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STATUTORY INSTRUMENTS

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**2008 No. 794**

**The Employment and Support Allowance Regulations 2008**

**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);

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- (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 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).

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

- C1** Reg. 163(a)(i) modified (with effect in accordance with art. 1(2)(l) (3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(l), 27(6), **Sch. 20**
- C2** Reg. 163(b)(i) modified (with effect in accordance with art. 1(2)(l) (3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(l), 27(6), **Sch. 20**
- C3** Reg. 163(c)(i) modified (with effect in accordance with art. 1(2)(l) (3)(a) 6 of the amending S.I.) by [The Social Security Benefits Up-rating Order 2009 \(S.I. 2009/497\)](#), arts. 1(2)(l), 27(6), **Sch. 20**

**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 [<sup>F1</sup>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 <sup>F2</sup>... 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**

- F1** 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)**
- F2** 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)**

**Status:**

Point in time view as at 06/04/2009.

**Changes to legislation:**

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 13.