benefit 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 a contributory allowance is for part of a week) and only the balance, if any, of the contributory allowance is to be payable to her.

Effect of statutory adoption pay on a contributory allowance

81.—(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—
 - (i) is in a period of limited capability for work; and
 - (ii) satisfies the conditions of entitlement to a contributory 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 a contributory 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 a contributory 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 adoption pay to which that claimant is entitled in accordance with Part 12ZB of the Contributions and Benefits Act^{F133} for the same week (or equivalent part of a week where entitlement to a contributory allowance is for part of a week) and only the balance, if any, of the contributory allowance is to be payable to that claimant.

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Textual Amendments

F133 Part 12ZB was inserted by section 4 of the [Employment Act 2002 \(c. 22\)](#) and amended by the [Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), [regulation 49\(1\)](#) and paragraph 12 of Schedule 8.

Effect of additional statutory paternity pay on a contributory allowance

82.—(1) This regulation applies where—

- (a) a claimant is entitled to additional statutory paternity pay and, on the day immediately preceding the first day in the additional paternity pay period—
 - (i) is in a period of limited capability for work; and
 - (ii) satisfies the conditions of entitlement to a contributory allowance in accordance with section 1(2)(a) of the Act; and
- (b) on any day during the additional statutory paternity 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 additional statutory paternity pay is to be entitled to a contributory allowance in respect of any day that falls within the additional paternity pay period.

(3) Where by virtue of paragraph (2) a person is entitled to a contributory 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 additional statutory paternity pay to which that claimant is entitled in accordance with Part 12ZA of the Contributions and Benefits Act ^{F134} for the same week (or equivalent part of a week where entitlement to a contributory allowance is for part of a week) and only the balance, if any, of the contributory allowance is to be payable to that claimant.

Textual Amendments

F134 Part 12ZA was inserted by section 2 of the Employment Act 2002 and amended by the [Work and Families Act 2006 \(c. 18\)](#), [sections 6 to 10](#) and the [Employment Equality \(Age\) Regulations 2006](#), [regulation 49\(1\)](#) and paragraph 11 of Schedule 8.

PART 10

INCOME AND CAPITAL

CHAPTER 1

General

Calculation of income and capital of members of claimant's family and of a polygamous marriage

83.—(1) Subject to paragraph (4), the income and capital of a claimant's partner which by virtue of paragraph 6(2) of Schedule 1 to the Act is to be treated as income and capital of the claimant, is to be calculated in accordance with the following provisions of this Part in like manner as for the

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claimant; and any reference to the “claimant” is, except where the context otherwise requires, to be construed, for the purposes of this Part, as if it were a reference to the claimant's partner.

(2) Subject to the following provisions of this Part, the income paid to, or in respect of, and capital of, a child or young person who is a member of the claimant's family is not to be treated as the income or capital of the claimant.

(3) Subject to paragraph (5), where a claimant or the partner of a claimant is married polygamously to two or more members of the claimant's household—

- (a) the claimant is to be treated as possessing capital and income belonging to each such member; and
- (b) the income and capital of that member is to be calculated in accordance with the following provisions of this Part in like manner as for the claimant.

(4) Where at least one member of a couple is aged less than 18 and the applicable amount of the couple falls to be determined under paragraph 1(3)(e), (f), (g), (h) or (i) of Schedule 4 (amounts), the income of the claimant's partner is not to be treated as the income of the claimant to the extent that—

- (a) in the case of a couple where both members are aged less than 18, the amount specified in paragraph 1(3)(c) of that Schedule exceeds the amount specified in paragraph 1(3)(i) of that Schedule; and
- (b) in the case of a couple where only one member is aged less than 18, the amount specified in paragraph 1(3)(a) of that Schedule exceeds the amount which is specified in paragraph 1(3)(h) of that Schedule.

(5) Where a member of a polygamous marriage is a partner aged less than 18 and the amount which applies in respect of that partner under regulation 68(2) (polygamous marriages) is nil, the claimant is not to be treated as possessing the income of that partner to the extent that an amount in respect of that partner would have been included in the applicable amount if the partner had fallen within the circumstances set out in regulation 68(2)(a) or (b).

Income of participants in the self-employment route

84. Chapters 2, 3, 4, 6, 8 and 9 of this Part and regulations 132 to 137, 142 and 143 do not apply to any income which is to be calculated in accordance with Chapter 5 of this Part (participants in the self-employment route).

[^{F135}Child maintenance or] liable relative payments

85. Regulations 91 to 109, 111 to 117 and Chapter 10 of this Part do not apply to any payment which is to be calculated in accordance with Chapter 8 of this Part (^{F136}child maintenance and liable relative payments]).

Textual Amendments

F135 Words in reg. 85 heading inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(2)(a)**

F136 Words in reg. 85 omitted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(3)**

Child support

^{F137}**86.**

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Textual Amendments

F137 Reg. 86 omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(4)(a)**

Calculation of income and capital of students

87. The provisions of Chapters 2 to 7 of this Part (income and capital) are to have effect in relation to students and their partners subject to the modifications set out in Chapter 10 of this Part (students).

Calculation of income which consists of earnings of participants in exempt work

88. Notwithstanding the other provisions of this Part, regulations 91(2), 92 to 99 and 108(3) and (4) and Schedule 7 (sums to be disregarded in the calculation of earnings) are to apply to any income which consists of earnings which is to be calculated for the purposes of regulations 45(2) to (4) (exempt work – earnings limits).

Calculation of income where pension payments, PPF periodic payments or councillor's allowance payable

89. Notwithstanding the other provisions of this Part, regulation 94(1) and (6) is to apply for the purposes of calculating the amount of any pension payments, PPF periodic payments or councillor's allowance to which Chapter 2 of Part 9 (deductions from the contributory allowance) applies.

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 (capital treated as income) 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(3) and (4) 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(3) and (4).

(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 payment or a councillor's allowance paid to the claimant.

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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)

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) The period over which a Career Development Loan, which is paid pursuant to section 2 of the Employment and Training Act 1973 ^{F138}, is to be taken into account is the period of education and training intended to be supported by that loan.

(4) Where grant income as defined in Chapter 10 of this Part 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 (date on which income is treated as paid) 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.

(5) 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,

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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.

(6) In a case to which paragraph (5) 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.

(7) 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.

(8) 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.

(9) 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 (persons treated, or not treated, as engaged in remunerative work);

(10) 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 of this Part.

Textual Amendments

F138 1973 c. 50. Section 2 was substituted by the [Employment Act 1988 \(c. 19\)](#), [section 25\(1\)](#) and amended by the [Employment Act 1989 \(c. 38\)](#), [section 29\(4\)](#) and Part 1 of Schedule 7 and the [Trade Union Reform and Employment Rights Act 1993 \(c. 19\)](#), [section 47\(1\)](#).

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; or
- (b) sums paid periodically for or in respect of any copyright
- (c) payments in respect of any book registered under the Public Lending Right Scheme 1982,

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.

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

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 the award begins; or
- (c) on the first day of the first benefit week that follows the date 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.

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 (the 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 (the relevant days), the amount to be taken into account for the relevant days is, except where paragraph (4) applies, to be calculated

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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 (4) 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 ^{F139}paragraph (8) 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.

Textual Amendments

F139 Words in [reg. 94\(8\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(1)**

CHAPTER 3

Employed earners

Earnings of employed earners

95.—(1) Subject to ^{F140}paragraphs (2) and (3)], “earnings” means, in the case of employment as an employed earner, any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;

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- (b) any payment in lieu of remuneration except any periodic sum paid to a claimant on account of the termination of the claimant's employment by reason of redundancy;
 - (c) any payment in lieu of notice;
 - (d) any holiday pay except any payable more than 4 weeks after the termination or interruption of employment;
 - (e) any payment by way of a retainer;
 - (f) any payment made by the claimant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant's employer in respect of—
 - (i) travelling expenses incurred by the claimant between the claimant's home and place of employment;
 - (ii) expenses incurred by the claimant under arrangements made for the care of a member of the claimant's family owing to the claimant's absence from home;
 - (g) any award of compensation made under section 112(4) or 117(3)(a) of the Employment Rights Act 1996 ^{F141} (the remedies: orders and compensation, enforcement of order and compensation);
 - (h) any payment or remuneration made under sections 28, 34, 64, 68 and 70 of the Employment Rights Act 1996 ^{F142} (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to employment tribunals);
 - (i) any such sum as is referred to in section 112(3) of the Contributions and Benefits Act ^{F143} (certain sums to be earnings for social security purposes);
 - (j) where a payment of compensation is made in respect of employment which is part-time employment, the amount of the compensation;
 - (k) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001 ^{F144}.
- (2) "Earnings" are not to include—
- (a) subject to paragraph (3), any payment in kind;
 - (b) any remuneration paid by or on behalf of an employer to the claimant in respect of a period throughout which the claimant is on maternity leave, paternity leave or adoption leave or is absent from work because the claimant is ill;
 - (c) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
 - (d) any occupational pension;
 - (e) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme ^{F145}.
- (3) Paragraph (2)(a) is not to apply in respect of any non-cash voucher referred to in paragraph (1)(k).
- (4) In this regulation—
- "compensation" means any payment made in respect of, or on the termination of, employment in a case where a claimant has not received or received only part of a payment in lieu of notice due or which would have been due to the claimant had that claimant not waived the right to receive it, other than—
- (a) any payment specified in paragraph (1)(a) to (i);
 - (b) any payment specified in paragraph (2)(a) to (e);

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- (c) any redundancy payment within the meaning of section 135(1) of the Employment Rights Act 1996;
- (d) any refund of contributions to which that person was entitled under an occupational pension scheme; and
- (e) any compensation payable by virtue of section 173 of the Education Reform Act 1988^{F146},

“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 (persons treated, or not treated, as engaged in remunerative work).

Textual Amendments

- F140** Words in [reg. 95\(1\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), [regs. 1\(2\), 8\(2\)](#)
- F141** 1996 c. 18.
- F142** Sections 34 and 70 were amended by the [Employment Rights \(Dispute Resolution\) Act 1998 \(c. 8\)](#), [section 1\(2\)\(a\)](#) and (b) and section 64 was amended by [S.I. 1999/3232](#), [regulation 41\(1\)](#) and paragraph 2 of Schedule 9.
- F143** Section 112(3) was amended by the Employment Rights Act 1996, paragraph 51(4)(a) to (c) of Schedule 1.
- F144** [S.I. 2001/1004](#), the relevant amending instruments are [S.I. 2001/2412](#), [S.I. 2002/307](#), [S.I. 2003/2958](#), [S.I. 2004/770](#), [S.I. 2005/778](#), [S.I. 2006/883](#), [S.I. 2006/2003](#) and [S.I. 2007/2091](#).
- F145** [S.I. 1996/3182](#).
- F146** 1988 c. 40.

Calculation of net earnings of employed earners

96.—(1) For the purposes of regulation 91 (calculation of earnings derived from employed earner's employment and income other than earnings) the earnings of a claimant derived from employment as an employed earner to be taken into account, subject to paragraph (2), are the claimant's net earnings.

(2) There is to be disregarded from a claimant's net earnings, any sum, where applicable, specified in paragraphs 1 to 12 of Schedule 7 (sums to be disregarded in the calculation of earnings).

(3) For the purposes of paragraph (1) net earnings are to be calculated by taking into account the gross earnings of the claimant from that employment less—

- (a) any amount deducted from those earnings by way of—
 - (i) income tax;
 - (ii) primary Class 1 contributions under section 6(1)(a) of the Contributions and Benefits Act^{F147};
- (b) one-half of any sum paid by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

Textual Amendments

- F147** [Section 6](#) was substituted by the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), [section 73](#) and paragraph 2 of Schedule 9.

CHAPTER 4

Self-employed earners

Earnings of self-employed earners

97.—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross receipts of the employment and include any allowance paid under section 2 of the Employment and Training Act 1973 ^{F148} or section 2 of the Enterprise and New Towns (Scotland) Act 1990 ^{F149} to the claimant for the purpose of assisting the claimant in carrying on the claimant's business.

(2) “Earnings” do not include—

- (a) where a claimant is involved in providing board and lodging accommodation for which a charge is payable, any payment by way of such a charge;
- (b) any payment to which paragraph 28 or 29 of Schedule 8 refers (payments in respect of a person accommodated with the claimant under an arrangement made by a local authority or voluntary organisation and payments made to the claimant by a health authority, local authority or voluntary organisation in respect of persons temporarily in the claimant's care);
- (c) any sports award.

Textual Amendments

F148 1973 c. 50.

F149 1990 c. 35.

Calculation of net profit of self-employed earners

98.—(1) For the purposes of regulation 92 (calculation of earnings of self-employed earners), the earnings of a claimant to be taken into account are to be—

- (a) in the case of a self-employed earner who is engaged in employment on that self-employed earner's own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations 1975 ^{F150}, that self-employed earner's share of the net profit derived from that employment less—
 - (i) an amount in respect of income tax and of National Insurance contributions payable under the Contributions and Benefits Act calculated in accordance with regulation 99 (deduction of tax and contributions for self-employed earners); and
 - (ii) one half of any premium paid in the period that is relevant under regulation 92 (calculation of earnings of self-employed earners) in respect of a personal pension scheme.

(2) There is to be disregarded from a claimant's net profit any sum, where applicable, specified in paragraphs 1 to 11 of Schedule 7.

(3) For the purposes of paragraph (1)(a) the net profit of the employment, except where paragraph (9) applies, is to be calculated by taking into account the earnings of the employment over the period determined under regulation 92 less—

- (a) subject to paragraphs (5) to (7), any expenses wholly and exclusively defrayed in that period for the purposes of that employment;

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- (b) an amount in respect of—
 - (i) income tax; and
 - (ii) National Insurance contributions payable under the Contributions and Benefits Act, calculated in accordance with regulation 99 (deduction of tax and contributions for self-employed earners); and
 - (c) one half of any premium paid in the period that is relevant under regulation 92 in respect of a personal pension scheme.
- (4) For the purposes of paragraph (1)(b), the net profit of the employment is to be calculated by taking into account the earnings of the employment over the period determined under regulation 92 less, subject to paragraphs (5) to (7), any expenses wholly and exclusively defrayed in that period for the purpose of that employment.
- (5) Subject to paragraph (6), a deduction is not to be made under paragraph (3)(a) or (4) in respect of—
- (a) any capital expenditure;
 - (b) the depreciation of any capital asset;
 - (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
 - (d) any loss incurred before the beginning of the period determined under regulation 92 (calculation of earnings of self-employed earners);
 - (e) the repayment of capital on any loan taken out for the purposes of the employment;
 - (f) any expenses incurred in providing business entertainment.
- (6) A deduction is to be made under paragraph (3)(a) or (4) in respect of the repayment of capital on any loan used for—
- (a) the replacement in the course of business of equipment or machinery; and
 - (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.
- (7) The Secretary of State will refuse to make a deduction in respect of any expenses under paragraph (3)(a) or (4) where the Secretary of State is not satisfied that the expense has been defrayed or, having regard to the nature of the expense and its amount, that it has been reasonably incurred.
- (8) For the avoidance of doubt—
- (a) a deduction is not to be made under paragraph (3)(a) or (4) in respect of any sum unless it has been expended for the purposes of the business;
 - (b) a deduction is to be made thereunder in respect of—
 - (i) the excess of any VAT paid over VAT received in the period determined under regulation 92;
 - (ii) any income expended in the repair of an existing asset except to the extent that any sum is payable under an insurance policy for its repair;
 - (iii) any payment of interest on a loan taken out for the purposes of the employment.
- (9) Where a claimant is engaged in employment as a child minder the net profit of the employment is to be one-third of the earnings of that employment, less—
- (a) an amount in respect of—
 - (i) income tax; and
 - (ii) National Insurance contributions payable under the Contributions and Benefits Act,

calculated in accordance with regulation 99 (deduction of tax and contributions for self-employed earners); and

(b) one half of any premium paid in respect of a personal pension scheme.

(10) Notwithstanding regulation 92 (calculation of earnings of self-employed earners) and the foregoing paragraphs, the Secretary of State may assess any item of a claimant's income or expenditure over a period other than that determined under regulation 92 as may, in the particular case, enable the weekly amount of that item of income or expenditure to be determined more accurately.

(11) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and that claimant is also engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of the claimant's employments is not to be offset against the claimant's earnings in any other of the claimant's employments.

Textual Amendments

F150 [S.I. 1975/529](#).

Deduction of tax and contributions for self-employed earners

99.—(1) Subject to paragraph (2), the amount to be deducted in respect of income tax under regulation 98(1)(b)(i), (3)(b)(i) or (9)(a)(i) (calculation of net profit of self-employed earners) is to be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at the ^{F151}... basic rate of tax less only the personal allowance to which the claimant is entitled under sections 35 and 38 to 40 of the Income Tax Act 2007 ^{F152} (personal reliefs) as is appropriate to the claimant's circumstances.

(2) If the period determined under regulation 92 is less than a year the earnings to which the [^{F153}basic rate] of tax is to be applied and the amount of the personal reliefs deductible under paragraph (1) is to be calculated on a pro rata basis.

(3) The amount to be deducted in respect of National Insurance contributions under regulation 98(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) is to be the total of—

(a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, 11(3) of the Contributions and Benefits Act ^{F154} at the rate applicable at the date of claim except where the claimant's chargeable income is less than the amount specified in section 11(4) of that Act (small earnings exception) for the tax year in which the date of claim falls; but if the assessment period is less than a year, the amount specified for that tax year is to be reduced pro rata; and

(b) the amount of Class 4 contributions (if any) which would be payable under section 15 of that Act ^{F155} (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date of claim on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of claim falls; but if the assessment period is less than a year, those limits are to be reduced pro rata.

(4) In this regulation “chargeable income” means—

(a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph (3)(a) or, as the case may be, (4) of regulation 98;

(b) in the case of employment as a child minder, one-third of the earnings of that employment.

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Textual Amendments

- F151** Words in [reg. 99\(1\)](#) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), [regs. 1\(2\)](#), [8\(3\)\(a\)](#)
- F152** [2007 c. 3](#).
- F153** Words in [reg. 99\(2\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), [regs. 1\(2\)](#), [8\(3\)\(b\)](#)
- F154** Section 11 was amended by the [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#), [section 2](#) and paragraph 12 of Schedule 3 and [S.I. 2007/1052](#), [article 2\(b\)](#).
- F155** Section 15 was amended by the [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [sections 882\(1\)](#) and 884 and paragraphs 419 and 420(1), (2)(a), (c) and (d), (3) and (4) of Schedule 1 and Schedule 3, the [National Insurance Contributions Act 2002 \(c. 19\)](#), [section 3\(1\)](#), the [Limited Liability Partnerships Act 2000 \(c. 12\)](#), [section 13](#) and [S.I. 2007/1052](#), [article 4\(a\)](#) and (b).

CHAPTER 5

Participants in the self-employment route

Interpretation

100. In this Chapter “special account” means, where a claimant was carrying on a commercial activity in respect of which assistance is received under the self-employment route, the account into which the gross receipts from that activity were payable during the period in respect of which such assistance was received.

Treatment of gross receipts of participants in the self-employment route

101. The gross receipts of a commercial activity carried on by a claimant in respect of which assistance is received under the self-employment route, are to be taken into account in accordance with the following provisions of this Chapter.

Calculation of income of participants in the self-employment route

102.—(1) The income of a claimant who has received assistance under the self-employment route is to be calculated by taking into account the whole of the monies in the special account at the end of the last day on which such assistance was received and deducting from those monies—

- (a) an amount in respect of income tax calculated in accordance with regulation 103 (deduction in respect of tax for participants in the self-employment route); and
- (b) any sum to which paragraph (4) refers.

(2) Income calculated pursuant to paragraph (1) is to be apportioned equally over a period which starts on the date the income is treated as paid under paragraph (3) and is equal in length to the period beginning with the day on which assistance was first received under the self-employment route and ending on the last day on which such assistance was received.

(3) Income calculated pursuant to paragraph (1) is to be treated as paid—

- (a) in the case where it is due to be paid before the first benefit week in respect of which the participant or the participant's partner first claims an income-related allowance following the last day on which assistance was received under the self-employment route, on the day in the week in which it is due to be paid which corresponds to the first day of the benefit week;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid.

(4) This paragraph refers, where applicable in each benefit week in respect of which income calculated pursuant to paragraph (1) is taken into account pursuant to paragraphs (2) and (3), to the sums which would have been disregarded under paragraph 7(1) of Schedule 7 had the income been earnings.

