
STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 1 **E+W+S**

GENERAL

Citation and commencement **E+W+S**

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 ^{F1} come into force.

Textual Amendments

F1 1992 c. 4. Sections 171ZEA to 171ZEE were inserted by sections 6 to 10 of the [Work and Families Act 2006](#) (c. 18).

Interpretation **E+W+S**

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 ^{F2};

“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 ^{F3};

“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,

Status: Point in time view as at 06/04/2010.

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 1. (See end of Document for details)

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^{F4};

“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;
- (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^{F5} or any analogous payment;
- (f) any payment based on the need for attendance which is paid as an addition to a war disablement pension;

[^{F6}“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^{F7}, 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^{F8};

“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^{F9};

“concessionary payment” means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged ^{F10} ... 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 ^{F11};

“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, 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 ^{F12};

“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 ^{F13}; or
 - (ii) a scheme made by virtue of section 18 of the Local Government and Housing Act 1989 ^{F14},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 ^{F15};

“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;

Status: Point in time view as at 06/04/2010.

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 1. (See end of Document for details)

“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 ^{F16} 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;

[^{F17}“enactment” includes an enactment comprised in, or in an instrument made under, 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 ^{F18};

“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 ^{F19};

“Health Service Act” means the National Health Service Act 2006 ^{F20};

“Health Service (Wales) Act” means the National Health Service (Wales) Act 2006 ^{F21};

“housing association” has the meaning given to it by section 1(1) of the Housing Associations Act 1985 ^{F22};

“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 ^{F23} 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 ^{F24};

“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 ^{F25};

“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 ^{F26};

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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 ^{F28};

“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

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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;

[^{F29}“MFET Limited” means the company limited by guarantee (number 7121661) of that name, established for the purpose in particular of making payments in accordance with arrangements made with the Secretary of State to persons who have acquired HIV as a result of treatment by the NHS with blood or blood products;]

“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;

“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 ^{F30};

“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 ^{F31} including such a supplement by virtue of any other scheme or order or under article 25A of the Personal Injuries (Civilians) Scheme 1983 ^{F32};

“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;

“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 ^{F33};

“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 ^{F34};

“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 ^{F35};

Status: Point in time view as at 06/04/2010.

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 1. (See end of Document for details)

- (b) an annuity contract or trust scheme approved under section 620 or 621 of the Income and Corporation Taxes Act 1988 ^{F36} 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 ^{F37};
- (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 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;

[^{F38}“public authority” includes any person certain of whose functions are functions of a public nature;]

[^{F38}“the qualifying age for state pension credit” means—

- (a) in the case of a woman, pensionable age, and
- (b) in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man;]

“qualifying person” means a person in respect of whom payment has been made from the Fund, the Eileen Trust^{F39}, MFET Limited], 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 ^{F40} (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 ^{F41} apply;
 - (iii) to which regulation 9 (powers in respect of persons leaving aircraft) of the Public Health (Aircraft) Regulations 1979 ^{F42} applies; or

- (iv) to which regulation 10 (powers in respect of certain persons on ships) of the Public Health (Ships) Regulations 1979^{F43} 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^{F44} (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^{F45}; 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^{F46},
apply;

“relevant enactment” means the Army Act 1955^{F47}, the Air Force Act 1955^{F48}, the Naval Discipline Act 1957^{F49}, the Matrimonial Proceedings Children Act 1958^{F50}, the Social Work (Scotland) Act 1968^{F51}, the Family Law Reform Act 1969^{F52}, the Children and Young Persons Act 1969^{F53}, the Matrimonial Causes Act 1973^{F54}, the Domestic Proceedings and Magistrates' Courts Act 1978^{F55}, the Adoption (Scotland) Act 1978^{F56}, the Family Law Act 1986^{F57}, the Children Act 1989^{F58} and the Adoption and Children Act 2002^{F59};

“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^{F60} (functions of the Secretary of State) or section 2 of the Enterprise and New Towns (Scotland) Act 1990^{F61} (functions in relation to training for employment etc.);

[^{F38}“service user group” means a group of individuals that is consulted by or on behalf of—

- (a) a Health Board, Special Health Board or the Agency in consequence of a function under section 2B of the National Health Service (Scotland) Act 1978,
- (b) a landlord authority in consequence of a function under section 105 of the Housing Act 1985,
- (c) a public authority in consequence of a function under section 49A of the Disability Discrimination Act 1995,
- (d) a best value authority in consequence of a function under section 3 of the Local Government Act 1999,
- (e) a local authority landlord or registered social landlord in consequence of a function under section 53 of the Housing (Scotland) Act 2001,

Status: Point in time view as at 06/04/2010.

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 1. (See end of Document for details)

- (f) a relevant English body or a relevant Welsh body in consequence of a function under section 242 of the National Health Service Act 2006,
- (g) a Local Health Board in consequence of a function under section 183 of the National Health Service (Wales) Act 2006,
- (h) the Commission or the Office of the Health Professions Adjudicator in consequence of a function under sections 4, 5, or 108 of the Health and Social Care Act 2008,
- (i) the regulator or a [^{F62}private registered provider of social housing] in consequence of a function under sections 98, 193 or 196 of the Housing and Regeneration Act 2008, or
- (j) a public or local authority in Great Britain in consequence of a function conferred under any other enactment,

for the purposes of monitoring and advising on a policy of that body or authority which affects or may affect persons in the group, or of monitoring or advising on services provided by that body or authority which are used (or may potentially be used) by those persons;]

“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 ^{F63} out of sums allocated to it for distribution under that section;

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[^{F64}“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 ^{F65};

“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, [^{F66}Skills Development Scotland,] 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
- (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, [^{F66}Skills

Development Scotland,] 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 [^{F67}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^{F68};

“war widow's pension” [^{F69}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” [^{F69}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^{F70};
- (b) as respects Scotland, any water and sewerage charges under Part 2 of the Local Government etc. (Scotland) Act 1994^{F71},

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^{F72} 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^{F73} (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 ^{F74}... 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^{F75} 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^{F76};

“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;

“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.

