

STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 4 E+W+S

CONDITIONS OF ENTITLEMENT – INCOME-RELATED ALLOWANCE

Meaning of education E+W+S

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—

[^{F1}(i) the [^{F2}Secretary of State under section 14 of the Education Act 2002][^{F3}or section 100 of the Apprenticeships, Skills, Children and Learning Act 2009];]

^{F4}(ia)

(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 [^{F5}Secretary of State under section 14 of the Education Act 2002][^{F6}or section 100 of the Apprenticeships, Skills, Children and Learning Act 2009] 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—

[^{F7}(i) in the case of a course funded by the [^{F5}Secretary of State]^{F8} ..., in the student’s learning agreement signed on behalf of the establishment which is funded by [^{F9}the Secretary of State] for the delivery of that course;]

(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^{F10}, regulation 4(2) of the Education (Student Loans) (Scotland) Regulations 2007^{F11} or regulation 2(8) of the Education (Student Support) Regulations (Northern Ireland) 2007^{F12}.

[^{F13}(2A) Paragraph (2) does not apply to any course of study which the claimant is required to attend for the purpose of meeting a requirement to undertake work-related activity.]

[^{F14}(2B) Paragraph (2) does not apply to a traineeship.]

(3) In this regulation “higher education” means higher education within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992^{F15}.

Textual Amendments

- F1** Reg. 14(2)(a)(i)(ai) substituted for reg. 14(2)(a)(i) (1.9.2010) by [The Apprenticeships, Skills, Children and Learning Act 2009 \(Consequential Amendments to Subordinate Legislation\) \(England\) Order 2010 \(S.I. 2010/1941\)](#), [art. 28\(3\)\(a\)](#), reg. 1
- F2** Words in reg. 14(2)(a) substituted (1.5.2012) by [The Young Peoples Learning Agency Abolition \(Consequential Amendments to Subordinate Legislation\) \(England\) Order 2012 \(S.I. 2012/956\)](#), arts. 1, [22\(3\)\(a\)](#)
- F3** Words in reg. 14(2)(a)(i) inserted (26.5.2015) by [The Deregulation Act 2015 \(Consequential Amendments\) Order 2015 \(S.I. 2015/971\)](#), art. 1(2)(a), [Sch. 3 para. 14\(3\)\(a\)](#)
- F4** Reg. 14(2)(a)(ia) omitted (26.5.2015) by virtue of [The Deregulation Act 2015 \(Consequential Amendments\) Order 2015 \(S.I. 2015/971\)](#), art. 1(2)(a), [Sch. 3 para. 14\(3\)\(b\)](#)
- F5** Words in reg. 14(2)(c) substituted (1.5.2012) by [The Young Peoples Learning Agency Abolition \(Consequential Amendments to Subordinate Legislation\) \(England\) Order 2012 \(S.I. 2012/956\)](#), arts. 1, [22\(3\)\(a\)](#)
- F6** Words in reg. 14(2)(c) substituted (26.5.2015) by [The Deregulation Act 2015 \(Consequential Amendments\) Order 2015 \(S.I. 2015/971\)](#), art. 1(2)(a), [Sch. 3 para. 14\(3\)\(c\)](#)
- F7** Reg. 14(2)(c)(i) substituted (1.9.2010) by [The Apprenticeships, Skills, Children and Learning Act 2009 \(Consequential Amendments to Subordinate Legislation\) \(England\) Order 2010 \(S.I. 2010/1941\)](#), [art. 28\(3\)\(c\)](#), reg. 1
- F8** Words in reg. 14(2)(c)(i) omitted (26.5.2015) by virtue of [The Deregulation Act 2015 \(Consequential Amendments\) Order 2015 \(S.I. 2015/971\)](#), art. 1(2)(a), [Sch. 3 para. 14\(3\)\(d\)\(i\)](#)
- F9** Words in reg. 14(2)(c)(i) substituted (26.5.2015) by [The Deregulation Act 2015 \(Consequential Amendments\) Order 2015 \(S.I. 2015/971\)](#), art. 1(2)(a), [Sch. 3 para. 14\(3\)\(d\)\(ii\)](#)
- F10** S.I. 2007/176.
- F11** S.S.I. 2007/154.
- F12** S.R. 2007/195.
- F13** Reg. 14(2A) inserted (1.4.2012) by [The Social Security \(Miscellaneous Amendments\) Regulations 2012 \(S.I. 2012/757\)](#), regs. 1(4), [20\(3\)](#)
- F14** Reg. 14(2B) inserted (6.11.2017) by [The Social Security \(Qualifying Young Persons Participating in Relevant Training Schemes\) \(Amendment\) Regulations 2017 \(S.I. 2017/987\)](#), regs. 1, [3\(3\)](#)
- F15** 1992 c. 37, amended by the [Further and Higher Education \(Scotland\) Act 2005 \(asp. 6\)](#).

Claimants to be treated as receiving education **E+W+S**

15.—[^{F16}(1)] Subject to regulation 18 [^{F17}and paragraph (2)], 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.

[^{F18}(2) A qualifying young person is not to be treated as receiving education if they are participating in a traineeship.]

Textual Amendments

- F16** Reg. 15(1): reg. 15 renumbered as reg. 15(1) (6.11.2017) by [The Social Security \(Qualifying Young Persons Participating in Relevant Training Schemes\) \(Amendment\) Regulations 2017 \(S.I. 2017/987\)](#), regs. 1, **3(4)(a)**
- F17** Words in reg. 15(1) inserted (6.11.2017) by [The Social Security \(Qualifying Young Persons Participating in Relevant Training Schemes\) \(Amendment\) Regulations 2017 \(S.I. 2017/987\)](#), regs. 1, **3(4)(b)**
- F18** Reg. 15(2) inserted (6.11.2017) by [The Social Security \(Qualifying Young Persons Participating in Relevant Training Schemes\) \(Amendment\) Regulations 2017 \(S.I. 2017/987\)](#), regs. 1, **3(4)(c)**

Claimants not to be treated as receiving education **E+W+S**

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 **E+W+S**

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
 - (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 E+W+S

18. Paragraph 6(1)(g) of Schedule 1 to the Act does not apply where the claimant is entitled to a disability living allowance^{F19}, child disability payment^{F20}, armed forces independence payment^{F21}^{F22},]personal independence payment ^{F23}or adult disability payment^{F23}].

Textual Amendments

- F19** Words in reg. 18 inserted (26.7.2021) by The Social Security (Scotland) Act 2018 (Disability Assistance for Children and Young People) (Consequential Modifications) Order 2021 (S.I. 2021/786), art. 1(2), **Sch. 9 para. 3**
- F20** Words in reg. 18 inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 37(3)**
- F21** Words in reg. 18 inserted (8.4.2013) by The Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations 2013 (S.I. 2013/388), reg. 2, **Sch. para. 40(3)**
- F22** Reg. 18: comma substituted for word (21.3.2022) by The Social Security (Disability Assistance for Working Age People) (Consequential Amendments) Order 2022 (S.I. 2022/177), arts. 1(2), **11(3)(a)**
- F23** Words in reg. 18 inserted (21.3.2022) by The Social Security (Disability Assistance for Working Age People) (Consequential Amendments) Order 2022 (S.I. 2022/177), arts. 1(2), **11(3)(b)**

Changes to legislation:

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 4.