
STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 10

INCOME AND CAPITAL

CHAPTER 3

Employed earners

Earnings of employed earners

95.—(1) Subject to [^{F1}paragraphs (2) and (3)], “earnings” means, in the case of employment as an employed earner, any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to a claimant on account of the termination of the claimant's employment by reason of redundancy;
- (c) any payment in lieu of notice;
- (d) any holiday pay except any payable more than 4 weeks after the termination or interruption of employment;
- (e) any payment by way of a retainer;
- (f) any payment made by the claimant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant's employer in respect of—
 - (i) travelling expenses incurred by the claimant between the claimant's home and place of employment;
 - (ii) expenses incurred by the claimant under arrangements made for the care of a member of the claimant's family owing to the claimant's absence from home;
- (g) any award of compensation made under section 112(4) or 117(3)(a) of the Employment Rights Act 1996 ^{F2} (the remedies: orders and compensation, enforcement of order and compensation);
- (h) any payment or remuneration made under [^{F3}section] 28, 34, 64, 68 [^{F4}or] 70 of the Employment Rights Act 1996 ^{F5} (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to employment tribunals);
- (i) any such sum as is referred to in section 112(3) of the Contributions and Benefits Act ^{F6} (certain sums to be earnings for social security purposes);
- (j) where a payment of compensation is made in respect of employment which is part-time employment, the amount of the compensation;

*Status: Point in time view as at 28/04/2014. This version of this provision has been superseded.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 95. (See end of Document for details)*

- (k) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001 ^{F7}.
- (2) “Earnings” are not to include—
- (a) subject to paragraph (3), any payment in kind;
 - (b) any remuneration paid by or on behalf of an employer to the claimant in respect of a period throughout which the claimant is on maternity leave, paternity leave or adoption leave or is absent from work because the claimant is ill;
 - (c) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
 - (d) any occupational pension;
 - (e) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme ^{F8}.
- [^{F9}(f) any payment in respect of expenses arising out of the [^{F10}claimant participating as a service user].]
- (3) Paragraph (2)(a) is not to apply in respect of any non-cash voucher referred to in paragraph (1)(k).
- (4) In this regulation—
- “compensation” means any payment made in respect of, or on the termination of, employment in a case where a claimant has not received or received only part of a payment in lieu of notice due or which would have been due to the claimant had that claimant not waived the right to receive it, other than—
- (a) any payment specified in paragraph (1)(a) to (i);
 - (b) any payment specified in paragraph (2)(a) to [^{F11}(f)];
 - (c) any redundancy payment within the meaning of section 135(1) of the Employment Rights Act 1996;
 - (d) any refund of contributions to which that person was entitled under an occupational pension scheme; and
 - (e) any compensation payable by virtue of section 173 of the Education Reform Act 1988 ^{F12};
- “part-time employment” means, if the claimant were entitled to income support, employment in which the claimant is not to be treated as engaged in remunerative work under regulation 5 or 6(1) and (4) of the Income Support Regulations (persons treated, or not treated, as engaged in remunerative work).

Textual Amendments

- F1** Words in reg. 95(1) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations 2008 \(S.I. 2008/2428\)](#), regs. 1(2), **8(2)**
- F2** 1996 c. 18.
- F3** Word in reg. 95(1)(h) substituted (28.4.2014) by [The Social Security \(Miscellaneous Amendments\) Regulations 2014 \(S.I. 2014/591\)](#), regs. 1, **10(2)(a)**
- F4** Word in reg. 95(1)(h) substituted (28.4.2014) by [The Social Security \(Miscellaneous Amendments\) Regulations 2014 \(S.I. 2014/591\)](#), regs. 1, **10(2)(b)**
- F5** Sections 34 and 70 were amended by the [Employment Rights \(Dispute Resolution\) Act 1998 \(c. 8\)](#), **section 1(2)(a)** and (b) and section 64 was amended by S.I. 1999/3232, **regulation 41(1)** and paragraph 2 of Schedule 9.

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- F6** Section 112(3) was amended by the Employment Rights Act 1996, paragraph 51(4)(a) to (c) of Schedule 1.
- F7** [S.I. 2001/1004](#), the relevant amending instruments are [S.I. 2001/2412](#), [S.I. 2002/307](#), [S.I. 2003/2958](#), [S.I. 2004/770](#), [S.I. 2005/778](#), [S.I. 2006/883](#), [S.I. 2006/2003](#) and [S.I. 2007/2091](#).
- F8** [S.I.1996/3182](#).
- F9** Reg. 95(2)(f) added (for specified purposes and with effect in accordance with reg. 1(2) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) \(No. 4\) Regulations 2009](#) ([S.I. 2009/2655](#)), regs. 1(2)(d), **11(6)**
- F10** Words in reg. 95(2)(f) substituted (29.10.2013) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2013](#) ([S.I. 2013/2536](#)), regs. 1(1), **13(26)(a)**
- F11** Word in reg. 95(4)(b) substituted (29.10.2013) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2013](#) ([S.I. 2013/2536](#)), regs. 1(1), **13(26)(b)**
- F12** 1988 c. 40.

Status:

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Changes to legislation:

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