

STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 9 E+W+S

AMOUNTS OF ALLOWANCE

CHAPTER 1 E+W+S

Prescribed amounts

Prescribed amounts E+W+S

67.—(1) Subject to regulations 68, 69^{F1}... (amounts in other cases, special cases^{F1}...), 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 [^{F2}housing costs as 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 [^{F3}work-related activity component and the] support component [^{F4}are][^{F4}is] prescribed in Part 4 of Schedule 4.

Textual Amendments

- F1** Words in reg. 67(1) omitted (25.1.2010) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2009](#) (S.I. 2009/3228), regs. 1(2), **3(4)(a)**
- F2** Words in reg. 67(1)(c) substituted (with effect in accordance with regs.19 - 21 of the amending S.I.) by [The Loans for Mortgage Interest Regulations 2017](#) (S.I. 2017/725), reg. 1(2)(a), **Sch. 5 para. 1(a)**
- F3** Words in reg. 67(3) omitted (3.4.2017) by virtue of [The Employment and Support Allowance and Universal Credit \(Miscellaneous Amendments and Transitional and Savings Provisions\) Regulations 2017](#) (S.I. 2017/204), regs. 1, **2(3)(a)** (with Sch. 2 paras. 1-7)
- F4** Word in reg. 67(3) substituted (3.4.2017) by [The Employment and Support Allowance and Universal Credit \(Miscellaneous Amendments and Transitional and Savings Provisions\) Regulations 2017](#) (S.I. 2017/204), regs. 1, **2(3)(b)** (with Sch. 2 paras. 1-7)

Polygamous marriages **E+W+S**

68.—(1) Subject to regulation 69^{F5}... (special cases^{F5} ...), 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 [^{F6}housing costs as 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^{F7} of that Act (persons under 18: severe hardship).

Textual Amendments

- F5** Words in reg. 68(1) omitted (25.1.2010) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2009 \(S.I. 2009/3228\)](#), regs. 1(2), **3(4)(b)**
- F6** Words in reg. 68(1)(d) substituted (with effect in accordance with regs.19 - 21 of the amending S.I.) by [The Loans for Mortgage Interest Regulations 2017 \(S.I. 2017/725\)](#), reg. 1(2)(a), **Sch. 5 para. 1(b)**
- F7** Section 16 was amended by paragraph 139(1) and (2) of Schedule 7 to the [Social Security Act 1998 \(c. 14\)](#).

Special cases **E+W+S**

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^{F8}; 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 ^{F9};

“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
- (b) is on temporary release in accordance with the provisions of the Prison Act 1952 ^{F10} or the Prisons (Scotland) Act 1989 ^{F11},

other than a person who is detained in hospital under the provisions of the Mental Health Act 1983 ^{F12} or, in Scotland, under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 ^{F13} or the Criminal Procedure (Scotland) Act 1995 ^{F14}.

[^{F15}(3) In Schedule 5 “person serving a sentence of imprisonment detained in hospital” means a person (“P”) who satisfies either of the following conditions.

- (4) The first condition is that—
 - (a) P is being detained under section 45A or 47 of the Mental Health Act 1983 (power of higher courts to direct hospital admission; removal to hospital of persons serving sentences of imprisonment etc.); and
 - (b) in any case where there is in relation to P a release date within the meaning of section 50(3) of that Act, P is being detained on or before the day which the Secretary of State certifies to be that release date.
- (5) The second condition is that P is being detained under—
 - (a) section 59A of the Criminal Procedure (Scotland) Act 1995 (hospital direction); or
 - (b) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment of mental disorder).]

Textual Amendments

- F8** [S.I. 2000/636](#).
- F9** [S.I. 2005/3360](#).
- F10** [1952 c. 52](#).
- F11** [1989 c. 45](#).
- F12** [1983 c. 20](#).
- F13** [2003 asp. 13](#).
- F14** [1995 c. 46](#).
- F15** [Reg. 69\(3\)-\(5\) added \(25.3.2010\) by The Social Security \(Persons Serving a Sentence of Imprisonment Detained in Hospital\) Regulations 2010 \(S.I. 2010/442\), regs. 1, 5\(2\)](#)

Status: Point in time view as at 21/03/2022.