Deduction in respect of tax for participants in the self-employment route

103.—(1) The amount to be deducted in respect of income tax under regulation 102(1)(a) (calculation of income of participants in the self-employment route) in respect of the period determined under regulation 102(2) is to be calculated as if—

- (a) the chargeable income is the only income chargeable to tax;
- (b) the personal allowance applicable to the person receiving assistance under the self-employment route by virtue of sections 35 and 45 to 55 of the Income Tax Act 2007 is allowable against that income; and
- (c) the rate at which the chargeable income less the personal allowance is assessable to income tax is the ^{F156}... basic rate of tax.

(2) For the purpose of paragraph (1), the [^{F157}basic rate] of tax to be applied and the amount of the personal allowance deductible is, where the period determined under regulation 102(2) is less than a year, to be calculated on a pro rata basis.

(3) In this regulation, “chargeable income” means the monies in the special account at the end of the last day upon which assistance was received under the self-employment route.

Textual Amendments

F156 Words in reg. 103(1)(c) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(4)(a)**

F157 Words in reg. 103(2) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(4)(b)**

CHAPTER 6

Other income

Calculation of income other than earnings

104.—(1) For the purposes of regulation 91 (calculation of earnings derived from employed earner's employment and income other than earnings) the income of a claimant which does not consist of earnings to be taken into account will, subject to paragraphs (2) to (7), be the claimant's gross income and any capital treated as income under regulation 105 (capital treated as income).

(2) There is to be disregarded from the calculation of a claimant's gross income under paragraph (1), any sum, where applicable, specified in Schedule 8.

(3) Where the payment of any benefit under the benefit Acts is subject to any deduction by way of recovery the amount to be taken into account under paragraph (1) is to be the gross amount payable.

(4) [^{F158}Paragraphs (5) and (5A) apply] where—

- (a) a relevant payment has been made to a claimant in an academic year; and
- (b) that claimant abandons, or is dismissed from, that claimant's course of study before the payment to the claimant of the final instalment of the relevant payment.

Status: Point in time view as at 05/01/2009. This version of this

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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)

(5) ^{F159}Where a relevant payment is made quarterly, the] amount of a relevant payment to be taken into account for the assessment period for the purposes of paragraph (1) in respect of a claimant to whom paragraph (4) applies, is to be calculated by applying the formula—

$$\frac{A - (B \times C)}{D}$$

where—

A = the total amount of the relevant payment which that claimant would have received had that claimant remained a student until the last day of the academic term in which the person abandoned, or was dismissed from, the course, less any deduction under regulation 137(6) (treatment of student loans);

B = the number of benefit weeks from the benefit week immediately following that which includes the first day of that academic year to the benefit week immediately before that which includes the day on which the claimant abandoned, or was dismissed from, that claimant's course;

C = the weekly amount of the relevant payment, before the application of the £10 disregard, which would have been taken into account as income under regulation 137(3) had the claimant not abandoned or been dismissed from, the course and, in the case of a claimant who was not entitled to an income-related allowance immediately before that claimant abandoned or was dismissed from the course, had that claimant, at that time, been entitled to an income-related allowance;

D = the number of benefit weeks in the assessment period.

^{F160}(5A) Where a relevant payment is made by two or more instalments in a quarter, the amount of a relevant payment to be taken into account for the assessment period for the purposes of paragraph (1) in respect of a person to whom paragraph (4) applies, shall be calculated by applying the formula in paragraph (5) but as if—

A = the total amount of relevant payments which that person received, or would have received, from the first day of the academic year to the day the person abandoned the course, or was dismissed from it, less any deduction under regulation 137(6).]

(6) ^{F161}In this regulation]—

“academic year” and “student loan” have the same meanings as for the purposes of Chapter 10 of this Part;

^{F162}“assessment period” means—

(a) in a case where a relevant payment is made quarterly, the period beginning with the benefit week which includes the day on which the claimant abandoned, or was dismissed from, the course and ending with the benefit week which includes the last day of the last quarter for which an instalment of the relevant payment was payable to that claimant;

(b) in a case where the relevant payment is made by two or more instalments in a quarter, the period beginning with the benefit week which includes the day on which the claimant abandoned, or was dismissed from, the course and ending with the benefit week which includes—

(i) the day immediately before the day on which the next instalment of the relevant payment would have been due had the payments continued; or

(ii) the last day of the last quarter for which an instalment of the relevant payment was payable to that claimant,

whichever of those dates is earlier;]

“quarter” for the purposes of the definition of “assessment period” in relation to an academic year means a period in that year—

- (a) beginning on 1st January and ending on 31st March;
- (b) beginning on 1st April and ending on 30th June;
- (c) beginning on 1st July and ending on 31st August; or
- (d) beginning on 1st September and ending on 31st December;

“relevant payment” means either a student loan or an amount intended for the maintenance of dependants referred to in regulation 132(6) (calculation of grant income) or both.

(7) In the case of income to which regulation 91(4) (calculation of income of former students) applies, the amount of income to be taken into account for the purposes of paragraph (1) is to be the amount of that income calculated in accordance with regulation 94(7) (calculation of weekly amount of income) and on the basis that none of that income has been repaid.

(8) Subject to paragraph (9), for the avoidance of doubt there is to be included as income to be taken into account under paragraph (1)—

- (a) any payment to which regulation 95(2) or 97(2) (payments not earnings) applies; or
- (b) in the case of a claimant who is receiving support provided under section 95 or 98 of the Immigration and Asylum Act^{F163} including support provided by virtue of regulations made under Schedule 9 to that Act, the amount of such support provided in respect of essential living needs of the claimant and the claimant's partner (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to that Act.

(9) In the case of a claimant who 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, there is not to be included as income to be taken into account under paragraph (1) the amount of 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.

Textual Amendments

- F158** Words in [reg. 104\(4\)](#) substituted (27.10.2008) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), regs. 1(5), [7\(2\)\(a\)](#)
- F159** Words in [reg. 104\(5\)](#) substituted (27.10.2008) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), regs. 1(5), [7\(2\)\(b\)](#)
- F160** Words in [reg. 104\(5A\)](#) substituted (27.10.2008) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), regs. 1(5), [7\(2\)\(c\)](#)
- F161** Words in [reg. 104\(6\)](#) substituted (27.10.2008) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), regs. 1(5), [7\(2\)\(d\)\(i\)](#)
- F162** Words in [reg. 104\(6\)](#) substituted (27.10.2008) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), regs. 1(5), [7\(2\)\(d\)\(ii\)](#)
- F163** Sections 95 and 98 and Schedule 9 were amended by the [Nationality, Immigration and Asylum Act 2002 \(c. 41\)](#), [sections 44\(1\)](#) and (6), [45\(4\)\(a\)](#) and (b) and [50\(1\)](#) and (2).

Capital treated as income

105.—(1) Capital which is payable by instalments which are outstanding on—

- (a) the first day in respect of which an income-related allowance is payable or the date of the determination of the claim, whichever is earlier; or

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(b) in the case of a supersession, the date of that supersession, is to be treated as income if the aggregate of the instalments outstanding and the amount of the claimant's capital otherwise calculated in accordance with Chapter 7 of this Part exceeds £16,000.

(2) Any payment received under an annuity is to be treated as income.

(3) Any earnings to the extent that they are not a payment of income are to be treated as income.

(4) Any Career Development Loan paid pursuant to section 2 of the Employment and Training Act 1973 ^{F164} is to be treated as income.

(5) Where an agreement or court order provides that payments are to be made to the claimant in consequence of any personal injury to the claimant and that such payments are to be made, wholly or in part, by way of periodical payments, any such periodical payments received by the claimant (but not a payment which is treated as capital by virtue of this Part), are to be treated as income.

Textual Amendments

F164 1973 c. 50.

Notional income – deprivation and income on application

106.—(1) A claimant is to be treated as possessing income of which the claimant has deprived himself or herself for the purpose of securing entitlement to an employment and support allowance or increasing the amount of that allowance, or for the purpose of securing entitlement to, or increasing the amount of, income support or a jobseeker's allowance.

(2) Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury;
- (c) an employment and support allowance;
- (d) a jobseeker's allowance;
- (e) working tax credit;
- (f) child tax credit;
- (g) a personal pension scheme, occupational pension scheme or a payment made by the Board of the Pension Protection Fund where the claimant is aged under 60;
- (h) any sum to which paragraph 43(2)(a) of Schedule 9 (capital to be disregarded) applies which is administered in the way referred to in paragraph 43(1)(a) of that Schedule;
- (i) any sum to which paragraph 44(a) of Schedule 9 refers; or
- (j) rehabilitation allowance made under section 2 of the Employment and Training Act 1973,

income which would become available to the claimant upon application being made but which has not been acquired by the claimant is to be treated as possessed by the claimant but only from the date on which it could be expected to be acquired were an application made.

(3) A claimant who has attained the age of 60 is to be treated as possessing—

- (a) the amount of any income from an occupational pension scheme, a personal pension scheme or the Board of the Pension Protection Fund—
 - (i) for which no claim has been made; and
 - (ii) to which the claimant might expect to be entitled if a claim for it were made;
- (b) income from an occupational pension scheme which the claimant elected to defer,

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but only from the date on which it could be expected to be acquired were an application for it to be made.

- (4) This paragraph applies where a claimant aged not less than 60—
- (a) is entitled to money purchase benefits under an occupational pension scheme or a personal pension scheme;
 - (b) fails to purchase an annuity with the funds available in that scheme; and
 - (c) either—
 - (i) defers in whole or in part the payment of any income which would have been payable to the claimant by that claimant's pension fund holder; or
 - (ii) fails to take any necessary action to secure that the whole of any income which would be payable to the person by that claimant's pension fund holder upon the person applying for it, is so paid; or
 - (iii) income withdrawal is not available to the claimant under that scheme.

(5) Where paragraph (4) applies, the amount of any income foregone is to be treated as possessed by that claimant, but only from the date on which it could be expected to be acquired were an application for it to be made.

(6) The amount of any income foregone in a case where paragraph (4)(c)(i) or (ii) applies is to be the maximum amount of income which may be withdrawn from the fund and is to be determined by the Secretary of State who will take account of information provided by the pension fund holder in accordance with regulation 7(5) of the Social Security (Claims and Payments) Regulations 1987^{F165}.

(7) The amount of any income foregone in a case where paragraph (4)(c)(iii) applies is to be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant occupational or personal pension scheme been held under a scheme where income withdrawal was available and is to be determined in the manner specified in paragraph (6).

(8) In paragraph (4), “money purchase benefits” has the meaning it has in section 181 of the Pension Schemes Act 1993^{F166}.

Textual Amendments

F165 [S.I. 1987/1967](#), relevant amending instruments are [S.I. 1999/2572](#) and [S.I. 2003/492](#).

F166 [1993 c. 48](#). The definition in section 181 was amended by [S.I. 2005/2053](#).

Notional income – income due to be paid or income paid to or in respect of a third party

107.—(1) Except in the case of a discretionary trust, or a trust derived from a payment made in consequence of a personal injury, any income which is due to be paid to the claimant but—

- (a) has not been paid to the claimant;
- (b) is not a payment prescribed in regulation 8 or 9 of the Social Security (Payments on Account, Overpayment and Recovery) Regulations 1988^{F167} (duplication and prescribed payments or maintenance payments) and not made on or before the date prescribed in relation to it,

is, except for any amount to which paragraph (2) applies, to be treated as possessed by the claimant.

- (2) This paragraph applies to—
- (a) an amount which is due to be paid to the claimant under an occupational pension scheme but which is not paid because the trustees or managers of the scheme have suspended or ceased payments due to an insufficiency of resources;

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- (b) any amount by which a payment made to the claimant from an occupational pension scheme falls short of the payment to which the claimant was due under the scheme where the shortfall arises because the trustees or managers of the scheme have insufficient resources available to them to meet in full the scheme's liabilities; or
 - (c) any earnings which are due to an employed earner on the termination of that employed earner's employment by reason of redundancy but which have not been paid to that employed earner.
- (3) Any payment of income, other than a payment of income specified in paragraph (5), made to a third party in respect of a single claimant or the claimant's partner (but not a member of the third party's family) is to be treated—

- (a) in a case where that payment is derived from—
 - (i) a payment of any benefit under the benefit Acts;
 - (ii) a payment from the Armed Forces and Reserve Forces Compensation Scheme;
 - (iii) a war disablement pension, war widow's pension or war widower's pension; or
 - (iv) 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,
 as possessed by that single claimant, if it is paid to the claimant or by the claimant's partner, if it is paid to the claimant's partner;
- (b) in a case where that payment is a payment of an occupational pension, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund, as possessed by that single claimant or, as the case may be, by the claimant's partner;
- (c) in any other case, as possessed by that single claimant or the claimant's partner to the extent that it is used for the 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 regulations 67(1)(c) or 68(1)(d) (housing costs), of that single claimant or, as the case may be, of the claimant's partner, or is used for any council tax or water charges for which that claimant or that partner is liable,

but, except where sub-paragraph (a) applies, this paragraph does not apply to any payment in kind to the third party.

(4) Any payment of income, other than a payment of income specified in paragraph (5), made to a single claimant or the claimant's partner in respect of a third party (but not in respect of another member of the claimant's family) is to be treated as possessed by that single claimant or, as the case may be, the claimant's partner, to the extent that it is kept or used by that claimant or used by or on behalf of the claimant's partner but, except where paragraph (3)(a) applies, this paragraph does not apply to any payment in kind to the third party.

(5) Paragraphs (3) and (4) do not apply in respect of a payment of income made—

- (a) under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or [^{F168}the Independent Living Fund (2006)];
- (b) pursuant to section 19(1)(a) of the Coal Industry Act 1994 ^{F169} (concessionary coal); or
- (c) pursuant to section 2 of the Employment and Training Act 1973 in respect of a person's participation—
 - (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations ^{F170};

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- (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
 - (iii) in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations ^{F171};
 - (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations ^{F172}; or
- (d) under an occupational pension scheme, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund where—
- (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980 ^{F173};
 - (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
 - (iii) the person referred to in paragraph (i) and that person's partner (if any) does not possess, or is not treated as possessing, any other income apart from that payment.

(6) Where the claimant resides in a care home, an Abbeyfield Home or an independent hospital, or is temporarily absent from such a home or hospital, any payment made by a person other than the claimant or a member of the claimant's family in respect of some or all of the cost of maintaining the claimant or the claimant's partner in that home or hospital is to be treated as possessed by the claimant or the claimant's partner.

(7) In paragraph (2)(a) and (b) “resources” has the same meaning as in section 181(1) of the Pension Schemes Act 1993.

Textual Amendments

- F167** S.I. 1988/664, the relevant amending instruments are S.I. 1991/387, S.I. 1991/2742, S.I. 1996/1345, S.I. 1999/2571, S.I. 1999/3178, S.I. 2000/1483, S.I. 2002/3019, S.I. 2003/492, S.I. 2005/337 and S.I. 2005/3476.
- F168** Words in reg. 107(5)(a) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008](#) (S.I. 2008/2428), regs. 1(2), **8(5)**
- F169** 1994 c. 27.
- F170** The relevant amending instrument is S.I. 2002/2314.
- F171** The relevant amending instruments are S.I. 2001/1029 and S.I. 2007/1316.
- F172** Regulation 17A was inserted by S.I. 1998/1274, **regulation 4**.
- F173** 1980 c. 46.

Notional income – other income

108.—(1) Where a claimant's earnings are not ascertainable at the time of the determination of the claim or of any revision or supersession the Secretary of State will treat the claimant as possessing such earnings as is reasonable in the circumstances of the case having regard to the number of hours worked and the earnings paid for comparable employment in the area.

(2) Where the amount of a subsistence allowance paid to a claimant in a benefit week is less than the amount of income-based jobseeker's allowance that claimant would have received in that benefit week had it been payable to the claimant, less 50p, the claimant is to be treated as possessing the amount which is equal to the amount of income-based jobseeker's allowance which the claimant would have received in that week, less 50p.

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(3) Subject to paragraph (4), where—

- (a) a claimant performs a service for another person; and
- (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area,

the Secretary of State is to treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies the Secretary of State that the means of that person are insufficient for the person to pay, or to pay more, for the service.

(4) Paragraph (3) will not apply—

- (a) to a claimant who is engaged by a charitable or voluntary organisation or who is a volunteer if the Secretary of State is satisfied in any of those cases that it is reasonable for the claimant to provide the service free of charge;
- (b) in a case where the service is performed in connection with—
 - (i) the claimant's participation in an employment or training programme in accordance with regulation 19(1)(q) of the Jobseeker's Allowance Regulations, other than where the service is performed in connection with the claimant's participation in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations ^{F174}; or
 - (ii) the claimant's or the claimant's partner's participation in an employment or training programme as defined in regulation 19(3) of those Regulations for which a training allowance is not payable or, where such an allowance is payable, it is payable for the sole purpose of reimbursement of travelling or meal expenses to the claimant or the claimant's partner participating in that programme;
- (c) to a claimant who is engaged in work experience whilst participating in—
 - (i) the New Deal for Lone Parents; or
 - (ii) a scheme which has been approved by the Secretary of State as supporting the objectives of the New Deal for Lone Parents; or
- (d) to a claimant who is participating in a work placement approved in writing by the Secretary of State before the placement starts;
- (e) in sub-paragraph (d) “work placement” means practical work experience with an employer, which is neither paid nor undertaken in expectation of payment.

Textual Amendments

F174 Regulation 75 was substituted by S.I. 1997/2863.

Notional income – calculation and interpretation

109.—(1) Where a claimant is treated as possessing any income under regulation 106 or 107 the foregoing provisions of this Part are to apply for the purposes of calculating the amount of that income as if a payment had actually been made and as if it were actual income which the claimant does possess.

(2) Where a claimant is treated as possessing any earnings under regulation 108(1) or (3) the foregoing provisions of this Part are to apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which the claimant does possess except that paragraph (3) of regulation 96 (calculation of net earnings of employed earners) does not apply and the claimant's net earnings are to be calculated by taking into account the earnings which the claimant is treated as possessing, less—

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- (a) where the period over which those earnings are to be taken into account is a year or more, an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the ^{F175}... basic rate of tax in the year of assessment less only the personal allowance to which the claimant is entitled under section 257(1) of the Income and Corporation Taxes Act 1988 ^{F176} (personal allowance) as is appropriate to the claimant's circumstances;
- (b) where if the period over which those earnings are to be taken into account is less than a year, the earnings to which the [^{F177}basic rate] of tax is to be applied and the amount of the personal allowance deductible under this paragraph is to be calculated on a pro rata basis;
- (c) where the weekly amount of those earnings equals or exceeds the lower earnings limit, an amount representing primary Class 1 contributions under section 6(1)(a) of the Contributions and Benefits Act ^{F178}, calculated by applying to those earnings the initial and main primary percentages in accordance with section 8(1)(a) and (b) of that Act ^{F179}; and
- (d) one-half of any sum payable by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

Textual Amendments

- F175** Words in reg. 109(2)(a) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(6)(a)**
- F176** 1988 c. 1. Section 257 was substituted by the [Finance Act 1988 \(c. 39\)](#), **section 33** and amended by the [Income Tax Act 2007 \(c. 3\)](#), **section 1027** and Schedule 1, Part 1, paragraphs 1 and 29(1) and (2) and S.I. 2006/3241.
- F177** Words in reg. 109(2)(b) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(6)(b)**
- F178** Section 6 was substituted by the [Welfare Reform and Pensions Act 1999 \(c. 30\)](#), **section 73** and paragraph 2 of Schedule 9.
- F179** Section 8 was substituted by the [National Insurance Contributions Act 2002 \(c. 19\)](#), **section 1(1)**.

CHAPTER 7

Capital

Capital limit

110. For the purposes of paragraph 6(1)(b) of Schedule 1 to the Act as it applies to an income-related allowance (no entitlement to benefit if capital exceeds prescribed amount), the prescribed amount is £16,000.

Calculation of capital

111.—(1) For the purposes of [^{F180}sections 1(2)] and 4 of, and Part 2 of Schedule 1 to, the Act as it applies to an income-related allowance, the capital of a claimant to be taken into account is, subject to paragraph (2), to be the whole of the claimant's capital calculated in accordance with this Part and any income treated as capital under regulation 112 (income treated as capital).

(2) There is to be disregarded from the calculation of a claimant's capital under paragraph (1) any capital, where applicable, specified in Schedule 9.

