
STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 10

INCOME AND CAPITAL

CHAPTER 8

Liable relatives

Interpretation

119. In this Chapter—

“claimant” includes a young claimant;

“liable relative” means—

- (a) a spouse, former spouse, civil partner or former civil partner of a claimant or of a member of the claimant’s family;
- (b) a parent of a child or young person who is a member of the claimant’s family or of a young claimant;
- (c) a person who has not been adjudged to be the father of a child or young person who is a member of the claimant’s family or of a young claimant where that person is contributing towards the maintenance of that child, young person or young claimant and by reason of that contribution the claimant may reasonably be treated as the father of that child, young person or young claimant;
- (d) a person liable to maintain another person by virtue of section 78(6)(c) of the Administration Act (liability to maintain) where the latter is the claimant or a member of the claimant’s family,

and, in this definition, a reference to a child’s, young person’s or young claimant’s parent includes any person in relation to whom the child, young person or young claimant was treated as a child or a member of the family;

“payment” means a periodical payment or any other payment made by or derived from a liable relative including, except in the case of a discretionary trust, any payment which would be so made or derived upon application being made by the claimant but which has not been acquired by the claimant but only from the date on which it could be expected to be acquired were an application made; but it does not include any payment—

- (a) arising from a disposition of property made in contemplation of, or as a consequence of—
 - (i) an agreement to separate;
 - (ii) any proceedings for judicial separation, divorce or nullity of marriage; or
 - (iii) any proceedings for separation, dissolution or nullity in relation to a civil partnership;
- (b) made after the death of the liable relative;

- (c) made by way of a gift but not in aggregate or otherwise exceeding £250 in the period of 52 weeks beginning with the date on which the payment, or if there is more than one such payment the first payment, is made; and, in the case of a claimant who continues to be in receipt of an income-related allowance at the end of the period of 52 weeks, this provision is to continue to apply thereafter with the modification that any subsequent period of 52 weeks is to begin with the first day of the benefit week in which the first payment is made after the end of the previous period of 52 weeks;
- (d) made—
 - (i) to a third party in respect of the claimant or a member of the claimant’s family; or
 - (ii) to the claimant or to a member of the claimant’s family in respect of a third party, where having regard to the purpose of the payment, the terms under which it is made and its amount it is unreasonable to take it into account;
- (e) in kind;
- (f) to, or in respect of, a child or young person who is to be treated as not being a member of the claimant’s household under regulation 156 (circumstances in which a person is to be treated as being or not being a member of the same household);
- (g) which is not a periodical payment, to the extent that any amount of that payment—
 - (i) has already been taken into account under this Part by virtue of a previous claim or determination;
 - (ii) has been recovered under section 74 of the Administration Act⁽¹⁾ (income support and other payments) or is currently being recovered; or
 - (iii) at the time the determination is made, has been used by the claimant except where the claimant has deprived himself or herself of that amount for the purpose of securing entitlement to an income-related allowance or increasing the amount of that allowance;

“periodical payment” means—

- (a) a payment which is made or is due to be made at regular intervals in pursuance of a court order or agreement for maintenance;
- (b) in a case where the liable relative has established a pattern of making payments at regular intervals, any such payment;
- (c) any payment not exceeding the amount of an income-related allowance payable had that payment not been made;
- (d) any payment representing a commutation of payments to which paragraph (a) or (b) of this definition applies whether made in arrears or in advance,

but does not include a payment due to be made before the first benefit week pursuant to the claim which is not so made;

“young claimant” means a person aged 16 or over but under 20 who makes a claim for an income-related allowance.

(1) Section 74 has been amended by the Jobseekers Act 1995 (c. 18), paragraph 5 of the Schedule and the Act, paragraph 10(8) of Schedule 3.