
STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 10

INCOME AND CAPITAL

CHAPTER 6

Other income

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

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

- (a) has not been paid to the claimant;
- (b) is not a payment prescribed in regulation 8 or 9 of the Social Security (Payments on Account, Overpayment and Recovery) Regulations 1988 ^{F1} (duplication and prescribed payments or maintenance payments) and not made on or before the date prescribed in relation to it,

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

(2) This paragraph applies to—

- (a) an amount which is due to be paid to the claimant under an occupational pension scheme but which is not paid because the trustees or managers of the scheme have suspended or ceased payments due to an insufficiency of resources;
- (b) any amount by which a payment made to the claimant from an occupational pension scheme falls short of the payment to which the claimant was due under the scheme where the shortfall arises because the trustees or managers of the scheme have insufficient resources available to them to meet in full the scheme's liabilities; or
- (c) any earnings which are due to an employed earner on the termination of that employed earner's employment by reason of redundancy but which have not been paid to that employed earner.

(3) Any payment of income, other than a payment of income specified in [^{F2}paragraph (5) or (5A)], made to a third party in respect of a single claimant or the claimant's partner (but not a member of the third party's family) is to be treated—

- (a) in a case where that payment is derived from—
 - (i) a payment of any benefit under the benefit Acts;
 - (ii) a payment from the Armed Forces and Reserve Forces Compensation Scheme;
 - (iii) a war disablement pension, war widow's pension or war widower's pension; or
 - (iv) a pension payable to a person as a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under an enactment to make provision

about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown,

as possessed by that single claimant, if it is paid to the claimant or by the claimant's partner, if it is paid to the claimant's partner;

- (b) in a case where that payment is a payment of an occupational pension, a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund, as possessed by that single claimant or, as the case may be, by the claimant's partner;
- (c) in any other case, as possessed by that single claimant or the claimant's partner to the extent that it is used for the food, ordinary clothing or footwear, household fuel, rent for which housing benefit is payable, or any housing costs to the extent that they are met under regulations 67(1)(c) or 68(1)(d) (housing costs), of that single claimant or, as the case may be, of the claimant's partner, or is used for any council tax or water charges for which that claimant or that partner is liable,

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

(4) Any payment of income, other than a payment of income specified in [^{F3}paragraph (5) or (5A)], made to a single claimant or the claimant's partner in respect of a third party (but not in respect of another member of the claimant's family) is to be treated as possessed by that single claimant or, as the case may be, the claimant's partner, to the extent that it is kept or used by that claimant or used by or on behalf of the claimant's partner but, except where paragraph (3)(a) applies, this paragraph does not apply to any payment in kind to the third party.

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

- (a) under [^{F4}or by] the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust [^{F5}, MFET Limited][^{F6}, the Skipton Fund, the Caxton Foundation][^{F7}, the Scottish Infected Blood Support Scheme][^{F8}, an approved blood scheme][^{F9}, the London Emergencies Trust, the We Love Manchester Emergency Fund [^{F10}, the National Emergencies Trust]] or [^{F11}the Independent Living Fund (2006)];
- (b) pursuant to section 19(1)(a) of the Coal Industry Act 1994 ^{F12} (concessionary coal); or
- (c) pursuant to section 2 of the Employment and Training Act 1973 in respect of a person's participation—
 - (i) in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations^{F13};
 - (ii) in a training scheme specified in regulation 75(1)(b)(ii) of those Regulations;
 - (iii) in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations^{F14};
 - (iv) in a qualifying course within the meaning specified in regulation 17A(7) of those Regulations^{F15}; or
- [^{F16}(ca) in respect of a person's participation in [^{F17}a scheme prescribed in regulation 3 of the Jobseeker's Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations 2013] or the Mandatory Work Activity Scheme; or]
- (d) under an occupational pension scheme, in respect of a pension or other periodical payment made under a personal pension scheme or a payment made by the Board of the Pension Protection Fund where—

- (i) a bankruptcy order has been made in respect of the person in respect of whom the payment has been made or, in Scotland, the estate of that person is subject to sequestration or a judicial factor has been appointed on that person's estate under section 41 of the Solicitors (Scotland) Act 1980^{F18};
- (ii) the payment is made to the trustee in bankruptcy or any other person acting on behalf of the creditors; and
- (iii) the person referred to in paragraph (i) and that person's partner (if any) does not possess, or is not treated as possessing, any other income apart from that payment.