Status: Point in time view as at 06/04/2010.

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 1. (See end of Document for details)

(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

- F2** 2007 c. 5.
- F3** 1996 c. 18. Sections 75A and 75B were inserted by section 3 of the [Employment Act 2002 \(c. 22\)](#).
- F4** 2004 c. 32.
- F5** 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.
- F6** 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\(a\)](#)
- F7** 2000 c. 14.
- F8** 2001 asp. 8.
- F9** 1992 c. 37.
- F10** 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\(2\)\(a\)](#)
- F11** 1992 c. 4. Section 171(1) was amended by the [Still-Birth \(Definition\) Act 1992 \(c. 29\)](#), [sections 2\(1\)](#) and 4(2).
- F12** 1994 c. 39.
- F13** 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.
- F14** 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).
- F15** 2004 asp. 9.
- F16** 1999 c. 30.
- F17** Words in reg. 2(1) substituted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009 \(S.I. 2009/2655\)](#), regs. 1(2)(d), [11\(2\)\(a\)](#)
- F18** S.I. 2005/439.
- F19** 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).
- F20** 2006 c. 41.
- F21** 2006 c. 42.
- F22** 1985 c. 69.
- F23** S.I. 2006/213.

- F24** 1999 c. 33.
- F25** S.I. 1987/1967.
- F26** 2001 asp. 8. Section 2(5) was amended by section 29 of the Smoking, Health and Social Care (Scotland) Act 2005 (asp. 13).
- F27** 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)**
- F28** S.I. 1996/1207.
- F29** Words in reg. 2(1) inserted (6.4.2010) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(1), **12(2)**
- F30** S.I. 1976/615.
- F31** S.I. 2006/606.
- F32** S.I. 1983/686.
- F33** 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.
- F34** 2005 c. 26.
- F35** 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).
- F36** 1988 c. 1. Sections 620, 621 and 622 were repealed by the Finance Act 2004 (c. 12), **section 326** and Schedule 42, Part 3.
- F37** 2004 c. 12.
- F38** Words in reg. 2(1) inserted (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2009 (S.I. 2009/2655), regs. 1(2)(d), **11(2)(b)**
- F39** Words in reg. 2(1) inserted (6.4.2010) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 (S.I. 2010/641), regs. 1(1), **12(3)(a)**
- F40** 1984 c. 22. Section 20 was amended by section 59 of, and Schedule 3 to, the Food Safety Act 1990 (c. 16).
- F41** S.I. 1988/1546.
- F42** S.I. 1979/1434.
- F43** S.I. 1979/1435.
- F44** 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).
- F45** S.I. 1971/131.
- F46** S.I. 1971/132.
- F47** 1955 c. 18.
- F48** 1955 c. 19.
- F49** 1957 c. 53.
- F50** 1958 c. 40.
- F51** 1968 c. 49.
- F52** 1969 c. 46.
- F53** 1969 c. 54.
- F54** 1973 c. 18.
- F55** 1978 c. 22.
- F56** 1978 c. 28.
- F57** 1986 c. 55.
- F58** 1989 c. 41.
- F59** 2002 c. 38.

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- F60** 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.
- F61** 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](#).
- F62** Words in reg. 2(1)(i) substituted (1.4.2010) by [The Housing and Regeneration Act 2008 \(Consequential Provisions\) \(No. 2\) Order 2010 \(S.I. 2010/671\)](#), art. 1(2), [Sch. 1 para. 70](#) (with Sch. 2); [S.I. 2010/862](#), art. 2
- F63** 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.
- F64** 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\(c\)](#)
- F65** 2002 c. 21.
- F66** Words in reg. 2(1) inserted (6.4.2009) by [The Social Security \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/583\)](#), regs. 1(2), [10\(2\)\(a\)](#)
- F67** 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\(2\)\(b\)](#)
- F68** 2003 c. 1.
- F69** 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\(2\)\(c\)](#)
- F70** 1991 c. 56.
- F71** 1994 c. 39.
- F72** 1971 c. 80.
- F73** 2000 c. 35.
- F74** 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\(1\)](#)
- F75** 1991 c. 48. Section 3(6) was amended by the [Child Support, Pensions and Social Security Act \(c. 19\)](#), section 1(2)(a).
- F76** 2000 c. 19.

^{F77}Disapplication of section 1(1A) of the Social Security Administration Act 1992 E+W+S

2A. Section 1(1A) of the Social Security Administration Act 1992 (requirement to state a national insurance number) shall not apply to a person who—

- (a) is a person in respect of whom a claim for employment and support allowance is made;
- (b) is subject to immigration control within the meaning of section 115(9)(a) of the Immigration and Asylum Act;
- (c) does not satisfy the basic conditions of entitlement to employment and support allowance for the purposes of section 1(3) of the Act; and
- (d) has not previously been allocated a national insurance number.]

Textual Amendments

- F77** Reg. 2A inserted (6.4.2009) by [The Social Security \(National Insurance Number Information: Exemption\) Regulations 2009 \(S.I. 2009/471\)](#), regs. 1, [13](#)

Rounding of fractions **E+W+S**

3. For the purposes of these Regulations—
 - (a) 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;
 - (b) 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.

Status:

Point in time view as at 06/04/2010.

Changes to legislation:

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