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Textual Amendments

F180 Words in [reg. 111\(1\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(7)**

Income treated as capital

112.—(1) Any bounty derived from employment to which regulation 43(1)(e) and paragraph 12 of Schedule 7 apply and paid at intervals of at least one year is to be treated as capital.

(2) Any amount by way of a refund of income tax paid in respect of, or deducted from, profits or income chargeable to tax under the provisions in Part 2 of the Income Tax (Trading and Other Income) Act 2005 ^{F181} or Part 2 of the Income Tax (Earnings and Pensions) Act 2003 ^{F182} is to be treated as capital.

(3) Any holiday pay which is not earnings under regulation 95(1)(d) (earnings of employed earners) is to be treated as capital.

(4) Except any income derived from capital disregarded under paragraph 1, 2, 4 to 8, 10, 16, 43 or 44 of Schedule 9, any income derived from capital is to be treated as capital but only from the date it is normally due to be credited to the claimant's account.

(5) In the case of employment as an employed earner, any advance of earnings or any loan made by the claimant's employer is to be treated as capital.

(6) Any payment under section 30 of the Prison Act 1952 ^{F183} (payments for discharged prisoners) or allowance under section 17 of the Prisons (Scotland) Act 1989 ^{F184} (allowances to prisoners on discharge) is to be treated as capital.

(7) Any charitable or voluntary payment which is not made or not due to be made at regular intervals, other than one to which paragraph (8) applies, is to be treated as capital.

(8) This paragraph applies to a payment which is made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or [^{F185}the Independent Living Fund (2006)].

(9) Any arrears of subsistence allowance which are paid to a claimant as a lump sum are to be treated as capital.

Textual Amendments

F181 2005 c. 5.

F182 2003 c. 1.

F183 1952 c. 52. Section 30 was substituted by the [Criminal Justice Act 1967 \(c. 80\)](#), [section 66\(3\)](#).

F184 1989 c. 45.

F185 Words in [reg. 112\(8\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(5)**

Calculation of capital in the United Kingdom

113. Capital which a claimant possesses in the United Kingdom is to be calculated at its current market or surrender value less—

- (a) where there would be expenses attributable to sale, 10%; and
- (b) the amount of any incumbrance secured on it.

Calculation of capital outside the United Kingdom

114. Capital which a claimant possesses in a country outside the United Kingdom is to be calculated—

- (a) in a case in which there is no prohibition in that country against the transfer to the United Kingdom of an amount equal to its current market or surrender value in that country, at that value;
- (b) in a case where there is such a prohibition, at the price which it would realise if sold in the United Kingdom to a willing buyer,

less, where there would be expenses attributable to sale, 10% and the amount of any incumbrance secured on it.

Notional capital

115.—(1) A claimant is to be treated as possessing capital of which the claimant has deprived himself or herself for the purpose of securing entitlement to an employment and support allowance or increasing the amount of that allowance, or for the purpose of securing entitlement to, or increasing the amount of, income support or a jobseeker's allowance except—

- (a) where that capital is derived from a payment made in consequence of any personal injury and is placed on trust for the benefit of the claimant;
 - (b) to the extent that the capital which the claimant is treated as possessing is reduced in accordance with regulation 116 (diminishing notional capital rule);
 - (c) any sum to which paragraph 43(2)(a) of Schedule 9 (capital to be disregarded) applies which is administered in the way referred to in paragraph 43(1)(a); or
 - (d) any sum to which paragraph 44(a) of Schedule 9 refers.
- (2) Except in the case of—
- (a) a discretionary trust;
 - (b) a trust derived from a payment made in consequence of a personal injury;
 - (c) any loan which would be obtainable only if secured against capital disregarded under Schedule 9;
 - (d) a personal pension scheme;
 - (e) an occupational pension scheme or a payment made by the Board of the Pension Protection Fund where the claimant is aged under 60; or
 - (f) any sum to which paragraph 43(2)(a) of Schedule 9 (capital to be disregarded) applies which is administered in a way referred to in paragraph 43(1)(a); or
 - (g) any sum to which paragraph 44(a) of Schedule 9 refers,

any capital which would become available to the claimant upon application being made but which has not been acquired by the claimant is to be treated as possessed by the claimant but only from the date on which it could be expected to be acquired were an application made.

(3) Any payment of capital, other than a payment of capital specified in paragraph (5), made to a third party in respect of a single claimant or the claimant's partner (but not a member of the third party's family) is to be treated—

- (a) in a case where that payment is derived from—
 - (i) a payment of any benefit under the benefit Acts;
 - (ii) a payment from the Armed Forces and Reserve Forces Compensation Scheme;
 - (iii) a war disablement pension, war widow's pension or war widower's pension; or

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- (iv) 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 who have died in consequence of service as members of the armed forces of the Crown, as possessed by that single claimant, if it is paid to that claimant, or by the claimant's partner, if it is paid to that partner;
- (b) in a case where that payment is a payment of an occupational pension, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund, as possessed by that single claimant or, as the case may be, by the claimant's partner;
- (c) in any other case, as possessed by that single claimant or the claimant's partner to the extent that it is used for the 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) and 68(1)(d) (housing costs) of that single claimant or, as the case may be, of the claimant's partner, or is used for any council tax or water charges for which that claimant or partner is liable.
- (4) Any payment of capital, other than a payment of capital specified in paragraph (5) made to a single claimant or the claimant's partner in respect of a third party (but not in respect of another member of the claimant's family) is to be treated as possessed by that single claimant or, as the case may be, the claimant's partner, to the extent that it is kept or used by that claimant or used by or on behalf of the claimant's partner.
- (5) Paragraphs (3) and (4) will not apply in respect of a payment of capital made—
- (a) under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust ^{F186}, the Independent Living Fund (2006)], the Skipton Fund or the London Bombings Relief Charitable Fund;
- (b) pursuant to section 2 of the Employment and Training Act 1973 in respect of a claimant's participation—
- (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations;
- (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations; or
- (iii) in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations; or
- (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations;
- (c) under an occupational pension scheme, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund where—
- (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980;
- (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (iii) the person referred to in paragraph (i) and that person's partner (if any) does not possess, or is not treated as possessing, any other income apart from that payment.

(6) Where a claimant stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, the claimant is to be treated as if that claimant were such sole owner or partner and in such a case—

- (a) the value of the claimant's holding in that company, notwithstanding regulation 111 (calculation of capital), is to be disregarded; and
- (b) the claimant will, subject to paragraph (7), be treated as possessing an amount of capital equal to the value or, as the case may be, the claimant's share of the value of the capital of that company and the foregoing provisions of this Chapter are to apply for the purposes of calculating that amount as if it were actual capital which the claimant does possess.

(7) For so long as the claimant undertakes activities in the course of the business of the company, the amount which the claimant is treated as possessing under paragraph (6) is to be disregarded.

(8) Where a claimant is treated as possessing capital under any of paragraphs (1) to (6), the foregoing provisions of this Chapter are to apply for the purposes of calculating its amount as if it were actual capital which the claimant does possess.

(9) For the avoidance of doubt a claimant is to be treated as possessing capital under paragraph (1) only if the capital of which the claimant has deprived himself or herself is actual capital.

Textual Amendments

F186 Words in [reg. 115\(5\)\(a\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(8)**

Diminishing notional capital rule

116.—(1) Where a claimant is treated as possessing capital under regulation 115(1) (notional capital), the amount which the claimant is treated as possessing—

- (a) in the case of a week that is subsequent to—
 - (i) the relevant week in respect of which the conditions set out in paragraph (2) are satisfied; or
 - (ii) a week which follows that relevant week and which satisfies those conditions, is to be reduced by an amount determined under paragraph (2);
- (b) in the case of a week in respect of which paragraph (1)(a) does not apply but where—
 - (i) that week is a week subsequent to the relevant week; and
 - (ii) that relevant week is a week in which the condition in paragraph (3) is satisfied, is to be reduced by the amount determined under paragraph (3).

(2) This paragraph applies to a benefit week or part-week where the claimant satisfies the conditions that—

- (a) the claimant is in receipt of an income-related allowance; and
- (b) but for regulation 115(1), the claimant would have received an additional amount of an income-related allowance in that benefit week or, as the case may be, that part-week,

and in such a case, the amount of the reduction for the purposes of paragraph (1)(a) is to be equal to that additional amount.

(3) Subject to paragraph (4), for the purposes of paragraph (1)(b) the condition is that the claimant would have been entitled to an income-related allowance in the relevant week, but for regulation 115(1), and in such a case the amount of the reduction is to be equal to the aggregate of—

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- (a) the amount of an income-related allowance to which the claimant would have been entitled in the relevant week but for regulation 115(1); and for the purposes of this sub-paragraph if the relevant week is a part-week that amount is to be determined by dividing the amount of an income-related allowance to which the claimant would have been so entitled by the number equal to the number of days in the part-week and multiplying the quotient by 7;
 - (b) the amount of housing benefit (if any) equal to the difference between the claimant's maximum housing benefit and the amount (if any) of housing benefit which the claimant is awarded in respect of the benefit week, within the meaning of regulation 2(1) of the Housing Benefit Regulations 2006^{F187} (interpretation), which includes the last day of the relevant week;
 - (c) the amount of council tax benefit (if any) equal to the difference between the claimant's maximum council tax benefit and the amount (if any) of council tax benefit which the claimant is awarded in respect of the benefit week which includes the last day of the relevant week, and for this purpose "benefit week" has the same meaning as in regulation 2(1) of the Council Tax Benefit Regulations 2006^{F188} (interpretation).
- (4) The amount determined under paragraph (3) is to be re-determined under that paragraph if the claimant makes a further claim for an income-related allowance and the conditions in paragraph (5) are satisfied, and in such a case—
- (a) sub-paragraphs (a) to (c) of paragraph (3) will apply as if for the words "relevant week" there were substituted the words "relevant subsequent week"; and
 - (b) subject to paragraph (6), the amount as re-determined is to have effect from the first week following the relevant subsequent week in question.
- (5) The conditions are that—
- (a) a further claim is made 26 or more weeks after—
 - (i) the date on which the claimant made a claim for an income-related allowance in respect of which the claimant was first treated as possessing the capital in question under regulation 115(1);
 - (ii) in a case where there has been at least one re-determination in accordance with paragraph (4), the date on which the claimant last made a claim for an income-related allowance which resulted in the weekly amount being re-determined; or
 - (iii) the date on which the claimant last ceased to be in receipt of an income-related allowance;
 whichever last occurred; and
 - (b) the claimant would have been entitled to an income-related allowance but for regulation 115(1).
- (6) The amount as re-determined pursuant to paragraph (4) is not to have effect if it is less than the amount which applied in that case immediately before the re-determination and in such a case the higher amount is to continue to have effect.
- (7) For the purposes of this regulation—
- "part-week" means a period to which Part 14 (periods of less than a week) applies;
- "relevant week" means the benefit week or part-week in which the capital in question of which the claimant has deprived himself or herself within the meaning of regulation 115(1)—
- (a) was first taken into account for the purpose of determining the claimant's entitlement to an income-related allowance, a jobseeker's allowance or income support; or
 - (b) was taken into account on a subsequent occasion for the purpose of determining or re-determining the claimant's entitlement to an income-related allowance, a jobseeker's allowance or income support on that subsequent occasion and that determination or re-

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determination resulted in the claimant's beginning to receive, or ceasing to receive, an income-related allowance, a jobseeker's allowance or income support;

and where more than one benefit week or part-week is identified by reference to paragraphs (a) and (b) of this definition the later or latest such benefit week or, as the case may be, the later or latest such part-week;

“relevant subsequent week” means the benefit week or part-week which includes the day on which the further claim or, if more than one further claim has been made, the last such claim was made.

Textual Amendments

F187 [S.I. 2006/213](#).

F188 [S.I. 2006/215](#).

Capital jointly held

117. Except where a claimant possesses capital which is disregarded under regulation 115(6) (notional capital), where a claimant and one or more persons are beneficially entitled in possession to any capital asset they are to be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Chapter are to apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess.

Calculation of tariff income from capital

118.—(1) Except where the circumstances prescribed in paragraph (3) apply to the claimant, where the claimant's capital calculated in accordance with this Part exceeds £6,000 it is to be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £6,000 but not exceeding £16,000.

(2) Where the circumstances prescribed in paragraph (3) apply to the claimant and that claimant's capital calculated in accordance with this Part exceeds £10,000, it is to be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £10,000 but not exceeding £16,000.

(3) For the purposes of paragraph (2) the prescribed circumstances are that the claimant lives permanently in—

- (a) a care home or an independent hospital;
- (b) an Abbeyfield Home; or
- (c) accommodation provided under section 3 of, and Part 2 of the Schedule to, the Polish Resettlement Act 1947 ^{F189} (provision of accommodation in camps) where the claimant requires personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, past or present mental disorder or a terminal illness and the care is provided in the home.

(4) For the purposes of paragraph (3), a claimant is to be treated as living permanently in such home, hospital or accommodation where the claimant is absent—

- (a) from a home, hospital or accommodation referred to in sub-paragraph (a) or (b) of paragraph (3)—
 - (i) in the case of a claimant over pensionable age, for a period not exceeding 52 weeks; and
 - (ii) in any other case, for a period not exceeding 13 weeks;

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- (b) from accommodation referred to in sub-paragraph (c) of paragraph (3), where the claimant, with the agreement of the manager of the accommodation, intends to return to the accommodation in due course.
- (5) Notwithstanding paragraphs (1) and (2), where any part of the excess is not a complete £250 that part is to be treated as equivalent to a weekly income of £1.
- (6) For the purposes of paragraphs (1) and (2), capital includes any income treated as capital under [^{F190}regulation 112 (income treated as capital)].

Textual Amendments

- F189** 1947 c. 19. Section 3 of and Part 2 of the Schedule to, the 1947 Act have been amended by S.I. 1968/1699, the Supplementary Benefit Act 1966 (c. 20), **section 39(1)** and paragraph 3 of Schedule 6, Supplementary Benefits Act 1976 (c. 71), **section 35(1)** and (2) and paragraph 4 of Schedule 6 and paragraph 1 of Schedule 7, the Social Security Act 1980 (c. 30), **sections 20** and 21(4) and paragraph 1 of Schedule 4 and Part 2 of Schedule 5 and the Criminal Justice Act 2003 (c. 44), **section 304** and paragraph 154 of Schedule 32.
- F190** Words in **reg. 118(6)** substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **20(6)**

CHAPTER 8

[^{F191}Child maintenance and liable relative payments]

Textual Amendments

- F191** Words in heading to Pt. 10 Ch. 8 substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **20(5)**

Interpretation

119. In this Chapter—

[^{F192}“child maintenance” means any payment towards the maintenance of a child or young person, including any payment made voluntarily and payments made under—

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

“claimant” includes a young claimant;

[^{F193}“claimant’s family” shall be construed in accordance with section 137 of the Contributions and Benefits Act (interpretation of part 7 and supplementary provisions);]

[^{F193}“housing costs” means those costs which may be met under paragraph 1(2) of Schedule 6;]

“liable relative” means—

- (a) a spouse, former spouse, civil partner or former civil partner of a claimant or of a member of the claimant's family;

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- (b) a parent of a child or young person who is a member of the claimant's family or of a young claimant;
- (c) a person who has not been adjudged to be the father of a child or young person who is a member of the claimant's family or of a young claimant where that person is contributing towards the maintenance of that child, young person or young claimant and by reason of that contribution the claimant may reasonably be treated as the father of that child, young person or young claimant;
- (d) a person liable to maintain another person by virtue of section 78(6)(c) of the Administration Act (liability to maintain) where the latter is the claimant or a member of the claimant's family,

and, in this definition, a reference to a child's, young person's or young claimant's parent includes any person in relation to whom the child, young person or young claimant was treated as a child or a member of the family;

[^{F194}“ordinary clothing and footwear” means clothing and footwear for normal daily use but does not include school uniforms;]

“payment” means a periodical payment or any other payment made by or derived from a liable relative ^{F195}... but it does not include any payment—

- (a) arising from a disposition of property made in contemplation of, or as a consequence of—
 - (i) an agreement to separate;
 - (ii) any proceedings for judicial separation, divorce or nullity of marriage; or
 - (iii) any proceedings for separation, dissolution or nullity in relation to a civil partnership;
- (b) made after the death of the liable relative;
- (c) made by way of a gift but not in aggregate or otherwise exceeding £250 in the period of 52 weeks beginning with the date on which the payment, or if there is more than one such payment the first payment, is made; and, in the case of a claimant who continues to be in receipt of an income-related allowance at the end of the period of 52 weeks, this provision is to continue to apply thereafter with the modification that any subsequent period of 52 weeks is to begin with the first day of the benefit week in which the first payment is made after the end of the previous period of 52 weeks;
- (d) [^{F196}made to a third party, or in respect of a third party, unless the payment is—
 - (i) in relation to the claimant or the claimant's family; and
 - (ii) the payment is in respect of food, ordinary clothing or footwear, fuel, rent, housing costs, council tax or water charges;]
- (e) in kind;
- (f) to, or in respect of, a child or young person who is to be treated as not being a member of the claimant's household under regulation 156 (circumstances in which a person is to be treated as being or not being a member of the same household);
- (g) which is not a periodical payment, to the extent that any amount of that payment—
 - (i) has already been taken into account under this Part by virtue of a previous claim or determination;
 - (ii) has been recovered under section 74 of the Administration Act ^{F197} (income support and other payments) or is currently being recovered; or
 - (iii) at the time the determination is made, has been used by the claimant except where the claimant has deprived himself or herself of that amount for the purpose of

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securing entitlement to an income-related allowance or increasing the amount of that allowance;

“periodical payment” means—

- (a) a payment which is made or is due to be made at regular intervals^{F198} ...;
- (b) in a case where the liable relative has established a pattern of making payments at regular intervals, any such payment;
- (c) any payment^{F199}, after the appropriate disregard under paragraph 60 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) has been applied to it, that does not exceed] the amount of an income-related allowance payable had that payment not been made;
- (d) any payment representing a commutation of payments to which paragraph (a) or (b) of this definition applies whether made in arrears or in advance,

but does not include a payment due to be made before the first benefit week pursuant to the claim which is not so made;

“young claimant” means a person aged 16 or over but under 20 who makes a claim for an income-related allowance.

Textual Amendments

- F192** Words in [reg. 119](#) inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(7)(a)**
- F193** Words in [reg. 119](#) inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(7)(b)**
- F194** Words in [reg. 119](#) inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(7)(c)**
- F195** Words in [reg. 119](#) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(7)(d)(i)**
- F196** Words in [reg. 119](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(7)(d)(ii)**
- F197** Section 74 has been amended by the [Jobseekers Act 1995 \(c. 18\)](#), **paragraph 5** of the Schedule and the Act, paragraph 10(8) of Schedule 3.
- F198** Words in [reg. 119](#) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(7)(e)(i)**
- F199** Words in [reg. 119](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(7)(e)(ii)**

Treatment of [^{F200}child maintenance or] liable relative payments

120. Subject to regulation 121(disregard of payments treated as not relevant income) and [^{F201}paragraph 60 of Schedule 8 (sums to be disregarded in the calculation of income other than earnings)] a payment—

- (a) to the extent that it is not a payment of income, is to be treated as income;
- (b) is to be taken into account in accordance with the following provisions of this Chapter.

Textual Amendments

- F200** Words in [reg. 120](#) heading inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(2)(b)**

F201 Words in reg. 120 substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(8)**

Disregard of payments treated as not relevant income

121. Where the Secretary of State treats any payment as not being relevant income for the purposes of section 74A of the Administration Act ^{F202} (payment of benefit where maintenance payments collected by Secretary of State), that payment is to be disregarded in calculating a claimant's income.

Textual Amendments

F202 Section 74A was inserted by the [Child Support Act 1995 \(c. 34\)](#), section 25 and amended by the [Civil Partnership Act 2004 \(c. 33\)](#), sections 254(1) and 261(4), Part 4 of Schedule 24 and paragraph 60(a) to (c) of Schedule 30 and the Act, section 28(1) and paragraph 10(1) and (9) of Schedule 3.

Period over which periodical payments are to be taken into account

122.—(1) The period over which a periodical payment is to be taken into account is to be—

- (a) in a case where the payment is made at regular intervals, a period equal to the length of that interval;
- (b) in a case where the payment is due to be made at regular intervals but is not so made, such number of weeks as is equal to the number (and any fraction is to be treated as a corresponding fraction of a week) obtained by dividing the amount of that payment by the weekly amount of that periodical payment as calculated in accordance with regulation 124(4) (calculation of the weekly amount of a liable relative payment);
- (c) in any other case, a period equal to a week.

