
STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 3

CONDITIONS OF ENTITLEMENT – CONTRIBUTORY ALLOWANCE

Condition relating to youth – residence or presence

11.—(1) The prescribed conditions for the purposes of paragraph 4(1)(c) of Schedule 1 to the Act as to residence or presence in Great Britain are that the claimant—

- (a) is ordinarily resident in Great Britain;
- (b) is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act or is a person to whom paragraph (3) applies;
- (c) is present in Great Britain; and
- (d) has been present in Great Britain for a period of, or for periods amounting in aggregate to, not less than 26 weeks in the 52 weeks immediately preceding the relevant benefit week.

(2) For the purposes of paragraph (1), a claimant is to be treated as being resident and present in Great Britain where the claimant is absent from Great Britain by reason only of being—

- (a) the spouse, civil partner, son, daughter, father, father-in-law, mother or mother-in-law of, and living with, a member of Her Majesty's forces who is abroad in that capacity;
- (b) in employment prescribed for the purposes of paragraph 7(1)(c) of Schedule 2 to the Act in connection with continental shelf operations; or
- (c) abroad in the capacity of being an aircraft worker or mariner.

(3) This paragraph applies where a person is—

- (a) a member of a family of a national of an European Economic Area state;
- (b) a person who is lawfully working in Great Britain and is a national of a State with which the [F1European Union] has concluded an agreement under [F1Article 217 of the Treaty on the Functioning of the European Union] providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families;
- (c) a person who is a member of a family of, and living with, a person specified in subparagraph (b); or
- (d) a person who has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules within the meaning of the Immigration Act 1971 F2 to be responsible for that person's maintenance and accommodation.

(4) A person is to be treated as having satisfied the residence or presence conditions in paragraph (1) throughout a period of limited capability for work where those conditions are satisfied on the first day of that period of limited capability for work.

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, Section 11. (See end of Document for details)

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Textual Amendments

- F1** Words in Instrument substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), **arts. 3-6, 8-10**
- F2** 1971 c. 77.

Changes to legislation:

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, Section 11.