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 9. (See end of Document for details)

Special cases: supplemental – persons from abroad E+W+S

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) [^{F16}or (3A)].

(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 [^{F17}Immigration (European Economic Area) Regulations 2016]
- (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; [^{F18}or]

[^{F19}(bb) regulation 16 of those Regulations, but only in a case where the right exists under that regulation because the claimant satisfies the criteria in paragraph (5) of that regulation;]

- ^{F20}(c)
- ^{F20}(d)
- ^{F20}(e)

[^{F21}(3A) A right to reside falls within this paragraph if it exists by virtue of a claimant having been granted limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of—

- (a) Appendix EU to the immigration rules made under section 3(2) of that Act; ^{F22}...
- (b) being a person with a Zambrano right to reside as defined in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of that Act[^{F23}; or
- (c) having arrived in the United Kingdom with an entry clearance that was granted under Appendix EU (Family Permit) to the immigration rules made under section 3(2) of that Act].]

[^{F24}(3B) Paragraph (3A)(a) does not apply to a person who—

- (a) has a right to reside granted by virtue of being a family member of a relevant person of Northern Ireland; and
- (b) would have a right to reside under the Immigration (European Economic Area) Regulations 2016 if the relevant person of Northern Ireland were an EEA national, provided that the right to reside does not fall within paragraph (3).]

(4) A claimant is not a person from abroad if the claimant is—

- (zza) a person granted leave in accordance with the immigration rules made under section 3(2) of the Immigration Act 1971, where such leave is granted by virtue of—
 - (i) the Afghan Relocations and Assistance Policy; or
 - (ii) the previous scheme for locally-employed staff in Afghanistan (sometimes referred to as the ex-gratia scheme);

- (zzb) a person in Great Britain not coming within sub-paragraph (zza) or (h)(iv) who left Afghanistan in connection with the collapse of the Afghan government that took place on 15th August 2021;
- [^{F25}(za) a qualified person for the purposes of regulation 6 of the [^{F26}Immigration (European Economic Area) Regulations 2016] as a worker or a self-employed person;
- (zb) a family member of a person referred to in sub-paragraph (za)^{F27} ...;
- (zc) a person who has a right to reside permanently in the United Kingdom by virtue of regulation 15(1)(c), (d) or (e) of those Regulations;]
- [^{F28}(zd) a family member of a relevant person of Northern Ireland, with a right to reside which falls within paragraph (3A)(a), provided that the relevant person of Northern Ireland falls within sub-paragraph (za), or would do so but for the fact that they are not an EEA national;]
- [^{F29}(ze) a frontier worker within the meaning of regulation 3 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020;
- (zf) a family member of a person referred to in sub-paragraph (ze), who has been granted limited leave to enter, or remain in, the United Kingdom by virtue of Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971;]
- ^{F25}(a)
- ^{F25}(b)
- ^{F25}(c)
- ^{F25}(d)
- ^{F25}(e)
- ^{F25}(f)
- (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 ^{F30}, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967 ^{F31};
- [^{F32}(h) a person who has been granted leave or who is deemed to have been granted leave outside the rules made under section 3(2) of the Immigration Act 1971 where that leave is—
 - (i) discretionary leave to enter or remain in the United Kingdom;
 - (ii) leave to remain under the Destitution Domestic Violence concession; ^{F33} ...
 - (iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005; [^{F34}or
 - (iv) granted under the Afghan Citizens Resettlement Scheme;]
- (i) a person who has humanitarian protection granted under those rules; [^{F35}or]
- (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; ^{F36} ...
- ^{F37}(k)
- ^{F37}(l)
- [^{F38}(5) In this regulation—

“EEA national” has the meaning given in regulation 2(1) of the Immigration (European Economic Area) Regulations 2016;

“*family member*” has the meaning given in regulation 7(1)(a), (b) or (c) of the Immigration (European Economic Area) Regulations 2016 except that regulation 7(4) of those Regulations does not apply for the purposes of paragraphs (3B) and (4)(zd);

“*relevant person of Northern Ireland*” has the meaning given in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971.]