(2) The period under paragraph (1) is to begin on the date on which the payment is treated as paid under regulation 125 (date on which a liable relative payment is to be treated as paid).

Period over which payments other than periodical payments are to be taken into account

^{F203}**123.—**(1) The period over which a payment other than a periodical payment (a “non-periodical payment”) is to be taken into account shall be determined as follows.

(2) Except in a case where paragraph (4) applies, the number of weeks over which a non-periodical payment is to be taken into account shall be equal to the number obtained by dividing that payment by the amount referred to in paragraph (3).

(3) The amount is the aggregate of £2 and—

- (a) the amount of employment and support allowance that would be payable had no payment been made, and
- (b) where applicable, the maximum amount of disregard that would apply to the payment under paragraph 60 of Schedule 8.

(4) This paragraph applies in a case where a liable relative makes a periodical payment and a non-periodical payment concurrently and the weekly amount of the periodical payment (as calculated in accordance with regulation 124) is less than B.

(5) In a case where paragraph (4) applies, the non-periodical payment shall, subject to paragraphs (6) and (7), be taken into account over a period of the number of weeks equal to the number obtained by applying the formula—

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$$\frac{A}{B-C}$$

(6) If the liable relative ceases to make periodical payments, the balance (if any) of the non-periodical payment shall be taken into account over the number of weeks equal to the number obtained by dividing that balance by the amount referred to in paragraph (3).

(7) If the amount of any subsequent periodical payment varies, the balance (if any) of the non-periodical payment shall be taken into account over a period of the number of weeks equal to the number obtained by applying the formula—

$$\frac{D}{B-E}$$

(8) The period under paragraph (2) or (4) shall begin on the date on which the payment is treated as paid under regulation 125 (date on which a liable relative payment is to be treated as paid) and the period under paragraph (6) or (7) shall begin on the first day of the benefit week in which the cessation or variation of the periodical payment occurred.

(9) Any fraction which arises by applying a calculation or formula referred to in this regulation shall be treated as a corresponding fraction of a week.

(10) In paragraphs (4) to (7)—

- A = the amount of the non-periodical payment;
- B = the aggregate of £2 and the amount of employment and support allowance that would be payable had the periodical payment not been made and, where applicable, the maximum disregard under paragraph 60 of Schedule 8;
- C = the weekly amount of the periodical payment;
- D = the balance (if any) of the non-periodical payment;
- E = the weekly amount of any subsequent periodical payment.]

Textual Amendments

F203 Reg. 123 substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(9)**

Calculation of the weekly amount of a ^[F204]child maintenance or] liable relative payment

124.—(1) Where a periodical payment is made or is due to be made at intervals of one week, the weekly amount is to be the amount of that payment.

(2) Where a periodical payment is made or is due to be made at intervals greater than one week and those intervals are monthly, the weekly amount is to be determined by multiplying the amount of the payment by 12 and dividing the product by 52.

(3) Where a periodical payment is made or is due to be made at intervals and those intervals are neither weekly nor monthly, the weekly amount is to be determined by dividing that payment by the number equal to the number of weeks (including any part of a week) in that interval.

(4) Where a payment is made and that payment represents a commutation of periodical payments whether in arrears or in advance, the weekly amount is to be the weekly amount of the individual periodical payments so commuted as calculated under paragraphs (1) to (3) as is appropriate.

(5) The weekly amount of a payment to which regulation 123 (period over which payments other than periodical payments are to be taken into account) applies, is to be equal to the amount of the divisor used in calculating the period over which the payment or, as the case may be, the balance is to be taken into account.

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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)

Textual Amendments

F204 Words in [reg. 124](#) heading inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(2)(c)**

Date on which a [^{F205}child maintenance or] liable relative payment is to be treated as paid

125.—(1) A periodical payment is to be treated as paid—

- (a) in the case of a payment which is due to be made before the first benefit week pursuant to the claim, on the day in the week in which it is due to be paid which corresponds to the first day of the benefit week;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid unless, having regard to the manner in which an income-related allowance is due to be paid in the particular case, it would be more practicable to treat it as paid on the first day of a subsequent benefit week.

(2) Subject to paragraph (3), any other payment is to be treated as paid—

- (a) in the case of a payment which is made before the first benefit week pursuant to the claim, on the day in the week in which it is paid which corresponds to the first day of the benefit week;
- (b) in any other case, on the first day of the benefit week in which it is paid unless, having regard to the manner in which an income-related allowance is due to be paid in the particular case, it would be more practicable to treat it as paid on the first day of a subsequent benefit week.

(3) Any other payment paid on a date which falls within the period in respect of which a previous payment is taken into account, not being a periodical payment, is to be treated as paid on the first day following the end of that period.

Textual Amendments

F205 Words in [reg. 125](#) heading inserted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(2)(d)**

Liable relative payments to be treated as capital

^{F206}**126.**

Textual Amendments

F206 [Reg. 126](#) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **20(4)(b)**

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.
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)

F207 CHAPTER 9

Child support

Textual Amendments

F207 Pt. 10 Ch. 9 omitted (27.10.2008) by virtue of The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **20(4)(c)**

127.

128.

129.

130.

CHAPTER 10

Students

Interpretation

131.—(1) In this Chapter—

“academic year” means the period of twelve months beginning on 1st January, 1st April, 1st July or 1st September according to whether the course in question begins in the winter, the spring, the summer or the autumn respectively but if students are required to begin attending the course during August or September and to continue attending through the autumn, the academic year of the course is to be considered to begin in the autumn rather than the summer;

“access funds” means—

- (a) grants made under section 7 of the Further and Higher Education Act 1992 ^{F208} and described as “learner support funds” or grants made under section 68 of that Act for the purpose of providing funds on a discretionary basis to be paid to students;
- (b) grants made under sections 73(a) and (c) and 74(1) of the Education (Scotland) Act 1980 ^{F209};
- (c) grants made under Article 30 of the Education and Libraries (Northern Ireland) Order 1993 ^{F210}, or grants, loans or other payments made under Article 5 of the Further Education (Northern Ireland) Order 1997 ^{F211} in each case being grants, or grants, loans or other payments as the case may be, made for the purpose of assisting students in financial difficulties;
- (d) discretionary payments, known as “learner support funds”, which are made available to students in further education by institutions out of funds provided by the Learning and Skills Council for England under sections 5, 6 and 9 of the Learning and Skills Act 2000 ^{F212}, or
- (e) Financial Contingency Funds made available by the Welsh Ministers;

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“college of further education” means, in Scotland, an educational establishment by which further education is provided;

“contribution” means any contribution in respect of the income of a student or of any other person which the Secretary of State, the Scottish Ministers or an education authority takes into account in ascertaining the amount of the student's grant or student loan, or any sums, which in determining the amount of a student's allowance or bursary in Scotland under the Education (Scotland) Act 1980 ^{F213}, the Scottish Ministers or education authority take into account being sums which the Scottish Ministers or the education authority consider that the holder of the allowance or bursary, the holder's parents and the holder's spouse or civil partner can reasonably be expected to contribute towards the holder's expenses;

“course of advanced education” means—

- (a) a course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a diploma of higher education or a higher national diploma; or
- (b) any other course which is of a standard above advanced GNVQ, or equivalent, including a course which is of a standard above a general certificate of education (advanced level), a Scottish national qualification (higher or advanced higher);

“covenant income” means the income payable to a student under a Deed of Covenant by a person whose income is, or is likely to be, taken into account in assessing the student's grant or award;

“education authority” means a government department, a local education authority as defined in section 212 of the Education Act 2002 ^{F214} (interpretation), an education authority as defined in section 123 of the Local Government (Scotland) Act 1973 ^{F215}, an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986 ^{F216}, any body which is a research council for the purposes of the Science and Technology Act 1965 ^{F217} or any analogous government department, authority, board or body, of the Channel Islands, Isle of Man or any other country outside Great Britain;

“full-time course of advanced education” means a course of advanced education which is—

- (a) a full-time course of study which is not funded in whole or in part by the Learning and Skills Council for England or by the Welsh Ministers or a full-time course of study which is not funded in whole or in part by the Scottish Ministers at a college of further education or a full-time course of study which is a course of higher education and is funded in whole or in part by the Scottish Ministers;
- (b) a course of study which is funded in whole or in part by the Learning and Skills Council for England or by the Welsh Ministers if it involves more than 16 guided learning hours per week for the student in question, according to the number of guided learning hours per week for that student set out—
 - (i) in the case of a course funded by the Learning and Skills Council for England, in the student's learning agreement signed on behalf of the establishment which is funded by that Council for the delivery of that course; or
 - (ii) in the case of a course funded by the Welsh Ministers, in a document signed on behalf of the establishment which is funded by that Council for the delivery of that course; or
- (c) a course of study (not being higher education) which is funded in whole or in part by the Scottish Ministers at a college of further education if it involves—
 - (i) more than 16 hours per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff according to the number of hours set out in a document signed on behalf of the college; or

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- (ii) 16 hours or less per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff and it involves additional hours using structured learning packages supported by the teaching staff where the combined total of hours exceeds 21 per week, according to the number of hours set out in a document signed on behalf of the college;

“full-time course of study” means a full-time course of study which—

- (a) is not funded in whole or in part by the Learning and Skills Council for England or by the Welsh Ministers or a full-time course of study which is not funded in whole or in part by the Scottish Ministers at a college of further education or a full-time course of study which is a course of higher education and is funded in whole or in part by the Scottish Ministers;
- (b) a course of study which is funded in whole or in part by the Learning and Skills Council for England or by the Welsh Ministers if it involves more than 16 guided learning hours per week for the student in question, according to the number of guided learning hours per week for that student set out—
 - (i) in the case of a course funded by the Learning and Skills Council for England, in the student's learning agreement signed on behalf of the establishment which is funded by that Council for the delivery of that course; or
 - (ii) in the case of a course funded by the Welsh Ministers, in a document signed on behalf of the establishment which is funded by that Council for the delivery of that course; or
- (c) is not higher education and is funded in whole or in part by the Scottish Ministers at a college of further education if it involves—
 - (i) more than 16 hours per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff according to the number of hours set out in a document signed on behalf of the college; or
 - (ii) 16 hours or less per week of classroom-based or workshop-based programmed learning under the direct guidance of teaching staff and it involves additional hours using structured learning packages supported by the teaching staff where the combined total of hours exceeds 21 per week, according to the number of hours set out in a document signed on behalf of the college;

“full-time student” means a person who is not a qualifying young person or child within the meaning of section 142 of the Contributions and Benefits Act ^{F218} (child and qualifying young person) and who is—

- (a) aged less than 19 and is attending or undertaking a full-time course of advanced education;
- (b) aged 19 or over but under pensionable age and is attending or undertaking a full-time course of study at an educational establishment; or
- (c) on a sandwich course;

“grant” (except in the definition of “access funds”) means any kind of educational grant or award and includes any scholarship, studentship, exhibition, allowance or bursary but does not include a payment from access funds or any payment to which paragraph 13 of Schedule 8 or paragraph 52 of Schedule 9 applies;

“grant income” means—

- (a) any income by way of a grant;
- (b) in the case of a student other than one to whom paragraph (c) refers, any contribution which has been assessed whether or not it has been paid;

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- (c) in the case of a student who is a lone parent or is a person to whom Part 4 applies, any contribution which has been assessed and which has been paid, and any such contribution which is paid by way of a covenant is to be treated as part of the student's grant income;

“higher education” means higher education within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992 ^{F219};

“last day of the course” means the date on which the last day of the final academic term falls in respect of the course in which the student is enrolled;

“period of study” means—

- (a) in the case of a course of study for one year or less, the period beginning with the start of the course and ending with the last day of the course;
- (b) in the case of a course of study for more than one year, in the first or, as the case may be, any subsequent year of the course, other than the final year of the course, the period beginning with the start of the course or, as the case may be, that year's start and ending with either—
- (i) the day before the start of the next year of the course in a case where the student's grant or loan is assessed at a rate appropriate to the student's studying throughout the year or, if the claimant does not have a grant or loan, where a loan would have been assessed at such a rate had the claimant had one; or
- (ii) in any other case the day before the start of the normal summer vacation appropriate to the student's course;
- (c) in the final year of a course of study of more than one year, the period beginning with that year's start and ending with the last day of the course;

“periods of experience” means periods of work experience which form part of a sandwich course;

“sandwich course” has the meaning prescribed in regulation 2(9) of the Education (Student Support) Regulations 2007 ^{F220}, regulation 4(2) of the Education (Student Loans) (Scotland) Regulations 2007 ^{F221} or regulation 2(8) of the Education (Student Support) Regulations (Northern Ireland) 2007 ^{F222};

“standard maintenance grant” means—

- (a) except where paragraph (b) or (c) applies, in the case of a student attending or undertaking a course of study at the University of London or an establishment within the area comprising the City of London and the Metropolitan Police District, the amount specified for the time being in paragraph 2(2)(a) of Schedule 2 to the Education (Mandatory Awards) Regulations 2003 ^{F223} (“the 2003 Regulations”) for such a student;
- (b) except where paragraph (c) applies, in the case of a student residing at the student's parent's home, the amount specified in paragraph 3(2) of Schedule 2 to the 2003 Regulations;
- (c) in the case of a student receiving an allowance or bursary under the Education (Scotland) Act 1980 ^{F224}, the amount of money specified for the relevant year appropriate for the student set out in the Student Support in Scotland Guide issued by the Student Awards Agency for Scotland, or its nearest equivalent in the case of a bursary provided by a college of further education or a local education authority;
- (d) in any other case, the amount specified in paragraph 2(2) of Schedule 2 to the 2003 Regulations other than in paragraph (a) or (b) of that paragraph;

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“student” means a person, other than a person in receipt of a training allowance, who is attending or undertaking a course of study at an educational establishment;

“student loan” means a loan towards a student's maintenance pursuant to any regulations made under section 22 of the Teaching and Higher Education Act 1998 ^{F225}, sections [^{F226}73(f)], 73B and 74 of the Education (Scotland) Act 1980 or article 3 of the Education (Student Support) (Northern Ireland) Order 1998 ^{F227} and is to include, in Scotland, amounts paid under regulation 4(1)(c) of the Students' Allowances (Scotland) Regulations 2007 ^{F228}.

(2) For the purposes of the definition of “full-time student” in paragraph (1), a person is to be regarded as attending or, as the case may be, undertaking a full-time course of study, a full-time course of advanced education or as being on a sandwich course—

- (a) subject to paragraph (3), in the case of a person attending or undertaking a part of a modular course which would be a full-time course of study for the purposes of this Part, for the period beginning on the day on which that part of the course starts and ending—
 - (i) on the last day on which the claimant is registered with the educational establishment as attending or undertaking that part as a full-time course of study; or
 - (ii) on such earlier date (if any) as the claimant finally abandons the course or is dismissed from it;
- (b) in any other case, throughout the period beginning on the date on which the claimant starts attending or undertaking the course and ending on the last day of the course or on such earlier date (if any) as the claimant finally abandons it or is dismissed from it.

(3) For the purpose of sub-paragraph (a) of paragraph (2), the period referred to in that sub-paragraph is to include—

- (a) where a person has failed examinations or has failed to successfully complete a module relating to a period when the claimant was attending or undertaking a part of the course as a full-time course of study, any period in respect of which the claimant attends or undertakes the course for the purpose of retaking those examinations or that module;
- (b) any period of vacation within the period specified in that paragraph or immediately following that period except where the person has registered with the educational establishment to attend or undertake the final module in the course and the vacation immediately follows the last day on which the claimant is required to attend or undertake the course.

(4) In paragraph (2), “modular course” means a course of study which consists of two or more modules, the successful completion of a specified number of which is required before a person is considered by the educational establishment to have completed the course.

Textual Amendments

F208 1992 c. 13.

F209 1980 c. 44.

F210 S.I. 1993/2810 (N.I. 12). The functions under article 30 were transferred by S.R. 1999/481 and the relevant amending instruments are S.I.1997/1772 (N.I. 15), S.I. 2005/1116 (N.I. 5) and S.I. 2005/1963 (N.I. 13).

F211 S.I. 1997/1772 (N.I. 15).

F212 2000 c. 21. Section 5 was amended by the Education Act 2002 (c. 32), **section 178(1)**, (2)(a) and (b). Section 6 was amended by the Special Educational Needs and Disability Act 2001 (c. 10), **sections 34(7)** and 42(6) and Schedule 9. Section 9 was amended by the Education and Inspections Act 2006 (c. 40), **section 176(2)**.

F213 1980 c. 44.

F214 2002 c. 32.

- F215** 1973 c. 65, **section 123** was substituted by the Local Government etc. (Scotland) Act 1994 (c. 39), **section 180** and Schedule 13, paragraph 92(28).
- F216** S.I. 1986/594 (N.I. 3).
- F217** 1965 c. 4.
- F218** Section 142 was substituted by the Child Benefit Act 2005 (c. 6), **section 1(2)**.
- F219** 1992 c. 37.
- F220** S.I. 2007/176.
- F221** S.S.I. 2007/154.
- F222** S.R. 2007/195.
- F223** S.I. 2003/1994.
- F224** 1980 c. 44.
- F225** 1998 c. 30. Section 22 was amended by the Learning and Skills Act 2000 (c. 21), **section 146(1)** and (2)(a), the Higher Education Act 2004 (c. 8), **sections 42(1)**, 43(1), (2) and (3) and 50 and Schedule 7, the Income Tax (Earnings and Pensions) Act 2003 (c. 1), **section 722** and Schedule 6, Part 2, paragraph 236(a) and (b) and the Finance Act 2003 (c. 14), **section 147(3)**.
- F226** Word in reg. 131(1) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **8(9)**
- F227** S.I. 1998/1760 (N.I. 14).
- F228** S.S.I. 2007/153.

Calculation of grant income

132.—(1) The amount of student's grant income to be taken into account, subject to paragraphs (2) and (3), is to be the whole of the student's grant income.

(2) There is to be disregarded from the amount of a student's grant income any payment—

- (a) intended to meet tuition fees or examination fees;
- (b) intended to meet additional expenditure incurred by a disabled student in respect of that student's attendance on a course;
- (c) intended to meet additional expenditure connected with term time residential study away from the student's educational establishment;
- (d) on account of the student maintaining a home at a place other than that at which the student resides while attending the course but only to the extent that the student's rent is not met by housing benefit;
- (e) on account of any other person but only if that person is residing outside of the United Kingdom and there is no applicable amount in respect of that person;
- (f) intended to meet the cost of books and equipment;
- (g) intended to meet travel expenses incurred as a result of the student's attendance on the course;
- (h) intended for the maintenance of a child dependant;
- (i) intended for the child care costs of a child dependant.

(3) Where a student does not have a student loan and is not treated as possessing such a loan, there is to be excluded from the student's grant income—

- (a) the sum of [^{F229}£295] per academic year in respect of travel costs; and
- (b) the sum of [^{F230}£380] per academic year towards the costs of books and equipment,

whether or not any such costs are incurred.

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(4) Subject to paragraph (6), a student's grant income except any amount intended for the maintenance of adult dependants under Part 3 of Schedule 2 to the Education (Mandatory Awards) Regulations 2003 is to be apportioned—

- (a) subject to paragraph (7), in a case where it is attributable to the period of study, equally between the weeks in the period beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of the period of study and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period of study;
- (b) in any other case, equally between the weeks in the period beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of the period for which it is payable and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period for which it is payable.

(5) Any grant in respect of an adult dependant paid under section 63(6) of the Health Services and Public Health Act 1968 ^{F231} (grants in respect of the provision of instruction to officers of hospital authorities) and any amount intended for the maintenance of an adult dependant under the provisions referred to in paragraph (4) is to be apportioned equally over a period of 52 weeks or, if there are 53 benefit weeks (including part-weeks) in the year, 53 weeks.

(6) In a case where a student is in receipt of a student loan or where that student could have acquired a student loan by taking reasonable steps but had not done so, any amount intended for the maintenance of an adult dependant under provisions other than those referred to in paragraph (4) is to be apportioned over the same period as the student's loan is apportioned or, as the case may be, would have been apportioned.

(7) In the case of a student on a sandwich course, any periods of experience within the period of study is to be excluded and the student's grant income is to be apportioned equally between the weeks in the period beginning with the benefit week, the first day of which immediately follows the last day of the period of experience and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the period of study.

