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## STATUTORY INSTRUMENTS

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# 2008 No. 794

## The Employment and Support Allowance Regulations 2008

### PART 11

#### SUPPLEMENTARY PROVISIONS

##### CHAPTER 4

##### Membership of household

#### **Circumstances in which a person is to be treated as being or not being a member of the household**

**156.**—(1) Subject to the following provisions of this regulation—

- (a) the claimant and the claimant's partner; and
- (b) where the claimant or the claimant's partner is responsible for a child or young person, that child or young person and any child of that child or young person,

are to be treated as being members of the same household.

(2) Paragraph (1) applies even where any of them is temporarily living away from the other members of the family.

(3) Paragraph (1) does not apply to a person who is living away from the other members of the family where—

- (a) that person does not intend to resume living with the other members of the family; or
- (b) that person's absence from the other members of the family is likely to exceed 52 weeks, unless there are exceptional circumstances (for example where the person is in hospital or otherwise has no control over the length of absence), and the absence is unlikely to be substantially more than 52 weeks.

(4) Paragraph (1) does not apply in respect of any member of a couple or of a polygamous marriage where—

- (a) one, both or all of them are patients detained in a hospital provided under section 4 of the Health Service Act (high security psychiatric services), section 4 of the Health Service (Wales) Act (high security psychiatric services) or section 102 of the National Health Service (Scotland) Act 1978 <sup>F1</sup> (state hospitals);
- (b) one, both or all of them are—
  - (i) detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or
  - (ii) on temporary release in accordance with the provisions of the Prison Act 1952 <sup>F2</sup> or the Prisons (Scotland) Act 1989 <sup>F3</sup>;
- (c) the claimant is abroad and does not satisfy the conditions of Chapter 4 of this Part (temporary absence from Great Britain); or

- (d) any one of them is permanently residing in a care home, an Abbeyfield Home or an independent hospital.
- (5) A child or young person is not to be treated as a member of the claimant's household where that child or young person is—
  - (a) placed with the claimant or the claimant's partner by a local authority under section 23(2)(a) of the Children Act 1989 <sup>F4</sup> or by a voluntary organisation under section 59(1)(a) of that Act <sup>F5</sup>;
  - (b) placed with the claimant or the claimant's partner prior to adoption;
  - (c) in accordance with a relevant enactment, boarded out with the claimant or the claimant's partner, whether or not with a view to adoption; or
  - (d) placed for adoption with the claimant or the claimant's partner pursuant to a decision under the [<sup>F6</sup>Adoption and Children Act 2002] or [<sup>F7</sup>the Adoption Agencies (Scotland) Regulations 2009].
- (6) Subject to paragraphs (7) and (8), paragraph (1) does not apply to a child or young person who is not living with the claimant and who—
  - (a) in a case which does not fall within sub-paragraph (b), has been continuously absent from Great Britain for a period of more than four weeks commencing—
    - (i) where that child or young person went abroad before the date of the claim for an employment and support allowance, on the date of that claim;
    - (ii) in any other case, on the day which immediately follows the day on which that child or young person went abroad;
  - (b) where regulation 153 (absence to receive medical treatment) applies, has been continuously absent from Great Britain for a period of more than 26 weeks, that period commencing—
    - (i) where that child or young person went abroad before the date of the claim for an employment and support allowance, on the date of that claim;
    - (ii) in any other case, on the day which immediately follows the day on which that child or young person went abroad;
  - (c) has been an in-patient or in accommodation for a continuous period of more than 12 weeks commencing—
    - (i) where that child or young person became an in-patient or, as the case may be, entered that accommodation, before the date of the claim for an employment and support allowance, with that date; or
    - (ii) in any other case, with the date on which that child or young person became an in-patient or entered that accommodation,and, in either case, has not been in regular contact with either the claimant or any member of the claimant's household;
  - (d) is being looked after by, or in the care of, a local authority under a relevant enactment;
  - (e) has been placed with a person other than the claimant prior to adoption;
  - (f) has been boarded out under a relevant enactment with a person other than the claimant prior to adoption;
  - (g) has been placed for adoption pursuant to a decision under the [<sup>F8</sup>Adoption and Children Act 2002] or [<sup>F9</sup>the Adoption Agencies (Scotland) Regulations 2009]; or
  - (h) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court.

(7) Sub-paragraphs (a)(i), (b)(i) and (c)(i) of paragraph (6) do not apply in a case where immediately before the date of claim for an employment and support allowance the claimant was entitled to an income-based jobseeker's allowance or income support.

(8) A child or young person to whom any of the circumstances mentioned in sub-paragraphs (d) or (h) of paragraph (6) applies is to be treated as being a member of the claimant's household only for that part of any benefit week where that child or young person lives with the claimant.

(9) In this regulation—

“accommodation” means accommodation provided by a local authority in a home owned or managed by that local authority—

(a) under sections 21 to 24 of the National Assistance Act 1948 <sup>F10</sup> (provision of accommodation);

(b) in Scotland, under section 13B or 59 of the Social Work (Scotland) Act 1968 <sup>F11</sup> (provision of residential or other establishment); or

(c) under section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 <sup>F12</sup> (care and support services etc.),

where the accommodation is provided for a person whose stay in that accommodation has become other than temporary; and

“voluntary organisation” has the meaning assigned to it in the Children Act 1989, or in Scotland, by section 94 of the Social Work (Scotland) Act 1968.

(10) For the purposes of these Regulations a person is responsible for a child or young person if that child or young person usually lives with that person.

#### Textual Amendments

**F1** 1978 c. 29.

**F2** 1952 c. 52.

**F3** 1989 c. 45.

**F4** 1989 c. 41. Section 23(2)(a) was amended by section 49(3) of the [Children Act 2004 \(c. 31\)](#).

**F5** Section 59(1)(a) was amended by section 49(4) of the [Children Act 2004 \(c. 31\)](#).

**F6** Words in reg. 156(5)(d) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **9(3)**

**F7** Words in reg. 156(5)(d) substituted (15.7.2011) by [The Adoption and Children \(Scotland\) Act 2007 \(Consequential Modifications\) Order 2011 \(S.I. 2011/1740\)](#), art. 1(2), **Sch. 1 para. 47(3)**

**F8** Words in reg. 156(6)(g) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **9(3)**

**F9** Words in reg. 156(6)(g) substituted (15.7.2011) by [The Adoption and Children \(Scotland\) Act 2007 \(Consequential Modifications\) Order 2011 \(S.I. 2011/1740\)](#), art. 1(2), **Sch. 1 para. 47(3)**

**F10** 1948 c. 29.

**F11** 1968 c. 49.

**F12** 2003 asp 13.

**Status:**

Point in time view as at 15/07/2011. This version of this provision has been superseded.

**Changes to legislation:**

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, Section 156.