[^{F39}(6) References in this regulation to the Immigration (European Economic Area) Regulations 2016 are to be read with Schedule 4 to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020(Consequential, Saving, Transitional and Transitory Provisions) Regulations 2020.]]

Textual Amendments

- F16** Words in reg. 70(2) inserted (7.5.2019) by The Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019 (S.I. 2019/872), regs. 1, **7(2)(a)**
- F17** Words in reg. 70(3)(a) substituted (7.5.2019) by The Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019 (S.I. 2019/872), regs. 1, **7(2)(b)**
- F18** Word in reg. 70(3)(b)(ii) inserted (31.12.2020) by The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (S.I. 2020/1309), regs. 1(2), **73(2)(a)(i)**
- F19** Reg. 70(3)(bb) substituted (7.5.2019) by The Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019 (S.I. 2019/872), regs. 1, **7(2)(c)**
- F20** Reg. 70(3)(c)-(e) omitted (31.12.2020) by virtue of The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (S.I. 2020/1309), regs. 1(2), **73(2)(a)(ii)**
- F21** Reg. 70(3A) inserted (7.5.2019) by The Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019 (S.I. 2019/872), regs. 1, **7(2)(d)**
- F22** Word in reg. 70(3A)(a) omitted (31.12.2020 immediately after IP completion day) by virtue of The Immigration (Citizens' Rights etc.) (EU Exit) Regulations 2020 (S.I. 2020/1372), regs. 1(2)(a)(3)(d), **23(2)(a)**
- F23** Reg. 70(3A)(c) and word inserted (31.12.2020 immediately after IP completion day) by The Immigration (Citizens' Rights etc.) (EU Exit) Regulations 2020 (S.I. 2020/1372), regs. 1(2)(a)(3)(d), **23(2)(b)**
- F24** Reg. 70(3B) inserted (24.8.2020) by The Social Security (Income-Related Benefits) (Persons of Northern Ireland - Family Members) (Amendment) Regulations 2020 (S.I. 2020/683), regs. 1, **7(2)(a)**
- F25** Reg. 70(4)(za)-(zc) substituted for reg. 70(4)(a)-(f) (31.5.2014) by The Social Security (Habitual Residence) (Amendment) Regulations 2014 (S.I. 2014/902), regs. 1, **7**
- F26** Words in reg. 70(4)(za) substituted (7.5.2019) by The Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019 (S.I. 2019/872), regs. 1, **7(2)(e)**
- F27** Words in reg. 70(4)(zb) omitted (24.8.2020) by virtue of The Social Security (Income-Related Benefits) (Persons of Northern Ireland - Family Members) (Amendment) Regulations 2020 (S.I. 2020/683), regs. 1, **7(2)(b)**
- F28** Reg. 70(4)(zd) inserted (24.8.2020) by The Social Security (Income-Related Benefits) (Persons of Northern Ireland - Family Members) (Amendment) Regulations 2020 (S.I. 2020/683), regs. 1, **7(2)(c)**
- F29** Reg. 70(4)(ze)(zf) inserted (31.12.2020) by The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (S.I. 2020/1309), regs. 1(2), **73(2)(b)**
- F30** Cmnd. 9171.
- F31** Cmnd. 3906.
- F32** Reg. 70(4)(h) substituted (29.10.2013) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2013 (S.I. 2013/2536), regs. 1(1), **13(2)(a)**
- F33** Word in reg. 70(4)(h)(ii) omitted (16.9.2021) by virtue of The Social Security (Habitual Residence and Past Presence) (Amendment) Regulations 2021 (S.I. 2021/1034), regs. 1(1), **2(3)(a)(4)**

- F34** Reg. 70(4)(h)(iv) and word inserted (16.9.2021) by The Social Security (Habitual Residence and Past Presence) (Amendment) Regulations 2021 (S.I. 2021/1034), regs. 1(1), **2(3)(b)(4)**
- F35** Word in reg. 70(4)(i) added (29.10.2013) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2013 (S.I. 2013/2536), regs. 1(1), **13(24)(b)**
- F36** Word in reg. 70(4)(j) omitted (18.3.2009) by virtue of The Social Security (Habitual Residence) (Amendment) Regulations 2009 (S.I. 2009/362), regs. 1(2), **9(2)**
- F37** Reg. 70(4)(k)(l) omitted (29.10.2013) by virtue of The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2013 (S.I. 2013/2536), regs. 1(1), **13(24)(c)**
- F38** Reg. 70(5) inserted (24.8.2020) by The Social Security (Income-Related Benefits) (Persons of Northern Ireland - Family Members) (Amendment) Regulations 2020 (S.I. 2020/683), regs. 1, **7(2)(d)**
- F39** Reg. 70(6) inserted (31.12.2020) by The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (S.I. 2020/1309), regs. 1(2), **73(2)(c)**