Textual Amendments

F229 Word in reg. 132(3)(a) substituted (27.10.2008) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), regs. 1(5), **7(3)(a)**

F230 Word in reg. 132(3)(b) substituted (27.10.2008) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), regs. 1(5), **7(3)(b)**

F231 1968 c. 46. Section 63(6) was amended by the [Health and Medicines Act 1988 \(c. 49\)](#), **section 20**.

Calculation of covenant income where a contribution is assessed

133.—(1) Where a student is in receipt of income by way of a grant during a period of study and a contribution has been assessed, the amount of the student's covenant income to be taken into account for that period and any summer vacation immediately following is to be the whole amount of the student's covenant income less, subject to paragraph (3), the amount of the contribution.

(2) The weekly amount of the student's covenant income is to be determined—

- (a) by dividing the amount of income which falls to be taken into account under paragraph (1) by 52 or, if there are 53 benefit weeks (including part-weeks) in the year, 53; and
- (b) by disregarding from the resulting amount, £5.

(3) For the purposes of paragraph (1), the contribution is to be treated as increased by the amount, if any, by which the amount excluded under regulation 132(2)(g) (calculation of grant income) falls

short of the amount for the time being specified in paragraph 7(2) of Schedule 2 to the Education (Mandatory Awards) Regulations 2003 ^{F232} (travel expenditure).

Textual Amendments

F232 [S.I. 2003/1994](#), the relevant amending instrument is [S.I. 2007/1629](#).

Calculation of covenant income where no grant income or no contribution is assessed

134.—(1) Where a student is not in receipt of income by way of a grant the amount of the student's covenant income is to be calculated as follows—

- (a) any sums intended for any expenditure specified in regulation 132(2)(a) to (e), necessary as a result of the student's attendance on the course, are to be disregarded;
- (b) any covenant income, up to the amount of the standard maintenance grant, which is not so disregarded is to be apportioned equally between the weeks of the period of study and there is to be disregarded from the covenant income to be so apportioned the amount which would have been disregarded under regulation 132(2)(f) and (g) and (3) had the student been in receipt of the standard maintenance grant;
- (c) the balance, if any, is to be divided by 52 or, if there are 53 benefit weeks (including part-weeks) in the year, 53 and treated as weekly income of which £5 is to be disregarded.

(2) Where a student is in receipt of income by way of a grant and no contribution has been assessed, the amount of the student's covenant income is to be calculated in accordance with paragraph (1), except that—

- (a) the value of the standard maintenance grant is to be abated by the amount of the student's grant income less an amount equal to the amount of any sums disregarded under regulation 132(2)(a) to (e); and
- (b) the amount to be disregarded under paragraph (1)(b) is to be abated by an amount equal to the amount of any sums disregarded under regulation 132(2)(f) and (g) and (3).

Relationships with amounts to be disregarded under Schedule 8

135. No part of a student's covenant income or grant income is to be disregarded under paragraph 16 of Schedule 8 (charitable and voluntary payments).

Other amounts to be disregarded

136.—(1) For the purposes of ascertaining income other than grant income, covenant income and loans treated as income in accordance with regulation 137 (treatment of student loans), any amounts intended for any expenditure specified in regulation 132(2) (calculation of grant income) necessary as a result of the student's attendance on the course is to be disregarded but only if, and to the extent that, the necessary expenditure exceeds or is likely to exceed the amount of the sums disregarded under regulation 132(2) and (3), 133(3) (calculation of covenant income where a contribution is assessed), 134(1)(a) or (b) (calculation of covenant income where no grant income or no contribution is assessed) and 137(6) on like expenditure.

(2) Where a claim is made in respect of any period in the normal summer vacation and any income is payable under a Deed of Covenant which commences or takes effect after the first day of that vacation, that income is to be disregarded.

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Treatment of student loans

137.—(1) A student loan is to be treated as income unless it is a specified loan or award in which case it is to be disregarded.

- (2) For the purposes of paragraph (1), a “specified loan or award” means—
- (a) in relation to England, a loan made by the Higher Education Funding Council for England under section 65 of the Further and Higher Education Act 1992 ^{F233};
 - (b) in relation to Wales, a loan made by the Higher Education Funding Council for Wales under section 65 of the Further and Higher Education Act 1992;
 - (c) in relation to Scotland, a loan made by an educational institution from funds it has received under the Education (Access Funds) (Scotland) Regulations 1990 ^{F234};
 - (d) in relation to Northern Ireland, an award made by the Department for Employment and Learning under article 51 of the Education and Libraries (Northern Ireland) Order 1986 ^{F235}.
- (3) In calculating the weekly amount of the loan to be taken in account as income—
- (a) in respect of a course that is of a single academic year's duration or less, a loan which is payable in respect of that period is to be apportioned equally between the weeks in the period beginning with—
 - (i) except in a case where paragraph (ii) applies, the benefit week, the first day of which coincides with, or immediately follows, the first day of the single academic year;
 - (ii) where the student is required to start attending the course in August or where the course is less than an academic year's duration, the benefit week, the first day of which coincides with, or immediately follows, the first day of the course,
 and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the course;
 - (b) in respect of an academic year of a course which starts other than on 1st September, a loan which is payable in respect of that academic year is to be apportioned equally between the weeks in the period beginning with the benefit week, the first day of which coincides with, or immediately follows, the first day of that academic year and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of that academic year but excluding any benefit weeks falling entirely within the quarter during which, in the opinion of the Secretary of State, the longest of any vacation is taken;
 - (c) for the purposes of sub-paragraph (b), “quarter” is to have the same meaning as for the purposes of regulation 104(6) (calculation of income other than earnings);
 - (d) in respect of the final academic year of a course (not being a course of a single year's duration), a loan which is payable in respect of that final academic year is to be apportioned equally between the weeks in the period beginning with—
 - (i) except in a case where paragraph (ii) applies, the benefit week, the first day of which coincides with, or immediately follows, the first day of that academic year;
 - (ii) where the final academic year starts on 1st September, the benefit week, the first day of which coincides with, or immediately follows, the earlier of 1st September or the first day of the autumn term,
 and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of the course;
 - (e) in any other case, the loan is to be apportioned equally between the weeks in the period beginning with the earlier of—
 - (i) the first day of the first benefit week in September; or

- (ii) the benefit week, the first day of which coincides with, or immediately follows, the first day of the autumn term,
and ending with the benefit week, the last day of which coincides with, or immediately precedes, the last day of June,
- and, in all cases, from the weekly amount so apportioned there is to be disregarded £10.
- (4) A student is to be treated as possessing a student loan in respect of an academic year where—
- (a) a student loan has been made to that student in respect of that year; or
 - (b) the student could acquire such a loan in respect of that year by taking reasonable steps to do so.
- (5) Where a student is treated as possessing a student loan under paragraph (4), the amount of the student loan to be taken into account as income is to be, subject to paragraph (6)—
- (a) in the case of a student to whom a student loan is made in respect of an academic year, a sum equal to the maximum student loan the student is able to acquire in respect of that year by taking reasonable steps to do so and either—
 - (i) in the case of a student other than one to whom paragraph (ii) refers, any contribution whether or not it has been paid to that student; or
 - (ii) in the case of a student who is entitled to an income-related allowance by virtue of being a student to whom regulation 18 (circumstances in which the condition that the claimant is not receiving education does not apply) applies;
 - (b) in the case of a student to whom a student loan is not made in respect of an academic year, the maximum student loan that would be made to the student if—
 - (i) the student took all reasonable steps to obtain the maximum student loan that student is able to acquire in respect of that year; and
 - (ii) no deduction in that loan was made by virtue of the application of a means test.
- (6) There is to be deducted from the amount of income taken into account under paragraph (5)—
- (a) the sum of [^{F236}£295] per academic year in respect of travel costs; and
 - (b) the sum of [^{F237}£380] per academic year towards the costs of books and equipment, whether or not any such costs are incurred.

Textual Amendments

F233 1992 c. 13.

F234 S.I. 1990/1534 (S. 157).

F235 S.I. 1986/594 (N.I. 3).

F236 Word in reg. 137(6)(a) substituted (27.10.2008) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), regs. 1(5), [7\(4\)\(a\)](#)

F237 Word in reg. 137(6)(b) substituted (27.10.2008) by [The Social Security \(Students and Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/1599\)](#), regs. 1(5), [7\(4\)\(b\)](#)

Treatment of payments from access funds

138.—(1) This regulation applies to payments from access funds that are not payments to which regulation 142(2) or (3) (income treated as capital) applies.

(2) A payment from access funds, other than a payment to which paragraph (3) applies, is to be disregarded as income.

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(3) Subject to paragraph (4) and paragraph 39 of Schedule 8, any payments from access funds which are intended and used for 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 a single claimant or, as the case may be, of the claimant's partner, and any payments from access funds which are used for any council tax or water charges for which that claimant or partner is liable is to be disregarded as income to the extent of £20 per week.

(4) Where a payment from access funds is made—

- (a) on or after 1st September or the first day of the course, whichever first occurs, but before receipt of any student loan in respect of that year and that payment is intended for the purpose of bridging the period until receipt of the student loan; or
- (b) before the first day of the course to a person in anticipation of that person becoming a student,

that payment is to be disregarded as income.

Treatment of fee loans

139. A loan for fees, known as a fee loan or a fee contribution loan, made pursuant to regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 ^{F238}, section 22 of the Teaching and Higher Education Act 1998 ^{F239} or section 73(f) of the Education (Scotland) Act 1980 ^{F240}, is to be disregarded as income.

Textual Amendments

F238 S.I. 1998/1760 (N.I. 14).

F239 1998 c. 30.

F240 1980 c. 44.

Disregard of contribution

140. Where the claimant or the claimant's partner is a student and, for the purposes of assessing a contribution to the student's grant or student loan, the other partner's income has been taken into account, an amount equal to that contribution is to be disregarded for the purposes of assessing that other partner's income.

Further disregard of student's income

141. Where any part of a student's income has already been taken into account for the purposes of assessing that student's entitlement to a grant or student loan, the amount taken into account is to be disregarded in assessing that student's income.

Income treated as capital

142.—(1) Any amount by way of a refund of tax deducted from a student's income is to be treated as capital.

(2) An amount paid from access funds as a single lump sum is to be treated as capital.

(3) An amount paid from access funds as a single lump sum which is intended and used for an item other than 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), of a single claimant or, as the case may be, of the claimant's partner, or which is used for an

item other than any council tax or water charges for which that claimant or partner is liable is to be disregarded as capital but only for a period of 52 weeks from the date of the payment.

Disregard of changes occurring during summer vacation

143. In calculating a student's income there is to be disregarded any change in the standard maintenance grant occurring in the recognised summer vacation appropriate to the student's course, if that vacation does not form part of the student's period of study, from the date on which the change occurred up to the end of that vacation.

PART 11

SUPPLEMENTARY PROVISIONS

CHAPTER 1

Miscellaneous

Waiting days

144.—(1) A claimant is not entitled to an employment and support allowance in respect of 3 days at the beginning of a period of limited capability for work.

(2) Paragraph (1) does not apply where—

- (a) the claimant's entitlement to an employment and support allowance commences within 12 weeks of the claimant's entitlement to income support, state pension credit, a jobseeker's allowance, a carer's allowance^{F241}, statutory sick pay or a maternity allowance^{F242} coming to an end;
- (b) the claimant is terminally ill and has—
 - (i) made a claim expressly on the ground of being terminally ill; or
 - (ii) made an application for supersession or revision in accordance with the Social Security and Child Support (Decisions and Appeals) Regulations 1999^{F242} which contains an express statement of being terminally ill; or
- (c) the claimant has been discharged from being a member of Her Majesty's forces and 3 or more days immediately before that discharge were days of sickness absence from duty, which are recorded by the Secretary of State for Defence^{F243}, or
- (d) the claimant is the other member of a couple to whom regulation 4I(2) of the Social Security (Claims and Payments) Regulations 1987 applies and the former claimant was not entitled to an employment and support allowance in respect of 3 days at the beginning of the period of limited capability for work which relates to the former claimant's entitlement.]

Textual Amendments

F241 Words in reg. 144(2)(a) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **9(1)(a)**

F242 S.I. 1999/991.

F243 Reg. 144(2)(d) and word added (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **9(1)(b)**

Linking rules

145.—(1) Any period of limited capability for work which is separated from another such period by not more than 12 weeks is to be treated as a continuation of the earlier period.

(2) Where the claimant is a work or training beneficiary in accordance with regulation 148, any period of limited capability for work which is separated from another such period by not more than 104 weeks is to be treated as a continuation of the earlier period.

(3) Where the claimant claims an employment and support allowance after ceasing to be in qualifying remunerative work and—

- (a) the period of limited capability for work began on the day immediately after the day on which the claimant so ceased;
- (b) the claimant has been entitled to an employment and support allowance within the period of 104 weeks before the beginning of that period of limited capability for work; and
- (c) the claimant satisfied the relevant tax credit conditions set out in paragraph (4) on the day before so ceasing,

the claimant is to be treated for the purposes of the claim as having had limited capability for work throughout the period during which those conditions were satisfied.

(4) A claimant satisfies the relevant tax credit conditions on a day if—

- (a) the claimant is entitled for the day to the disability element of working tax credit (on a claim made by the claimant or by the claimant jointly with another) or would be so entitled but for the fact that the relevant income (within the meaning of Part 1 of the Tax Credits Act) in the case of the claimant or the claimant and another is such that that person is not so entitled; and
- (b) either working tax credit or any element of child tax credit other than the family element is paid in respect of the day on such a claim.

(5) Where a claim for an employment and support allowance is made after the claimant ceases to be engaged in training and—

- (a) that claimant was entitled to an employment and support allowance within the period of 8 weeks immediately before becoming so engaged;
- (b) that claimant has limited capability for work on the day after ceasing to be so engaged; and
- (c) that day falls not later than the end of the period of 104 weeks beginning with the end of the last week for which the claimant was entitled to an employment and support allowance,

the claimant is to be treated, for the purposes of the claim, as having had limited capability for work for the period when so engaged in training.

Advance awards

146.—(1) Where section 5 of the Act (advance award of income-related allowance) applies to a claim and the claimant satisfies the conditions in paragraph (3)—

- (a) the claim is to be treated as if made for a period from the relevant day; and
- (b) the Secretary of State may award an employment and support allowance from the relevant day.

(2) In this regulation the “relevant day” is the day after the end of a period of 13 weeks beginning on the first day on which the claimant would be entitled to an income-related allowance if the claimant satisfied the condition in paragraph 6(1)(a) of Schedule 1 to the Act.

(3) The conditions are that—

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- (a) the Secretary of State is of the opinion that unless there is a change of circumstances the claimant will satisfy the conditions set out in section 1(3)(b) to (f) of, and Part 2 of Schedule 1 to, the Act when an income-related allowance becomes payable under the award; and
 - (b) the claimant is treated as having limited capability for work under regulation 20, 25, 26, [F24430] or 33(2) (conditions for treating a person as having limited capability for work) for the period before an income-related allowance becomes payable under the award.
- (4) Where an award is made under paragraph (1)—
- (a) the award for an employment and support allowance will become payable on the date on which the claimant would have been entitled to a main phase employment and support allowance if the claimant had satisfied the condition in paragraph 6(1)(a) of Schedule 1 to the Act before the relevant day;
 - (b) sections 4(4)(a) and 4(5)(a) of the Act do not apply to that award.

Textual Amendments

F244 Word in [reg. 146\(3\)\(b\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), [regs. 1\(2\)](#), [9\(2\)](#)

Recovery orders

147.—(1) Where an award of income-related allowance has been made to a claimant, the Secretary of State may apply to the court for a recovery order against the claimant's partner.

(2) On making a recovery order the court may order the partner to pay such amount at such intervals as it considers appropriate, having regard to all the circumstances of the partner and, in particular, the partner's income.

(3) Except in Scotland, a recovery order is to be treated for all purposes as if it were a maintenance order within the meaning of section 150(1) of the Magistrates Courts Act 1980 ^{F245}.

(4) Where a recovery order requires the partner to make payments to the Secretary of State, the Secretary of State may, by giving notice in writing to the court which made the order, the liable person and the claimant, transfer to the claimant the right to receive payments under the order and to exercise the relevant rights in relation to the order.

(5) In paragraph 4, “the relevant rights” means, in relation to a recovery order, the right to bring any proceedings, take any steps or do any other thing under or in relation to the order.

Textual Amendments

F245 [1980 c. 43](#). The definition in section 150(1) was inserted by the [Family Law Reform Act 1987 \(c. 42\)](#), [section 33\(1\)](#) and Schedule 2, paragraph 88.

CHAPTER 2

Work or training beneficiaries

Work or training beneficiaries

148.—(1) Subject to paragraph (2), a claimant is a “work or training beneficiary” on any day in a linking term where the claimant—

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- (a) had limited capability for work for more than 13 weeks in the most recent past period of limited capability for work;
 - (b) ceased to be entitled to an allowance or advantage at the end of that most recent past period of limited capability for work; and
 - (c) became engaged in work or training within one month of so ceasing to be entitled to that benefit at the end of that most recent past period of limited capability for work.
- (2) A claimant is not a work or training beneficiary if—
- (a) the most recent past period of limited capability for work was ended by a determination that the claimant did not have limited capability for work; and
 - (b) that determination was on the basis of a limited capability for work assessment.
- (3) For the purposes of this Part—
- “allowance or advantage” means any allowance or advantage under the Act or the Contributions and Benefits Act for which entitlement is dependent on limited capability for work;
- “linking term” means a period of 104 weeks from the first day immediately following the last day in a period of limited capability for work;
- “work” means work, other than work under regulation 45 (exempt work), for which payment is made or which is done in expectation of payment.

Linking rules – limited capability for work

149.—(1) Where the circumstances in paragraph (2) apply, a work or training beneficiary is to be treated as having limited capability for work for a period of 13 weeks beginning on the day within the linking term on which the work or training beneficiary claims an employment and support allowance.

- (2) The circumstances are that—
- (a) the work or training beneficiary provides evidence of limited capability for work in accordance with the Medical Evidence Regulations (which prescribe the form of the doctor's statement or other evidence required in each case); and
 - (b) in the most recent past period of limited capability for work, it had been determined that the work or training beneficiary had limited capability for work—
 - (i) the claimant having been assessed in accordance with a limited capability for work assessment; or
 - (ii) as a result of the claimant being treated as having limited capability for work in accordance with regulation 20, 25, 26, 29 or 33(2) (persons to be treated as having limited capability for work).

Linking rules – limited capability for work-related activity

150. Where a work or training beneficiary was a member of the support group when the most recent past period of limited capability for work came to an end, that work or training beneficiary is to be treated as having limited capability for work-related activity for a period of 13 weeks beginning on the day within the linking term on which a claim for an employment and support allowance is made.

CHAPTER 3

Temporary absence from Great Britain

Absence from Great Britain

151.—(1) A claimant who is entitled to an employment and support allowance is to continue to be so entitled during a period of temporary absence from Great Britain only in accordance with this Chapter.

(2) A claimant who continues to be entitled to a contributory allowance during a period of temporary absence will not be disqualified for receiving that allowance during that period under section 18(4) of the Act.

Short absence

152. A claimant is to continue to be entitled to an employment and support allowance during the first 4 weeks of a temporary absence from Great Britain if—

- (a) the period of absence is unlikely to exceed 52 weeks; and
- (b) while absent from Great Britain, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance.

Absence to receive medical treatment

153.—(1) A claimant is to continue to be entitled to an employment and support allowance during the first 26 weeks of a temporary absence from Great Britain if—

- (a) the period of absence is unlikely to exceed 52 weeks;
- (b) while absent from Great Britain, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance;
- (c) the claimant is absent from Great Britain solely—
 - (i) in connection with arrangements made for the treatment of the claimant for a disease or bodily or mental disablement directly related to the claimant's limited capability for work which commenced before leaving Great Britain; or
 - (ii) because the claimant is accompanying a dependent child in connection with arrangements made for the treatment of that child for a disease or bodily or mental disablement;
- (d) those arrangements relate to treatment—
 - (i) outside Great Britain;
 - (ii) during the period whilst the claimant is temporarily absent from Great Britain; and
 - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment; and
- (e) before leaving Great Britain the claimant sought and received the permission of the Secretary of State to do so.

