
STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 10

INCOME AND CAPITAL

CHAPTER 7

Capital

Income treated as capital

112.—(1) Any bounty derived from employment to which regulation 43(1)(e) and paragraph 12 of Schedule 7 apply and paid at intervals of at least one year is to be treated as capital.

(2) Any amount by way of a refund of income tax paid in respect of, or deducted from, profits or income chargeable to tax under the provisions in Part 2 of the Income Tax (Trading and Other Income) Act 2005(1) or Part 2 of the Income Tax (Earnings and Pensions) Act 2003(2) is to be treated as capital.

(3) Any holiday pay which is not earnings under regulation 95(1)(d) (earnings of employed earners) is to be treated as capital.

(4) Except any income derived from capital disregarded under paragraph 1, 2, 4 to 8, 10, 16, 43 or 44 of Schedule 9, any income derived from capital is to be treated as capital but only from the date it is normally due to be credited to the claimant's account.

(5) In the case of employment as an employed earner, any advance of earnings or any loan made by the claimant's employer is to be treated as capital.

(6) Any payment under section 30 of the Prison Act 1952(3) (payments for discharged prisoners) or allowance under section 17 of the Prisons (Scotland) Act 1989(4) (allowances to prisoners on discharge) is to be treated as capital.

(7) Any charitable or voluntary payment which is not made or not due to be made at regular intervals, other than one to which paragraph (8) applies, is to be treated as capital.

(8) This paragraph applies to a payment which is made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or the Independent Living Funds.

(9) Any arrears of subsistence allowance which are paid to a claimant as a lump sum are to be treated as capital.

(1) 2005 c. 5.

(2) 2003 c. 1.

(3) 1952 c. 52. Section 30 was substituted by the Criminal Justice Act 1967 (c. 80), section 66(3).

(4) 1989 c. 45.