Modifications etc. (not altering text)

- C1** Reg. 70 applied (with modifications) (31.12.2020) by The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 (S.I. 2020/1209), regs. 1(1), **3(3)**, 4(4), 11(o)

Definition of non-dependant **E+W+S**

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 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.

Status: Point in time view as at 21/03/2022.

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 9. (See end of Document for details)

(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 **E+W+S**

Deductions from the contributory allowance

Permanent health insurance **E+W+S**

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.

[^{F40}Financial Assistance Scheme **E+W+S**

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

F40 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 **E+W+S**

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 **E+W+S**

74.—(1) Where—

- (a) [^{F41}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

F41 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 **E+W+S**

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;
 - (d) any pension payment made under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003 ^{F42};
 - (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

F42 2003 c. 1.

Deductions for councillor's allowance **E+W+S**

76.—(1) Where the net amount of councillor's allowance to which a claimant is entitled in respect of any week exceeds [^{F43}16 x National Minimum Wage, subject to paragraph (3)], an amount equal to the excess is to be deducted from the amount of a contributory allowance to which that [^{F44}claimant] 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

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in respect of expenses wholly, exclusively and necessarily incurred by that claimant, in that week, in the performance of the duties of a councillor.

[^{F45}(3) Where the amount determined by the calculation in paragraph (1) would, but for this paragraph, include an amount of—

- (i) less than 50p, that amount shall be rounded up to the nearest 50p; or
- (ii) less than £1 but more than 50p, that amount shall be rounded up to the nearest £1.]

Textual Amendments

- F43** Words in reg. 76(1) substituted (11.4.2011) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), **16(6)(a)**
- F44** Word in reg. 76(1) substituted (29.10.2013) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2013 \(S.I. 2013/2536\)](#), regs. 1(1), **13(25)**
- F45** Reg. 76(3) added (11.4.2011) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), **16(6)(b)**

Date from which payments are to be taken into account **E+W+S**

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 **E+W+S**

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 **E+W+S**

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 **E+W+S**

Statutory payments

Effect of statutory maternity pay on a contributory allowance **E+W+S**

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 E+W+S

- 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^{F46} 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

F46 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 E+W+S

^{F47}**82.**

Status: Point in time view as at 21/03/2022.

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 9. (See end of Document for details)

Textual Amendments

F47 Reg. 82 omitted (5.4.2015) by virtue of [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(3), **20(5)** (with art. 35(1))

[^{F48}Effect of statutory shared parental pay on a contributory allowance **E+W+S**

82A.—(1) This regulation applies where—

- (a) a claimant is entitled to statutory shared parental pay and, on the day immediately preceding the first day in the shared parental pay period—
 - (i) is in a period of limited capability for work; and
 - (ii) satisfies the conditions for a contributory allowance in accordance with section 1(2)(a) of the Act; and
- (b) on any day during the statutory shared parental 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 statutory shared parental pay is to be entitled to a contributory allowance in respect of any day that falls within the shared parental 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 statutory shared parental pay to which that claimant is entitled in accordance with Part 12ZC 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 that claimant.

(4) In this regulation “statutory shared parental pay period” means the weeks in respect of which statutory shared parental pay is payable to a person under section 171ZY(2) of the Social Security Contributions and Benefits Act 1992.]

Textual Amendments

F48 Reg. 82A inserted (31.12.2014) by [The Shared Parental Leave and Statutory Shared Parental Pay \(Consequential Amendments to Subordinate Legislation\) Order 2014 \(S.I. 2014/3255\)](#), arts. 1(2), **20(6)**

Status:

Point in time view as at 21/03/2022.

Changes to legislation:

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 9.