(2) In paragraph (1)(d)(iii), “appropriately qualified” means qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

Absence in order to receive NHS treatment

154. A claimant is to continue to be entitled to an employment and support allowance during any period of temporary absence from Great Britain if—

- (a) while absent from Great Britain, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance;
- (b) that period of temporary absence is for the purpose of the claimant receiving treatment at a hospital or other institution outside Great Britain where the treatment is being provided—
 - (i) under section 6(2) of the Health Service Act (Performance of functions outside England) or section 6(2) of the Health Service (Wales) Act (Performance of functions outside Wales);
 - (ii) pursuant to arrangements made under section 12(1) of the Health Service Act (Secretary of State's arrangements with other bodies), section 10(1) of the Health Service (Wales) Act (Welsh Ministers' arrangements with other bodies), paragraph 18 of Schedule 4 to the Health Service Act (Joint exercise of functions) or paragraph 18 of Schedule 3 to the Health Service (Wales) Act (Joint exercise of functions); or
 - (iii) under any equivalent provision in Scotland or pursuant to arrangements made under such provision; and
- (c) before leaving Great Britain the claimant sought and received the permission of the Secretary of State to do so.

Absence of member of family of member of Her Majesty's forces

155.—(1) A claimant is to continue to be entitled to an employment and support allowance during any period of temporary absence from Great Britain if—

- (a) the claimant is a member of the family of a member of Her Majesty's forces and temporarily absent from Great Britain by reason only of the fact that the claimant is living with that member; and
- (b) before leaving Great Britain the claimant sought and received the permission of the Secretary of State to do so.

(2) In this regulation “member of the family of a member of Her Majesty's forces” means the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of such a member.

CHAPTER 4

Membership of household

Circumstances in which a person is to be treated as being or not being a member of the household

156.—(1) Subject to the following provisions of this regulation—

- (a) the claimant and the claimant's partner; and
- (b) where the claimant or the claimant's partner is responsible for a child or young person, that child or young person and any child of that child or young person,

are to be treated as being members of the same household.

(2) Paragraph (1) applies even where any of them is temporarily living away from the other members of the family.

(3) Paragraph (1) does not apply to a person who is living away from the other members of the family where—

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- (a) that person does not intend to resume living with the other members of the family; or
 - (b) that person's absence from the other members of the family is likely to exceed 52 weeks, unless there are exceptional circumstances (for example where the person is in hospital or otherwise has no control over the length of absence), and the absence is unlikely to be substantially more than 52 weeks.
- (4) Paragraph (1) does not apply in respect of any member of a couple or of a polygamous marriage where—
- (a) one, both or all of them are patients detained in a hospital provided under section 4 of the Health Service Act (high security psychiatric services), section 4 of the Health Service (Wales) Act (high security psychiatric services) or section 102 of the National Health Service (Scotland) Act 1978 ^{F246} (state hospitals);
 - (b) one, both or all of them are—
 - (i) detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or
 - (ii) on temporary release in accordance with the provisions of the Prison Act 1952 ^{F247} or the Prisons (Scotland) Act 1989 ^{F248};
 - (c) the claimant is abroad and does not satisfy the conditions of Chapter 4 of this Part (temporary absence from Great Britain); or
 - (d) any one of them is permanently residing in a care home, an Abbeyfield Home or an independent hospital.
- (5) A child or young person is not to be treated as a member of the claimant's household where that child or young person is—
- (a) placed with the claimant or the claimant's partner by a local authority under section 23(2) (a) of the Children Act 1989 ^{F249} or by a voluntary organisation under section 59(1)(a) of that Act ^{F250};
 - (b) placed with the claimant or the claimant's partner prior to adoption;
 - (c) in accordance with a relevant enactment, boarded out with the claimant or the claimant's partner, whether or not with a view to adoption; or
 - (d) placed for adoption with the claimant or the claimant's partner pursuant to a decision under the [^{F251}Adoption and Children Act 2002] or the Adoption Agencies (Scotland) Regulations 1996 ^{F252}.
- (6) Subject to paragraphs (7) and (8), paragraph (1) does not apply to a child or young person who is not living with the claimant and who—
- (a) in a case which does not fall within sub-paragraph (b), has been continuously absent from Great Britain for a period of more than four weeks commencing—
 - (i) where that child or young person went abroad before the date of the claim for an employment and support allowance, on the date of that claim;
 - (ii) in any other case, on the day which immediately follows the day on which that child or young person went abroad;
 - (b) where regulation 153 (absence to receive medical treatment) applies, has been continuously absent from Great Britain for a period of more than 26 weeks, that period commencing—
 - (i) where that child or young person went abroad before the date of the claim for an employment and support allowance, on the date of that claim;

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- (ii) in any other case, on the day which immediately follows the day on which that child or young person went abroad;
- (c) has been an in-patient or in accommodation for a continuous period of more than 12 weeks commencing—
 - (i) where that child or young person became an in-patient or, as the case may be, entered that accommodation, before the date of the claim for an employment and support allowance, with that date; or
 - (ii) in any other case, with the date on which that child or young person became an in-patient or entered that accommodation,
 and, in either case, has not been in regular contact with either the claimant or any member of the claimant's household;
- (d) is being looked after by, or in the care of, a local authority under a relevant enactment;
- (e) has been placed with a person other than the claimant prior to adoption;
- (f) has been boarded out under a relevant enactment with a person other than the claimant prior to adoption;
- (g) has been placed for adoption pursuant to a decision under the [^{F253}Adoption and Children Act 2002] or the Adoption Agencies (Scotland) Regulations 1996; or
- (h) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court.

(7) Sub-paragraphs (a)(i), (b)(i) and (c)(i) of paragraph (6) do not apply in a case where immediately before the date of claim for an employment and support allowance the claimant was entitled to an income-based jobseeker's allowance or income support.

(8) A child or young person to whom any of the circumstances mentioned in sub-paragraphs (d) or (h) of paragraph (6) applies is to be treated as being a member of the claimant's household only for that part of any benefit week where that child or young person lives with the claimant.

(9) In this regulation—

“accommodation” means accommodation provided by a local authority in a home owned or managed by that local authority—

- (a) under sections 21 to 24 of the National Assistance Act 1948 ^{F254} (provision of accommodation);
- (b) in Scotland, under section 13B or 59 of the Social Work (Scotland) Act 1968 ^{F255} (provision of residential or other establishment); or
- (c) under section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ^{F256} (care and support services etc.),

where the accommodation is provided for a person whose stay in that accommodation has become other than temporary; and

“voluntary organisation” has the meaning assigned to it in the Children Act 1989, or in Scotland, by section 94 of the Social Work (Scotland) Act 1968.

(10) For the purposes of these Regulations a person is responsible for a child or young person if that child or young person usually lives with that person.

Textual Amendments

F246 1978 c. 29.

F247 1952 c. 52.

- F248** 1989 c. 45.
- F249** 1989 c. 41. Section 23(2)(a) was amended by section 49(3) of the Children Act 2004 (c. 31).
- F250** Section 59(1)(a) was amended by section 49(4) of the Children Act 2004 (c. 31).
- F251** Words in reg. 156(5)(d) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **9(3)**
- F252** S.I. 1996/3266.
- F253** Words in reg. 156(6)(g) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **9(3)**
- F254** 1948 c. 29.
- F255** 1968 c. 49.
- F256** 2003 asp 13.

PART 12

DISQUALIFICATION

Disqualification for misconduct etc.

- 157.**—(1) Subject to paragraph (3), paragraph (2) applies where a claimant—
- (a) has limited capability for work through the claimant's own misconduct, except in a case where the limited capability is due to pregnancy or a sexually transmitted disease; or
 - (b) fails without good cause to attend for or submit to medical or other treatment (excluding vaccination, inoculation or major surgery) recommended by a doctor with whom, or a hospital or similar institution with which, the claimant is undergoing medical treatment, which would be likely to remove the limitation on the claimant's capability for work;
 - (c) fails without good cause to refrain from behaviour calculated to retard the claimant's recovery; or
 - (d) is, without good cause, absent from the claimant's place of residence without leaving word with the Secretary of State where the claimant may be found.
- (2) A claimant referred to in paragraph (1) is to be disqualified for receiving an employment and support allowance for such period not exceeding 6 weeks as the Secretary of State may determine.
- (3) Paragraph (1) does not apply where the claimant—
- (a) is disqualified for receiving an employment and support allowance by virtue of regulations made under section 7 of the Social Security Fraud Act 2001 ^{F257}; or
 - (b) is a person in hardship.

Textual Amendments

- F257** 2001 c. 11.

Meaning of “person in hardship”

- 158.**—(1) A claimant is a “person in hardship” if the claimant—
- (a) has informed the Secretary of State of the circumstances on which the claimant relies to establish that fact; and
 - (b) falls within paragraph (2), (3) or (5).
- (2) A claimant falls within this paragraph if—

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- (a) she is pregnant;
 - (b) a member of the claimant's family is pregnant;
 - (c) the claimant is a single claimant aged less than 18; or
 - (d) the claimant is a member of a couple and both members are aged less than 18.
- (3) Subject to paragraph (4), the claimant falls within this paragraph if the claimant or the claimant's partner—
- (a) is responsible for a child or young person who is a member of the claimant's household;
 - (b) has been awarded an attendance allowance or the care component;
 - (c) has claimed either attendance allowance or disability living allowance and the claim has not been determined;
 - (d) devotes a considerable portion of each week to caring for another person who—
 - (i) has been awarded an attendance allowance or the care component; or
 - (ii) has claimed either attendance allowance or disability living allowance and the claim has not been determined; or
 - (e) is aged 60 or more.
- (4) A claimant to whom paragraph (3)(c) or (3)(d)(ii) applies is a person in hardship only for 26 weeks from the date of the claim unless the claimant is a person in hardship under another provision of this regulation.
- (5) The claimant falls within this paragraph where the Secretary of State is satisfied, having regard to all the circumstances and, in particular, the matters set out in paragraph (6), that unless an employment and support allowance is paid, the claimant, or a member of the claimant's family, will suffer hardship.
- (6) The matters referred to in paragraph (5) are—
- (a) the resources which are likely to be available to the claimant and the claimant's family and the length of time for which they might be available; and
 - (b) whether there is a substantial risk that essential items, including food, clothing and heating, will cease to be available to the claimant or a member of the claimant's family, or will be available at considerably reduced levels and the length of time for which this might be so.
- (7) In this regulation “care component” means the care component of disability living allowance at the highest or middle rate prescribed under section 72(3) of the Contributions and Benefits Act.

Treating a claimant as not having limited capability for work

159.—(1) Subject to paragraph (2), the claimant is to be treated as not having limited capability for work if the claimant is disqualified for receiving a contributory allowance during a period of imprisonment or detention in legal custody if that disqualification is for more than 6 weeks.

(2) Where the claimant is entitled to an amount under paragraph 3 of Schedule 5 (special cases: prisoners) during a period of imprisonment or detention in legal custody, the claimant is to be treated as not having limited capability for work from the day after the day on which entitlement ended.

Exceptions from disqualification for imprisonment

160.—(1) Notwithstanding section 18(4)(b) of the Act, a claimant is not disqualified for receiving a contributory allowance for any period during which that claimant is undergoing imprisonment or detention in legal custody—

- (a) in connection with a charge brought or intended to be brought against the claimant in criminal proceedings;

- (b) pursuant to any sentence; or
 - (c) pursuant to any order for detention,
- made by a court in such proceedings, unless paragraph (2) applies.
- (2) This paragraph applies where—
 - (a) a penalty is imposed on the claimant at the conclusion of the proceedings referred to in paragraph (1); or
 - (b) in the case of default of payment of a sum adjudged to be paid on conviction a penalty is imposed in respect of such default.
 - (3) Notwithstanding section 18(4)(b) of the Act, a claimant is not to be disqualified for receiving a contributory allowance, for any period during which the claimant is undergoing detention in legal custody after the conclusion of criminal proceedings if it is a period during which the claimant is liable to be detained in a hospital or similar institution in Great Britain as a person suffering from mental disorder unless—
 - (a) the claimant is detained or liable to be detained under section 45A of the Mental Health Act 1983 ^{F258} (hospital and limitation directions) or section 59A of the Criminal Procedure (Scotland) Act 1995 ^{F259} (hospital direction); or
 - (b) the claimant is detained or liable to be detained under section 47 of the Mental Health Act 1983 ^{F260} (removal to hospital of persons serving sentences of imprisonment, etc.) ^{F261} ...; or
 - (c) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment for mental disorder).
 - (4) Where—
 - (a) paragraph (3)(a) or (b) applies, in relation to a claimant; and
 - (b) a certificate given by or on behalf of the Secretary of State or Scottish Ministers shows the earliest date on which that claimant would have been expected to be discharged from detention under the sentence or order if the claimant had not been transferred to a hospital or similar institution,those paragraphs are to be treated as not satisfied in relation to that claimant from the day following that date.
 - (5) For the purposes of this regulation—
 - (a) “court” means any court in the United Kingdom, the Channel Islands or the Isle of Man or in any place to which the Colonial Prisoners Removal Act 1884 ^{F262} applies or any naval court-martial, army court-martial or air force court-martial within the meaning of the Courts-Martial (Appeals) Act 1968 ^{F263} or the Courts-Martial Appeal Court;
 - (b) “hospital or similar institution” means any place (not being a prison, a young offender institution, a secure training centre, secure accommodation in a children's home or a remand centre, and not being at or in any such place) in which persons suffering from mental disorder are or may be received for care or treatment;
 - (c) “penalty” means a sentence of imprisonment or detention under section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000 ^{F264}, a detention and training order under section 100 of that Act, a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003 ^{F265} or an extended sentence under section 228 of that Act or, in Scotland, under section 205, 207 or 208 of the Criminal Procedure (Scotland) Act 1995;
 - (d) in relation to a person who is liable to be detained in Great Britain as a result of any order made under the Colonial Prisoners Removal Act 1884, references to a prison must be construed as including references to a prison within the meaning of that Act;

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(e) criminal proceedings against any person must be deemed to be concluded upon that person being found insane in those proceedings so that the person cannot be tried or that person's trial cannot proceed.

(6) Where a claimant outside Great Britain is undergoing imprisonment or detention in legal custody and, in similar circumstances in Great Britain, the claimant would, by virtue of this regulation, not have been disqualified for receiving a contributory allowance, the claimant is not disqualified for receiving that allowance by reason only of the imprisonment or detention.

Textual Amendments

- F258** 1983 c. 20. Section 45A was inserted by the [Crime \(Sentences\) Act 1997 \(c. 43\)](#), [section 46](#) and amended by the [Criminal Justice Act 2003 \(c. 44\)](#), [Schedule 32](#), paragraphs 37 and 39 and Schedule 37, Part 7.
- F259** 1995 c. 46. Section 59A was inserted by the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp. 13\)](#), [Schedule 4](#), paragraph 8(6).
- F260** Section 47 was amended by the [Crime \(Sentences\) Act 1997](#), section 49(3).
- F261** Words in [reg. 160\(3\)\(b\)](#) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), [10](#)
- F262** 1884 c. 31.
- F263** 1968 c. 20.
- F264** 2000 c. 6. Section 90 was amended by the [Criminal Justice and Court Services Act 2000 \(c. 43\)](#), [section 60\(2\)](#) and (3).
- F265** 2003 c. 44.

Suspension of payment of a contributory allowance during imprisonment

161.—(1) Subject to the following provisions of this regulation, the payment of a contributory allowance to any claimant—

- (a) which is excepted from the operation of section 18(4)(b) of the Act by virtue of the provisions of regulation 160(2), (3) or (6); or
- (b) which is payable otherwise than in respect of a period during which the claimant is undergoing imprisonment or detention in legal custody,

is suspended while that claimant is undergoing imprisonment or detention in legal custody.

(2) A contributory allowance is not to be suspended while the claimant is liable to be detained in a hospital or similar institution, as defined in regulation 160(5), during a period for which in the claimant's case, the allowance is or would be excepted from the operation of section 18(4)(b) by virtue of the provisions of regulation 160(3).

(3) Where, by virtue of this regulation, payment of a contributory allowance is suspended for any period, the period of suspension is not to be taken into account in calculating any period under the provisions of regulation 38 of the [Social Security \(Claims and Payments\) Regulations 1987](#) ^{F266} (extinguishment of right to sums payable by way of benefit which are not obtained within the prescribed time).

Textual Amendments

- F266** [S.I. 1987/1968](#).

PART 13

URGENT CASES

Urgent cases

162.—(1) In a case to which this regulation applies a claimant's weekly applicable amount and that claimant's income and capital are to be calculated in accordance with the following provisions of this Part.

(2) Subject to paragraph (3), this regulation applies to a claimant who is treated as possessing income under regulation 107(1) (notional income).

(3) This regulation is only to apply to a claimant to whom paragraph (2) applies, where the income that claimant is treated as possessing by virtue of regulation 107(1) is not readily available to that claimant; and—

- (a) the amount of an income-related allowance which would be payable but for this Part is less than the amount of an income-related allowance payable by virtue of the provisions of this Part; and
- (b) the Secretary of State is satisfied that, unless the provisions of this Part are applied to the claimant, the claimant or the claimant's family will suffer hardship.

Applicable amounts in urgent cases

163. For the purposes of calculating any entitlement to an income-related allowance under this Part—

- (a) except in a case to which sub-paragraph (b) or (c) applies, a claimant's weekly applicable amount is to be the aggregate of—
 - (i) 90% of the amount applicable in respect of himself or herself or, if the claimant is a member of a couple or of a polygamous marriage, of the amount applicable in respect of both of them under paragraph 1(1), (2) or (3) of Schedule 4 or, as the case may be, the amount applicable in respect of them under regulation 68 (polygamous marriages);
 - (ii) the amount, if applicable, specified in Part 2 of Schedule 4 (premiums);
 - (iii) the amount, if applicable, specified in Part 4 of Schedule 4 (components); and
 - (iv) any amounts applicable under regulation 67(1)(c) or, as the case may be, 68(1)(d) (housing costs);
- (b) in the case of a claimant to whom any paragraph of Schedule 5 (special cases) applies, the applicable amount is to be the aggregate of—
 - (i) 90% of the amount applicable in column 2 of that Schedule in respect of the claimant and partner (if any);
 - (ii) the amount, if applicable, specified in Part 2 of Schedule 4;
 - (iii) the amount, if applicable, specified in Part 4 of Schedule 4; and
 - (iv) any amounts applicable under regulation 67(1)(c) or, as the case may be, 68(1)(d); or
- (c) in the case of a claimant to whom regulation 162(2) applies, where that claimant is appealing to an appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998, against a decision which embodies a determination that the claimant does not have limited capability for work, the applicable amount is to be the aggregate of—
 - (i) 90% of the amount applicable in respect of himself or herself or, if the claimant is a member of a couple or of a polygamous marriage, of the amount applicable in

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respect of both of them under paragraph 1(1), (2) or (3) of Schedule 4 or, as the case may be, the amount applicable in respect of them under regulation 68 (polygamous marriages);

- (ii) the amount, if applicable, specified in Part 2 of Schedule 4 (premiums); and
- (iii) any amounts applicable under regulation 67(1)(c) or, as the case may be, 68(1)(d).

Assessment of income and capital in urgent cases

164.—(1) The claimant's income is to be calculated in accordance with Part 10 subject to the following modifications—

- (a) any income other than—
 - (i) a payment of income or income in kind made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or [^{F267}the Independent Living Fund (2006)] ; or
 - (ii) income to which paragraph 9 (but only to the extent that a concessionary payment would be due under that paragraph for any non-payment of an income-related allowance under regulation 162 (urgent cases) or of jobseeker's allowance under regulation 147 of the Jobseeker's Allowance Regulations (urgent cases)), 35, 41(2), (3) or (4), 42, 64 or 65 of Schedule 8 (disregard of income other than earnings) applies,

possessed or treated as possessed by the claimant, is to be taken into account in full notwithstanding any provision in that Part disregarding the whole or any part of that income;

- (b) any income to which regulation 118 (calculation of tariff income from capital) applies is to be disregarded;
- (c) income treated as capital by virtue of regulation 112(1), (2), (3) and (7) (income treated as capital) is to be taken into account as income;
- (d) in a case to which regulation 162(2) (urgent cases) applies, any income to which regulation 107(1) applies is to be disregarded.

(2) The claimant's capital calculated in accordance with Part 10, but including any capital referred to in—

- (a) paragraph 3;
- (b) to the extent that such assets as are referred to in paragraph 10 consist of liquid assets, paragraph 10;
- (c) except to the extent that the arrears referred to in paragraph 11 consist of arrears of housing benefit payable under ^{F268}... Part 7 of the Contributions and Benefits Act or any arrears of benefit due under regulation 162, or regulation 147 of the Jobseeker's Allowance Regulations (urgent cases), paragraph 11; and
- (d) paragraphs 13(b), 24 and 32,

of Schedule 9 (capital to be disregarded), are to be taken into account in full and the amount of an income-related allowance which would, but for this paragraph be payable under this regulation, is to be payable only to the extent that it exceeds the amount of that capital.

