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STATUTORY INSTRUMENTS

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**2008 No. 794**

**The Employment and Support Allowance Regulations 2008**

**PART 13**

**URGENT CASES**

**Assessment of income and capital in urgent cases**

**164.**—<sup>F1</sup>(1) The claimant's income is to be calculated in accordance with Part 10 subject to the following modifications—

- (a) any income other than—
  - (i) a payment of income or income in kind made under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust, the Fund, the Eileen Trust or <sup>F2</sup>the Independent Living Fund (2006)] ; or
  - (ii) income to which paragraph 9 (but only to the extent that a concessionary payment would be due under that paragraph for any non-payment of an income-related allowance under regulation 162 (urgent cases) or of jobseeker's allowance under regulation 147 of the Jobseeker's Allowance Regulations (urgent cases)), 35, 41(2), (3) or (4), 42, 64 or 65 of Schedule 8 (disregard of income other than earnings) applies,

possessed or treated as possessed by the claimant, is to be taken into account in full notwithstanding any provision in that Part disregarding the whole or any part of that income;

- (b) any income to which regulation 118 (calculation of tariff income from capital) applies is to be disregarded;
  - (c) income treated as capital by virtue of regulation 112(1), (2), (3) and (7) (income treated as capital) is to be taken into account as income;
  - (d) in a case to which regulation 162(2) (urgent cases) applies, any income to which regulation 107(1) applies is to be disregarded.
- (2) The claimant's capital calculated in accordance with Part 10, but including any capital referred to in—
- (a) paragraph 3;
  - (b) to the extent that such assets as are referred to in paragraph 10 consist of liquid assets, paragraph 10;
  - (c) except to the extent that the arrears referred to in paragraph 11 consist of arrears of housing benefit payable under <sup>F3</sup>... Part 7 of the Contributions and Benefits Act or any arrears of benefit due under regulation 162, or regulation 147 of the Jobseeker's Allowance Regulations (urgent cases), paragraph 11; and
  - (d) paragraphs 13(b), 24 and 32,

of Schedule 9 (capital to be disregarded), are to be taken into account in full and the amount of an income-related allowance which would, but for this paragraph be payable under this regulation, is to be payable only to the extent that it exceeds the amount of that capital.]

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**Textual Amendments**

- F1** Pt. 13 revoked in part (for specified purposes and with effect in accordance with reg. 1(3) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 5\) Regulations 2009 \(S.I. 2009/3228\)](#), **reg. 2(1)(d)** (with [reg. 2\(2\)-\(4\)](#))
- F2** Words in reg. 164(1)(a)(i) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **11(a)**
- F3** Words in reg. 164(2)(c) omitted (27.10.2008) by virtue of [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **11(b)**

**Changes to legislation:**

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, Section 164.