[^{F19}(5A) Paragraphs (3) and (4) do not apply in respect of [^{F20}any of the following payments of income—

- (a) a Grenfell Tower payment;
- (b) a child abuse payment;
- (c) a Windrush payment.]

[a Post Office compensation payment.]]
^{F21}(d)

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

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

[^{F22}(8) Paragraphs (1), (3) and (4) do not apply in respect of any amount of income other than earnings, or earnings derived from employment as an employed earner, arising out of the [^{F23}claimant participating as a service user].]

Textual Amendments

- F1** [S.I. 1988/664](#), the relevant amending instruments are [S.I. 1991/387](#), [S.I. 1991/2742](#), [S.I. 1996/1345](#), [S.I. 1999/2571](#), [S.I. 1999/3178](#), [S.I. 2000/1483](#), [S.I. 2002/3019](#), [S.I. 2003/492](#), [S.I. 2005/337](#) and [S.I. 2005/3476](#).
- F2** Words in reg. 107(3) substituted (15.7.2020) by [The Social Security \(Income and Capital\) \(Miscellaneous Amendments\) Regulations 2020 \(S.I. 2020/618\)](#), regs. 1, **7(3)(a)**
- F3** Words in reg. 107(4) substituted (15.7.2020) by [The Social Security \(Income and Capital\) \(Miscellaneous Amendments\) Regulations 2020 \(S.I. 2020/618\)](#), regs. 1, **7(3)(b)**
- F4** Words in reg. 107(5)(a) inserted (6.4.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(1), **12(5)(a)**
- F5** Words in reg. 107(5)(a) inserted (6.4.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2010 \(S.I. 2010/641\)](#), regs. 1(1), **12(3)(b)**
- F6** Words in reg. 107(5)(a) inserted (31.10.2011) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2011 \(S.I. 2011/2425\)](#), regs. 1(2), **23(8)**
- F7** Words in reg. 107(5)(a) inserted (3.4.2017) by [The Social Security \(Scottish Infected Blood Support Scheme\) Regulations 2017 \(S.I. 2017/329\)](#), regs. 1, **8(3)(a)**
- F8** Words in reg. 107(5)(a) inserted (23.10.2017) by [The Social Security \(Infected Blood and Thalidomide\) Regulations 2017 \(S.I. 2017/870\)](#), regs. 1, **8(3)(a)**
- F9** Words in reg. 107(5)(a) inserted (19.6.2017) by [The Social Security \(Emergency Funds\) \(Amendment\) Regulations 2017 \(S.I. 2017/689\)](#), regs. 1, **8(3)(a)**

- F10** Words in reg. 107(5)(a) inserted (15.7.2020) by The Social Security (Income and Capital) (Miscellaneous Amendments) Regulations 2020 (S.I. 2020/618), regs. 1, **7(3)(c)**
- F11** Words in reg. 107(5)(a) substituted (27.10.2008) by The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/2428), regs. 1(2), **8(5)**
- F12** 1994 c. 27.
- F13** The relevant amending instrument is S.I. 2002/2314.
- F14** The relevant amending instruments are S.I. 2001/1029 and S.I. 2007/1316.
- F15** Regulation 17A was inserted by S.I. 1998/1274, **regulation 4**.
- F16** Reg. 107(5)(ca) inserted (5.8.2011) by The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2011 (S.I. 2011/1707), regs. 1, **4(4)(5)**
- F17** Words in reg. 107(5)(ca) substituted (12.2.2013) by The Jobseeker s Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations 2013 (S.I. 2013/276), regs. 1, **15(b)**
- F18** 1980 c. 46.
- F19** Reg. 107(5A) inserted (15.7.2020) by The Social Security (Income and Capital) (Miscellaneous Amendments) Regulations 2020 (S.I. 2020/618), regs. 1, **7(3)(d)**
- F20** Words in reg. 107(5A) substituted (1.1.2022) by The Social Security (Income and Capital Disregards) (Amendment) Regulations 2021 (S.I. 2021/1405), regs. 1, **7(3)**
- F21** Reg. 107(5A)(d) inserted (9.7.2023) by The Social Security (Income and Capital Disregards) (Amendment) Regulations 2023 (S.I. 2023/640), regs. 1(1), **7(3)**
- F22** Reg. 107(8) added (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(9)**
- F23** Words in reg. 107(8) substituted (29.10.2013) by The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2013 (S.I. 2013/2536), regs. 1(1), **13(29)**

Changes to legislation:

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, Section 107.