Textual Amendments

F267 Words in [reg. 164\(1\)\(a\)\(i\)](#) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **11(a)**

F268 Words in reg. 164(2)(c) omitted (27.10.2008) by virtue of The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), 11(b)

PART 14

PERIODS OF LESS THAN A WEEK

Entitlement for less than a week – amount of an employment and support allowance payable

165.—(1) This regulation applies where the claimant is entitled to an employment and support allowance for a part-week and is subject to the following provisions of this Part.

(2) The amount payable by way of an income-related allowance in respect of that part-week is to be calculated by applying the formula—

(a) where the claimant has no income—

$$\frac{(Nx A)}{7}$$

or

(b) where the claimant has an income—

$$\frac{Nx(A - I)}{7} - B$$

where—

A is the claimant's weekly applicable amount in the relevant week;

B is the amount of any employment and support allowance, jobseeker's allowance, income support, maternity allowance, incapacity benefit or severe disablement allowance payable to the claimant or the claimant's partner in respect of any day in the part-week;

I is the claimant's weekly income in the relevant week; and

N is the number of days in the part week.

(3) The amount payable by way of a contributory allowance in respect of a part-week is to be calculated by applying the formula—

$$\frac{(Nx X) - Y}{7}$$

where—

X is the amount calculated in accordance with section 2(1) of the Act;

Y is the amount of any widow's benefit, widowed parent's allowance, bereavement allowance, training allowance, carer's allowance and any increase in disablement pension payable in accordance with Part 1 of Schedule 7 to the Contributions and Benefits Act (Unemployability Supplement) payable in respect of any day in the part-week;

N is the number of days in the part-week.

(4) In this Part—

“part-week” means an entitlement to an employment and support allowance in respect of any period of less than a week;

“relevant week” means the period of 7 days determined in accordance with regulation 166.

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Relevant week

166.—(1) Where a part-week—

- (a) is the whole period for which an employment and support allowance is payable, or occurs at the beginning of an award, the relevant week is the period of 7 days ending on the last day of that part-week; or
- (b) occurs at the end of an award, the relevant week is the period of 7 days beginning on the first day of the part-week.

(2) Where a claimant has an award of an employment and support allowance and that claimant's benefit week changes, for the purpose of calculating the amounts of an employment and support allowance payable for the part-week beginning on the day after the last complete benefit week before the change and ending immediately before the change, the relevant week is the period of 7 days beginning on the day after the last complete benefit week.

Modification in the calculation of income

167. For the purposes of regulation 165 (entitlement for less than a week – amount of an employment and support allowance payable), a claimant's income and, in determining the amount payable by way of an income-related allowance, the income of any person which the claimant is treated as possessing under regulations made under section 17(3) of the Act, regulation 68 (polygamous marriages) or regulation 83 (calculation of income and capital of members of claimant's family and of a polygamous marriage), is to be calculated in accordance with Parts 10 (income and capital) and 13 (urgent cases) subject to the following changes—

- (a) any income which is due to be paid in the relevant week is to be treated as paid on the first day of that week;
- (b) in determining the amount payable by way of an income-related allowance, any jobseeker's allowance, employment and support allowance, income support, maternity allowance, incapacity benefit or severe disablement allowance payable in the relevant week but not in respect of any day in the part-week is to be disregarded;
- (c) the amount referred to as B in regulation 165(2) is to be disregarded;
- (d) in determining the amount payable by way of a contributory allowance, any widow's benefit, training allowance, widowed parent's allowance, bereavement allowance, carer's allowance and any increase in disablement pension payable in accordance with Part 1 of Schedule 7 to the Contributions and Benefits Act (unemployability supplement) which is payable in the relevant week but not in respect of any day in the part-week is to be disregarded;
- (e) where the part-week occurs at the end of the claim—
 - (i) any income; or
 - (ii) any change in the amount of income of the same kind, which is first payable within the relevant week but not on any day in the part-week is to be disregarded;
- (f) where only part of the weekly balance of income is taken into account in the relevant week, the balance is to be disregarded.

Reduction in certain cases

168. The reduction to be made in accordance with regulations 157 and 158 is an amount equal to one seventh of the reduction which would be made under those regulations for a week, multiplied by the number of days in a part-week.

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Payment of a contributory allowance for days of certain regular treatment

169.—(1) Where a claimant is entitled to a contributory allowance as a result of being treated as having limited capability for work in accordance with regulation 26 the amount payable is to be equal to one seventh of the amount of the contributory allowance which would be payable in respect of a week in accordance with section 2(1) of the Act multiplied by N.

(2) In paragraph (1), N is the number of days in that week on which the claimant was receiving treatment referred to in regulation 26 or recovering from that treatment, but does not include any day during which the claimant does work.

Signed by the authority of the Secretary of State for Work and Pensions.

Department for Work and Pensions

Stephen. C. Timms
Minister of State,

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SCHEDULE 1

Regulation 2(2)

HER MAJESTY'S FORCES

PART 1

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

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 ^{F269} and not having been a contributor under the Social Security Act 1975 ^{F270} 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

F269 1965 c. 51.

F270 1975 c. 14.

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SCHEDULE 2

Regulation 19(2) and (3)

ASSESSMENT OF WHETHER A CLAIMANT HAS LIMITED CAPABILITY FOR WORK

PART 1

Physical disabilities

(1) Activity		(2) Descriptors	(3) Points
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

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- 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 [^{F271}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 [^{F272}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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		(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

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other aid to vision if such aid is normally worn.

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

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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

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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)

- [^{F273}1](c) (iii) Where the claimant's [^{F274}15] artificial stoma relates solely to the evacuation of the bowel, has no voluntary control over voiding of the bladder.]
- 10 (c) [^{F275}(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) [^{F276}(v)] Where the claimant's 9 artificial stoma relates solely to the evacuation of the bowel, [^{F277}at least once a month], loses control of bladder so that the claimant cannot control the full voiding of the bladder.
- 10 (c) [^{F278}(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) [^{F279}(vii)] None of the above apply. 0
11. Remaining conscious during waking 11 (a) At least once a week, has an 15 moments. 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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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)

(d) None of the above apply. 0

Textual Amendments

- F271** Words in Sch. 2 para. 3(b) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **12(a)**
- F272** Words in Sch. 2 para. 3(c) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **12(a)**
- F273** Sch. 2 para. 10(c)(iii) inserted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **12(c)**
- F274** Word in Sch. 2 para. 10(c)(iii) added (as renumbered by SI 2008/2428 reg. 12(b)(i)) (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **12(d)**
- F275** Sch. 2 para. 10(c)(iv): Sch. 2 para. 10(c)(iii) renumbered as Sch. 2 para. 10(c)(iv) (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **12(b)(i)**
- F276** Sch. 2 para. 10(c)(v): Sch. 2 para. 10(c)(iv) renumbered as Sch. 2 para. 10(c)(v) (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **12(b)(ii)**
- F277** Words in Sch. 2 para. 10(c)(v) substituted (as renumbered by SI 2008/2428 reg. 12(b)(iii)) (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **12(e)**
- F278** Sch. 2 para. 10(c)(vi): Sch. 2 para. 10(c)(v) renumbered as Sch. 2 para. 10(c)(vi) (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **12(b)(iii)**
- F279** Sch. 2 para. 10(c)(vii): Sch. 2 para. 10(c)(vi) renumbered as Sch. 2 para. 10(c)(vii) (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **12(b)(iv)**

PART 2

Mental, cognitive and intellectual function assessment

(1) Activity	(2) Descriptors	(3) Points
12. Learning or comprehension in the 12 completion of tasks.	<p>(a) Cannot learn or understand how to successfully complete a simple task, such as setting an alarm clock, at all.</p> <p>(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.</p>	15

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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
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... 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 6
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 15
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.
 - (b) For the majority of the time, 9
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.
 - (c) Frequently forgets or loses 6
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.
 - (d) None of the above apply. 0
- 15. Execution of tasks. 15
 - (a) Is unable to successfully complete 15
any everyday task.
 - (b) Takes more than twice the length of 15
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 [^{F281}daily] verbal prompting given by another person in the claimant's presence
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....
- (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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17. Coping with change. 17 (e) None of the above apply. 0
- (a) Cannot cope with very minor, 15 expected changes in routine, to the extent that overall day to day life cannot be managed.
- (b) Cannot cope with expected 9 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.
- (c) Cannot cope with minor, 6 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.
- (d) None of the above apply. 0
18. Getting about. 18 (a) Cannot get to any specified place 15 with which the claimant is, or would be, familiar.
- (b) Is unable to get to a specified place 15 with which the claimant is familiar, without being accompanied by another person on each occasion.
- (c) For the majority of the time is 9 unable to get to a specified place with which the claimant is familiar without being accompanied by another person.
- (d) Is frequently unable to get to a 6 specified place with which the claimant is familiar without being accompanied by another person.
- (e) None of the above apply. 0
19. Coping with social situations. 19 (a) Normal activities, for example, 15 visiting new places or engaging in social contact, are precluded because of overwhelming fear or anxiety.
- (b) Normal activities, for example, [F2839] visiting new places or engaging in social contact, are precluded for the majority of the time due to overwhelming fear or anxiety.

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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.

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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)

21. Dealing with other people. 21
- (g) None of the above apply. 0
 - (a) Is unaware of impact of own 15
behaviour to the extent that:
 - (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:
 - (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
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... for the majority of the time.
 - (e) Is unaware of impact of own 6
behaviour to the extent that:
 - (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

Textual Amendments

F280 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 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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)

F281	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)
F282	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)
F283	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)
F284	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

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.

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- (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 [^{F285}(excluding own back)] without repeatedly stopping, experiencing breathlessness or severe discomfort;
- (c) Cannot clean own torso [^{F286}(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.

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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)

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);

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- (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

F285 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

F286 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

Regulations 67(1)(a) and (2) and 68(1)(a) and (b)

AMOUNTS

PART 1

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> <i>Person or Couple</i>	<i>(2)</i> <i>Amount</i>
(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;

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- | | | |
|---|-----|-------------|
| (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 | | |

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- (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 [^{F287}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) [^{F288}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;

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- (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

F287 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)**

F288 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

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 ^{F289} 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 ^{F290}, or by Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990 ^{F291}, 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

F289 [S.I. 1979/597](#).

F290 [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 \(c. 57\)](#).

F291 1990 c.35.

Pensioner premium

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

Severe disability premium

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;

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- (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 ^{F292} (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

F292 1948 c. 29.

Enhanced disability premium

- 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.

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Carer premium

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


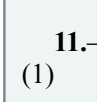
9. For the purpose of determining whether a premium is applicable to a person under paragraphs 6, 7 and 8, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs is to be treated as if it were a payment of that benefit.

Persons in receipt of benefit

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

Weekly amount of premiums specified in Part 2

<i>Premium</i>	<i>Amount</i>
 Pensioner premium for a person to whom (1) paragraph 5 applies who—	
	

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|--|---|
| <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 [F293 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> |

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- (b) £18.15 where the claimant is a member of a couple or a polygamous marriage and the conditions specified in [F294, paragraph 7] are satisfied in respect of a member of that couple or polygamous marriage.

Textual Amendments

F293 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)**

F294 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

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

Regulation 69

SPECIAL CASES

PART 1

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 applies, who is a prisoner; | (a) Nil; |
| (b) | (b) |

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|---|--|
| (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

- | | |
|--|---|
| <p>4. A claimant who is a member of a couple and who is temporarily separated from the claimant's partner where—</p> <p>(a) one member of the couple is—</p> <p>(i) not a patient but is residing in a care home, an Abbeyfield Home or an independent hospital; or</p> <p>(ii) resident in premises used for the rehabilitation of alcoholics or drug addicts; or</p> <p>(iii) resident in accommodation provided under section 3 of and Part 2 of the Schedule to, the Polish Resettlement Act 1947
 <small>£295</small>
 (provision of accommodation in camps); or</p> <p>(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>£296</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</p> <p>(v) in a probation or bail hostel approved for the purpose by the Secretary of State; and</p> <p>(b) the other member of the couple is—</p> | <p>4. Either—</p> <p>(a) the amount applicable to the claimant as a member of a couple under regulation 67(1); or</p> <p>(b) the aggregate of the claimant's applicable amount and that of the claimant's partner assessed under the provisions of</p> |
|--|---|

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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

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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.

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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 [^{F297}partners] .
9. For the first 26 weeks of that absence, the amount applicable to the claimant under regulations 68 and 69, as the case may be, and thereafter, if the claimant is in Great Britain the amount applicable to the claimant under regulations 68 and 69, as the case may be, as if any member of the polygamous marriage not in the United Kingdom were not a member of the marriage.

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

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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 ^{F298}; 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

F295 1947 c. 19; amended by Schedule 4 of the Social Security Act 1980 (c. 30) and by S.I. 1951/674 and 1968/1699.

F296 1990 c. 35.

F297 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

F298 S.I. 2000/636, the relevant amending instruments are S.I. 2002/2497 and S.I. 2003/2274.

PART 2

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

Patients

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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
F299
(hospital and limitation directions) or section 59A of the Criminal Procedure (Scotland) Act 1995
F300
(hospital directions); or
- (b) section 47 of the Mental Health Act 1983
F301
(removal to hospital of persons serving sentences of imprisonment, etc.) or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003
F302
(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

F299 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.

F300 1995 c. 46; section 59A was inserted by the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp. 13\)](#), [Schedule 4](#), paragraph 8(6).

F301 Section 47 was amended by the [Crime \(Sentences\) Act 1997](#), section 49(3).

F302 2003 asp. 13.

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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 6

Regulations 67(1)(c), [F30368(1)(d)]

HOUSING COSTS

Textual Amendments

F303 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)

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 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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.

Modifications etc. (not altering text)

- C1** Sch. 6 para. 1(2) applied (with modifications) (5.1.2009) by [The Social Security \(Housing Costs Special Arrangements\) \(Amendment and Modification\) Regulations 2008 \(S.I. 2008/3195\)](#), regs. 1(3), **9(a)** (with reg. 8)

Remunerative work

2.—(1) Subject to [^{F304}sub-paragraphs (2) to (8)], a [^{F305}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.

[^{F306}(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).

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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)

(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

F304 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)

F305 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)

F306 Sch. 6 para. 2(8)(9) substituted for Sch. 6 para. 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

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 [^{F307}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 ^{F308}; 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.

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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)

Textual Amendments

F307 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)**

F308 S.I. 2002/1792, the relevant amending instruments are S.I. 2002/3019, S.I. 2006/718 and S.I. 2006/2378.

Circumstances in which a person is liable to meet housing costs

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

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—

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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)

- (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;
 - (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,

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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 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 ^{F309},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.

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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 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

F309 2007 c. 21.

Housing costs not met

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

[^{F310}(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.

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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) 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
- (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,

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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 ^{F311}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

F310 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)**

F311 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

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 ^{F312} (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

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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) in Scotland, before 1st April 1989 an assessor acting pursuant to section 45(1) of the Water (Scotland) Act 1980 ^{F313} (provision as to valuation roll) has apportioned the net annual value 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 ^{F314};

“the Act of 1988” means the Local Government Finance Act 1988 ^{F315}.

(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

F312 1967 c. 9.

F313 1980 c. 45.

F314 1987 c. 47.

F315 1988 c. 41. Section 41(1) was amended by the [Local Government Finance Act 1992 \(c. 14\)](#), [Schedule 13](#), paragraph 59.

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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)

Existing housing costs

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.

Modifications etc. (not altering text)

- C2 Sch. 6 para. 8 applied (with modifications) (5.1.2009) by [The Social Security \(Housing Costs Special Arrangements\) \(Amendment and Modification\) Regulations 2008 \(S.I. 2008/3195\)](#), regs. 1(3), **9(b)** (with reg. 8)
- C3 Sch. 6 para. 8(1) applied (with modifications) (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Housing Costs Special Arrangements\) \(Amendment and Modification\) Regulations 2008 \(S.I. 2008/3195\)](#), regs. 1(2), **4(a)** (with regs. 3, 7)

New housing costs

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.

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(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 [^{F316}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
 - (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

F316 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)**

Modifications etc. (not altering text)

- C4** [Sch. 6 para. 9](#) applied (with modifications) (5.1.2009) by [The Social Security \(Housing Costs Special Arrangements\) \(Amendment and Modification\) Regulations 2008 \(S.I. 2008/3195\)](#), regs. 1(3), 9(c)(aa)(i) (with reg. 8)
- C5** [Sch. 6 para. 9\(1\)](#) applied (with modifications) (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Housing Costs Special Arrangements\) \(Amendment and Modification\) Regulations 2008 \(S.I. 2008/3195\)](#), regs. 1(2), **4(b)** (with regs. 3, 7)
- C6** [Sch. 6 para. 9\(1\)](#) applied (with modifications) (5.1.2009) by [The Social Security \(Housing Costs Special Arrangements\) \(Amendment and Modification\) Regulations 2008 \(S.I. 2008/3195\)](#), regs. 1(3), **9(c)(ii)** (with reg. 8)
- C7** [Sch. 6 para. 9\(1\)\(2\)](#) applied (with modifications) (5.1.2009) by [The Social Security \(Housing Costs Special Arrangements\) \(Amendment and Modification\) Regulations 2008 \(S.I. 2008/3195\)](#), regs. 1(3), 9(c)(bb)(i) (with reg. 8)

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C8 Sch. 6 para. 9(4)-(7) applied (with modifications) (5.1.2009) by The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (S.I. 2008/3195), regs. 1(3), 9(c)(iii) (with reg. 8)

General exclusions from paragraphs 8 and 9

- 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).

Modifications etc. (not altering text)

- C9** Sch. 6 para. 10 applied (with modifications) (5.1.2009) by The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (S.I. 2008/3195), regs. 1(3), 9(d)(i) (with reg. 8)
- C10** Sch. 6 para. 10(1) applied (with modifications) (5.1.2009) by The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (S.I. 2008/3195), regs. 1(3), 9(d)(ii) (with reg. 8)

The calculation for loans

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.

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Modifications etc. (not altering text)

- C11** Sch. 6 para. 11 applied (with modifications) (5.1.2009) by [The Social Security \(Housing Costs Special Arrangements\) \(Amendment and Modification\) Regulations 2008 \(S.I. 2008/3195\)](#), regs. 1(3), **9(e)** (with reg. 8)

General provisions applying to new and existing housing costs

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

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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.

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

$$Rx \frac{S}{T}$$

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.

[^{F317}(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

F317 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)**

Modifications etc. (not altering text)

C12 Sch. 6 para. 12 applied (with modifications) (5.1.2009) by The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (S.I. 2008/3195), regs. 1(3), **9(f)(i)** (with reg. 8)

C13 Sch. 6 para. 12(1)(2) applied (with modifications) (5.1.2009) by The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (S.I. 2008/3195), regs. 1(3), **9(f)(ii)** (with reg. 8)

C14 Sch. 6 para. 12(4) applied (with modifications) (5.1.2009) by The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (S.I. 2008/3195), regs. 1(3), **9(f)(iii)** (with reg. 8)

C15 Sch. 6 para. 12(4) applied (with modifications) (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (S.I. 2008/3195), regs. 1(2), **4(c)** (with regs. 3, 7)

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The standard rate

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

[^{F318}(2) The standard rate is to be 6.08%.]

^{F319}(3)

Textual Amendments

F318 Sch. 6 para. 13(2) substituted (5.1.2009) by [The Social Security \(Housing Costs Special Arrangements\) \(Amendment and Modification\) Regulations 2008 \(S.I. 2008/3195\)](#), regs. 1(3), **2(1)(a)(2)(a)**

F319 Sch. 6 para. 13(3) omitted (5.1.2009) by virtue of [The Social Security \(Housing Costs Special Arrangements\) \(Amendment and Modification\) Regulations 2008 \(S.I. 2008/3195\)](#), regs. 1(3), **2(1)(a)(2)(b)**

Excessive Housing Costs

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

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- (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,

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.

Modifications etc. (not altering text)

C16 Sch. 6 para. 14(9) applied (with modifications) (5.1.2009) by [The Social Security \(Housing Costs Special Arrangements\) \(Amendment and Modification\) Regulations 2008 \(S.I. 2008/3195\)](#), regs. 1(3), **9(g)** (with reg. 8)

Linking rule

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;

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- (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^{F320} 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;

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- (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, 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^{F321} or section 2 of the Enterprise and New Towns (Scotland) Act 1990^{F322}, 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.

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(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^{F323}.

(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;

^{F324}(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

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- (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.

(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,

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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)

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

F320 S.I. 1987/1968, the relevant amending instruments are S.I. 1996/2431 and S.I. 2005/2877.

F321 1973 c. 50.

F322 1990 c. 35.

F323 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.

F324 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)**

Modifications etc. (not altering text)

C17 Sch. 6 para. 15(2) applied (with modifications) (5.1.2009) by The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (S.I. 2008/3195), regs. 1(3), **9(h)(i)** (with reg. 8)

C18 Sch. 6 para. 15(6)(a) applied (with modifications) (5.1.2009) by The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (S.I. 2008/3195), regs. 1(3), **9(h)(ii)** (with reg. 8)

C19 Sch. 6 para. 15(14) applied (with modifications) (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (S.I. 2008/3195), regs. 1(2), **4(d)(i)** (with regs. 3, 7)

C20 Sch. 6 para. 15(14) applied (with modifications) (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (S.I. 2008/3195), regs. 1(2), **4(d)(ii)** (with regs. 3, 7)

C21 Sch. 6 para. 15(14) applied (with modifications) (5.1.2009) by The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (S.I. 2008/3195), regs. 1(3), **9(h)(iii)** (with reg. 8)

C22 Sch. 6 para. 15(18) applied (with modifications) (5.1.2009) by The Social Security (Housing Costs Special Arrangements) (Amendment and Modification) Regulations 2008 (S.I. 2008/3195), regs. 1(3), **9(h)(iv)** (with reg. 8)

Loans on residential property

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

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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) 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

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.

Other housing costs

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—

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- (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 ^{F325};
 - (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 ^{F326} (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

F325 1977 c. 30.

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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)

F326 S.I. 2006/213, the relevant amending instrument is S.I. 2007/688.

Non-dependant deductions

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^{F327} (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—
 - (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—

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- (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 ^{F328}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);
 - ^{F329}(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 ^{F330}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).

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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)

Textual Amendments

F327 1948 c. 29.

F328 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)**

F329 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)**

F330 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

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 ^{F331} (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

F331 [S.I. 1995/2287](#), these regulations were superseded by [S.I. 1995/3320](#).

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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)

Modifications etc. (not altering text)

- C23** Sch. 6 para. 20 applied (with modifications) (5.1.2009) by [The Social Security \(Housing Costs Special Arrangements\) \(Amendment and Modification\) Regulations 2008 \(S.I. 2008/3195\)](#), regs. 1(3), **9(i)** (with reg. 8)

SCHEDULE 7

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 ^{F332} (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

- F332** 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—

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- (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, [^{F333}£92.00] in regulation 45(3) or (4).

Textual Amendments

F333 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, [^{F334}£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, [^{F334}£92.00], but only up to a maximum of £20.

Textual Amendments

F334 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) [^{F335}£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.

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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)

Textual Amendments

F335 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 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 ^{F336}; 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

F336 [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.

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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 8

Regulation 104(2)

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

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

2. Any payment in respect of any expenses incurred, or to be incurred, by a claimant who is—

- (a) engaged by a charitable or voluntary organisation; or
- (b) a volunteer,

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

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 ^{F337} 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

F337 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 ^{F338}, 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

F338 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.

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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)

9. Any concessionary payment made to compensate for the non-payment of—
- (a) any payment specified in paragraph 8 or 11;
 - (b) an [^{F339}income-related] employment and support allowance, income support or [^{F340}an income-based jobseeker's allowance].

Textual Amendments

F339 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)**

F340 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 ^{F341};
 - (ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980 ^{F342}, or
 - (iii) directions made under section 73ZA of the Education (Scotland) Act 1980 ^{F343} and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992 ^{F344}, or
- (b) corresponding to such an education maintenance allowance, made pursuant to—
 - (i) section 14 or section 181 of the Education Act 2002 ^{F345}; 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

F341 1996 c. 56. Section 518 was substituted by the School Standards and Framework Act 1998 (c. 31), section 129.

F342 1980 c. 44.

F343 Section 73ZA was inserted by the Further and Higher Education (Scotland) Act 2005 asp. 6, section 19.

F344 1992 c. 37.

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F345 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 ^{F346}.

Textual Amendments

F346 S.I. 2002/2086.

15.—(1) Any payment made pursuant to section 2 of the Employment and Training Act 1973 ^{F347} (functions of the Secretary of State) or section 2 of the Enterprise and New Towns (Scotland) Act 1990 ^{F348} (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

F347 1973 c. 50.

F348 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

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- (ii) from funds derived from a payment made, in consequence of any personal injury to the claimant; or
 - (e) a payment (not falling within sub-paragraph (a) to (d) above) received by virtue of any agreement or court order to make payments to the claimant in consequence of any personal injury to the claimant.
17. Subject to paragraphs 39 and 40, £10 of any of the following, namely—
- (a) a war disablement pension (except insofar as such a pension falls to be disregarded under paragraph 10 or 11);
 - (b) a war widow's pension or war widower's pension;
 - (c) a pension payable to a person as a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown;
 - (d) a guaranteed income payment [^{F349}and, if the amount of that payment has been abated to less than £10 by a payment under the Armed Forces Pension Scheme 1975 or the Armed Forces Pension Scheme 2005, so much of the pension payable under either of those schemes as would not, in aggregate with the amount of the guaranteed income payment disregarded, exceed £10];
 - (e) a payment made to compensate for the non-payment of such a pension or payment as is mentioned in any of the preceding sub-paragraphs;
 - (f) a pension paid by the government of a country outside Great Britain which is analogous to any of the pensions or payments mentioned in sub-paragraphs (a) to (d) above;
 - (g) a pension paid to victims of National Socialist persecution under any special provision made by the law of the Federal Republic of Germany, or any part of it, or of the Republic of Austria;
 - (h) any widowed mother's allowance paid pursuant to section 37 of the Contributions and Benefits Act;
 - (i) any widowed parent's allowance paid pursuant to section 39A of the Contributions and Benefits Act ^{F350}.

Textual Amendments

F349 Words in Sch. 8 para. 17(d) inserted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 7\) Regulations 2008 \(S.I. 2008/3157\)](#), regs. 1(2), **11(3)(a)**

F350 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;

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- (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^{F351} (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^{F352};
- (ii) in any other case the interest which is payable on the loan without deduction of such a sum.

Textual Amendments

F351 1988 c. 1.

F352 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 [^{F353}the Independent Living Fund (2006)].

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(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

F353 Words in Sch. 8 para. 22(2) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **18(b)**

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

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

- (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^{F354} or in accordance with a scheme approved by the Scottish Ministers under section 51A of the Adoption (Scotland) Act 1978^{F355} (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^{F356} (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^{F357}, 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^{F358} (special guardianship support services).

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(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^{F359}.

Textual Amendments

F354 2002 c. 38.

F355 1978 c. 28.

F356 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).

F357 S.I. 1995/755 (N.I. 2).

F358 Section 14F was inserted by the Adoption and Children Act 2002 (c. 38), section 115(1).

F359 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^{F360} 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^{F361} (payment of allowances).

Textual Amendments

F360 1995 c. 36.

F361 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^{F362};
- (e) a Primary Care Trust established under section 16A of the National Health Service Act 1977^{F363} 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.

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Textual Amendments

F362 1948 c. 29. Section 26(3A) was inserted by the [National Health Service and Community Care Act 1990 \(c. 19\)](#), [section 42\(4\)](#).

F363 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 ^{F364};
- (b) section 12 of the Social Work (Scotland) Act 1968 ^{F365}; 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

F364 1989 c. 41. Sections 23B, 23C and 24A were substituted by the [Children \(Leaving Care\) Act 2000 \(c. 35\)](#), [sections 2](#) and 4.

F365 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).

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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 ^{F366} 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 ^{F367}.

(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

F366 1974 c. 39.

F367 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.

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35. Any social fund payment made pursuant to Part 8 of the Contributions and Benefits Act.
36. Any payment of income which under regulation 112 (income treated as capital) is to be treated as capital.
37. Any payment under Part 10 of the Contributions and Benefits Act (pensioner's Christmas bonus).
38. Any payment which is due to be paid before the date of claim which would otherwise fall to be taken into account in the same benefit week as a payment of the same kind and from the same source.
39. The total of a claimant's income or, if the claimant is a member of a family, the family's income and the income of any person which the claimant is treated as possessing under regulation 83(3) (calculation of income and capital of members of claimant's family and of a polygamous marriage) to be disregarded under regulation 133(2)(b) and 134(1)(c) (calculation of covenant income), regulation 137(1) and (2) (treatment of student loans), regulation 138(3) (treatment of payments from access funds) and paragraph 17 is in no case to exceed £20 per week.
40. Notwithstanding paragraph 39 where two or more payments of the same kind and from the same source are to be taken into account in the same benefit week, there is to be disregarded from each payment the sum which would otherwise fall to be disregarded under this Schedule; but this paragraph is to apply only in the case of a payment which it has not been practicable to treat under regulation 93(1)(b) (date on which income is treated as paid) as paid on the first day of the benefit week in which it is due to be paid.
- 41.—(1) Any payment made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust (“the Trusts”), the Fund, the Eileen Trust or [F³⁶⁸the 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.

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(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

F368 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 ^{F369} (reduction of liability for council tax).

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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)

Textual Amendments

F369 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^{F370} (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^{F371};
- (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^{F372} (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

F370 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.

F371 S.I. 2007/1104 (W. 116).

F372 S.S.I. 2003/460.

46. Any payment made to such persons entitled to receive benefits as may be determined by or under a scheme made pursuant to section 13 of the Social Security Act 1988^{F373} 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

F373 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^{F374} to assist disabled persons to obtain or retain employment despite their disability.

Textual Amendments

F374 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^{F375} (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.

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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)

Textual Amendments

F375 S.I. 2006/606.

[^{F376}50.—(1)] If the claimant is in receipt of any benefit under Part 2, 3 or 5 of the Contributions and Benefits Act, any increase in the rate of that benefit arising under Part 4 (increases for dependants) or section 106(a) (unemployability supplement) of that Act, where the dependant in respect of whom the increase is paid is not a member of the claimant’s family.

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

Textual Amendments

F376 Sch. 8 para. 50 substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **11(3)(b)**

51. In the case of a pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983 ^{F377} (pensions to widows, widowers or surviving civil partners), the sum specified in paragraph 1(c) of Schedule 4 to that scheme.

Textual Amendments

F377 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, [^{F378}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

F378 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 ^{F379} or under section 12B of the Social Work (Scotland) Act 1968 ^{F380} or under regulations made under section 57 of the Health and Social Care Act 2001 ^{F381} (direct payments).

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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)

Textual Amendments

F379 1996 c 30.

F380 1968 c 49.

F381 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 ^{F382} or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ^{F383} or the provision of accommodation or welfare services to which Part 3 of the National Assistance Act 1948 ^{F384} refers or to which the Social Work (Scotland) Act 1968 ^{F385} refers, which falls to be treated as notional income under paragraph (6) of regulation 107 (payments made in respect of a person living in a care home, an Abbeyfield Home or an independent hospital).

Textual Amendments

F382 1983 c. 20.

F383 2003 asp. 13.

F384 1948 c. 29.

F385 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

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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.

[^{F386}(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).]

[^{F386}(4) In this paragraph, “child maintenance” shall have the same meaning as in regulation 119.]

Textual Amendments

F386 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 ^{F387}.

Textual Amendments

F387 [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.

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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)

SCHEDULE 9

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 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—

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- (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;

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- (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 ^{F388} or section 338(1) of the Housing (Scotland) Act 1987 ^{F389} 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

F388 1985 c. 69.

F389 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.

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 [^{F390}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.

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(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

F390 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 ^{F391};
- (b) section 12 of the Social Work (Scotland) Act 1968 ^{F392}; 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

F391 [1989 c. 41](#). Sections 23B, 23C and 24A were substituted by the [Children \(Leaving Care\) Act 2000 \(c. 35\)](#), [sections 2](#) and 4.

F392 [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 ^{F393} (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

F393 [1988 c. 1](#).

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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, [F394the 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
- (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—

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- (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

F394 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 ^{F395}the Independent Living Fund (2006)].

Textual Amendments

F395 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 ^{F396} or section 2 of the Enterprise and New Towns (Scotland) Act 1990 ^{F397}, but only for the period of 52 weeks beginning on the date of receipt of the payment.

Textual Amendments

F396 1973 c. 50.

F397 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.

Status: Point in time view as at 05/01/2009. This version of this Instrument contains provisions that are not valid for this point in time.

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)

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 [^{F398}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 ^{F399} (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

F398 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)

F399 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 ^{F400} (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

F400 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 ^{F401} (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 ^{F402};
- (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 ^{F403} (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

F401 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.

F402 S.I. 2007/1104 (W. 116).

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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)

F403 [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 ^{F404} to assist disabled persons to obtain or retain employment despite their disability.

Textual Amendments

F404 [1944 c. 10](#).

42. Any payment made by a local authority under section 3 of the Disabled Persons (Employment) Act 1958 ^{F405} to homeworkers assisted under the Blind Homeworkers' Scheme.

Textual Amendments

F405 [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 ^{F406} 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

F406 [S.I. 1998/3122](#), the relevant amending instrument is [S.I. 2007/2204](#)

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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) [^{F407}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

F407 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.

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—

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- (i) regulations made under section 518 of the Education Act 1996 ^{F408};
 - (ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980 ^{F409};
 - (iii) directions made under section 73ZA of the Education (Scotland) Act 1980 ^{F410} and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992 ^{F411}, or
- (b) corresponding to such an education maintenance allowance, made pursuant to—
- (i) section 14 or section 181 of the Education Act 2002 ^{F412}; 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

- F408** 1996 c. 56. Section 518 was substituted by the [School Standards and Framework Act 1998 \(c. 31\), section 129](#).
- F409** 1980 c. 44.
- F410** Section 73ZA was inserted by the [Further and Higher Education \(Scotland\) Act 2005 \(asp. 6\), section 19](#).
- F411** 1992 c. 37.
- F412** 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

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- (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;
- (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.

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54. The amount of a payment, other than a [^{F413}war disablement pension, war widow's pension or war widower's pension], 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

F413 Words in Sch. 9 para. 54 substituted (5.1.2009) by The Social Security (Miscellaneous Amendments) (No. 7) Regulations 2008 (S.I. 2008/3157), regs. 1(1), **11(4)**

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 ^{F414}, regulations made under section 57 of the Health and Social Care Act 2001 ^{F415} or under section 12B of the Social Work (Scotland) Act 1968 ^{F416}.

Textual Amendments

F414 1996 c. 30.

F415 2001 c. 15.

F416 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 ^{F417}.

Textual Amendments

F417 2002 c. 38.

58. Any payment made to the claimant in accordance with regulations made pursuant to section 14F of the Children Act 1989 ^{F418} (special guardianship support services).

Textual Amendments

F418 1989 c. 41. Section 14F was inserted by the Adoption and Children Act 2002 (c. 38), **section 115(1)**.

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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)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made either by virtue of, or in consequence of, provisions in the Part 1 of the Welfare Reform Act 2007 (“the Act”). The Regulations are made before the end of the period of 6 months beginning with the coming into force of those provisions and are therefore exempted from the requirement in section 172(1) of the Social Security Administration Act 1992 (c. 5) to refer proposals to make them to the Social Security Advisory Committee and are made without reference to that Committee.

Section 1 of the Act introduces a new benefit, employment and support allowance (“ESA”), for claimants assessed as having “limited capability for work” because of a health condition or disability. ESA will replace Incapacity Benefit, and Income Support on the basis of incapacity. ESA has a contributory strand accessible via a National Insurance Contribution test and an income-related strand accessible via an income test. Most claimants will be required to serve an assessment phase which will normally last for 13 weeks from the start of the claim (regulations 4 – 7). During this period claimants will receive a rate of benefit that depends on whether they are aged 16-24 years or 25 years and over. Recipients of the income-related strand may also qualify for certain premiums and housing costs (regulations 67 – 71 and Schedules 4 and 6).

Once the assessment phase is complete and subject to satisfying the assessment of “limited capability for work” (see Part 5 and Schedule 2) claimants will move onto the main phase of the benefit. Their entitlement will then consist of the basic rate – a flat rate of benefit, regardless of age - and, on top of this, a work-related activity or support component. The majority of claimants will be entitled to the work-related activity component and will be required to engage in “conditionality” (Part 8). This will be work-focused health-related assessments (Chapter 1 of Part 8) and work-focused interviews (Chapter 2 of Part 8). Failure to engage can lead to the imposition of a reduction in benefit (Chapter 3 of Part 8).

Claimants who demonstrate “limited capability for work-related activity” (Part 6 and Schedule 3) will be entitled to the support component instead of the work-related activity component, in addition to the basic rate. These claimants will be those with the most severe health conditions and will not be subject to any conditionality requirements.

Part 2 of these Regulations provides detailed provisions on when the assessment phase will end.

Part 3 deals with conditions of entitlement to a contributory allowance including special provision for young people who are unable to satisfy the contribution conditions (regulations 9 – 13).

Part 4 deals with conditions of entitlement to an income-related allowance, dealing in particular with the circumstances in which a claimant is to be treated as receiving or not receiving education (regulations 14 – 18).

Part 5 deals with the determination of whether or not a claimant has limited capability for work. The assessment used to determine this is set out in Schedule 2. It also provides for the circumstances in which a claimant is to be treated as having or not having limited capability for work.

Part 6 deals with the determination of whether or not a claimant has limited capability for work-related activity. The assessment used to determine this is set out in Schedule 3. It also provides for the circumstances in which a claimant is to be treated as having or not having limited capability for work-related activity.

Part 7 provides for the circumstances in which the work a claimant does affects the claimant's entitlement to ESA.

Part 8 deals with conditionality. Chapter 1 provides for requirements to attend work-focused health-related assessments. Chapter 2 provides for requirements to attend work-focused interviews. Chapter 3 provides for a reduction in ESA in respect of claimants who do not engage

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in work-focused health-related assessments or work-focused interviews. Chapter 4 provides for notification under this Part and Chapter 5 provides for the modification of the Act in relation to advance claims.

Part 9 deals with amounts of the allowance. Chapter 1 provides for prescribed amounts. The amounts themselves are set out in Schedules 4, 5, and 6. Chapter 2 provides for deductions from the contributory allowance. Chapter 3 deals with the effect of statutory maternity pay, statutory adoption pay and statutory paternity pay on a contributory allowance.

Part 10 deals with the calculation of a claimant's income and capital. Chapter 1 deals with general provisions. Chapter 2 provides for the calculation of income. Chapter 3 deals with employed earners and Chapter 4 deals with self-employed earners. Chapter 5 deals with participants in the self-employed route and Chapter 6 deals with the calculation of other income. Chapter 7 deals with the calculation of capital and Chapter 8 provides for the treatment of liable relative payments. Chapter 9 deals with the treatment of payments of child support maintenance and Chapter 10 deals with modification of the provisions which apply for purposes of calculating of the income and capital of students. Schedule 7 provides the detail of sums to be disregarded in the calculation of earnings and Schedule 8 provides the detail of sums to be disregarded in the calculation of income other than earnings. Schedule 9 provides the detail of capital to be disregarded.

Part 11 provides for supplementary provisions. Chapter 1 deals with miscellaneous provisions, such as providing that a claimant must wait a number of days at the start of a period of limited capability for work before becoming entitled to ESA (regulation 144), rules which enable two periods of limited capability for work separated by not more than 12 weeks to be linked together (regulation 145), advance awards (regulation 146) and recovery orders (regulation 147). Chapter 2 provides specific rules for "work or training beneficiaries" which extend the normal linking period for certain claimants who leave ESA for work to 104 weeks. Chapter 3 deals with temporary absence abroad and Chapter 4 provides for the circumstances in which a person is to be treated as being or not being a member of the claimant's household.

Part 12 provides for the circumstances in which a claimant may be disqualified from receiving ESA and includes provision to deal with the situation where this would leave a person in hardship. Part 13 deals with urgent cases and Part 14 deals with periods of less than a week.

An impact assessment has not been completed for these regulations as they have no impact on the private or voluntary sectors. An assessment of the impact of these regulations on the public sector has been made. Copies of this Impact Assessment have been made available in the libraries of both Houses of Parliament. Copies may be obtained from the Better Regulation Unit of the Department for Work and Pensions, level 4, The Adelphi, 1-11 John Adam Street, London WC2N 6HT, or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.

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Changes to legislation:

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