

SCHEDULE 7 **E+W+S**

Regulations 96(2), 98(2)

SUMS TO BE DISREGARDED IN THE CALCULATION OF EARNINGS

1.—(1) In the case of a claimant who has been engaged in remunerative work as an employed earner or, had the employment been in Great Britain, would have been so engaged—

- (a) any earnings, other than items to which sub-paragraph (2) applies, paid or due to be paid from that employment which terminated before the first day of entitlement to an income-related allowance;
- (b) any earnings, other than a payment of the nature described in [^{F1}sub-paragraph (2)(a) or (b)(ii)], paid or due to be paid from that employment which has not been terminated where the claimant is not—
 - (i) engaged in remunerative work; or
 - (ii) suspended from employment.

(2) This sub-paragraph applies to—

- [^{F2}(a) any payment of the nature described in—
 - (i) regulation 95(1)(e) (earnings of employed earners), or
 - (ii) section 28, 64 or 68 of the Employment Rights Act 1996 (guarantee payments, suspension from work on medical or maternity grounds); and]
 - (b) any award, sum or payment of the nature described in—
 - (i) regulation 95(1)(g) or (i); or
 - (ii) section 34 or 70 of the Employment Rights Act 1996 ^{F3} (guarantee payments and suspension from work: complaints to employment tribunals),

including any payment made following the settlement of a complaint to an employment tribunal or of court proceedings.

Textual Amendments

- F1** Words in Sch. 7 para. 1(1)(b) substituted (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(18)(a)**
- F2** Sch. 7 para. 1(2)(a) substituted (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(18)(b)**
- F3** 1996 c. 18. Sections 34 and 70 were amended by section 1(2) of the [Employment Rights \(Dispute Resolution\) Act 1998 \(c. 8\)](#).

2.—(1) In the case of a claimant to whom this paragraph applies, any earnings (other than a payment of the nature described in [^{F4}paragraph 1(2)(a) or (b)(ii)]) which relate to employment which ceased before the first day of entitlement to an income-related allowance whether or not that employment has terminated.

(2) This paragraph applies to a claimant who has been engaged in part-time employment as an employed earner or, had the employment been in Great Britain, would have been so engaged; but it does not apply to a claimant who has been suspended from employment.

Status: Point in time view as at 16/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, SCHEDULE 7. (See end of Document for details)

Textual Amendments

F4 Words in Sch. 7 para. 2(1) substituted (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(18)(c)**

3. If the claimant's partner has been engaged in remunerative work as an employed earner or, had the employment been in Great Britain, would have been so engaged, any earnings paid or due to be paid on termination of that employment by way of retirement but only if—

- (a) on retirement the partner is entitled to a retirement pension under the Contributions and Benefits Act; or
- (b) the only reason the partner is not entitled to a retirement pension under the Contribution and Benefits Act is because the contribution conditions are not satisfied.

4. In the case of a claimant who has been engaged in remunerative work or part-time employment as a self-employed earner or, had the employment been in Great Britain, would have been so engaged and who has ceased to be so employed, from the date of the cessation of the claimant's employment any earnings derived from that employment except earnings to which regulation 92(2) (royalties etc.) applies.

5. In the case of a claimant who is undertaking work which falls within one of the categories in regulation 45(2) to (4) any earnings derived from that work which do not exceed the limits specified for that work of £20 in regulation 45(2) or, as the case may be, [^{F5}16 x National Minimum Wage] in regulation 45(3) or (4).

Textual Amendments

F5 Words in Sch. 7 para. 5 substituted (for specified purposes and with effect in accordance with reg. 1(3) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), reg. **16(12)**

[^{F6}**5A.** In the case of a claimant who receives a payment to which regulation 92(2) applies, £20, except where regulation 45(2) to (4) applies to the claimant, in which case the amounts specified in paragraph 6 shall apply, but only up to a maximum of £20.]

Textual Amendments

F6 Sch. 7 para. 5A inserted (28.6.2010) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2010 \(S.I. 2010/840\)](#), regs. 1, **9(19)**

6. Where regulation 45(2) to (4) applies to the claimant and that claimant's earnings are less than—

- (a) in a case to which regulation 45(2) applies, £20;
- (b) in a case to which regulation 45(3) and (4) applies, [^{F7}16 x National Minimum Wage]

the earnings of the claimant's partner are to be disregarded to the extent that the claimant's earnings are less than £20 or, as the case may be, [^{F7}16 x National Minimum Wage], but only up to a maximum of £20.

Textual Amendments

- F7** Words in Sch. 7 para. 6 substituted (for specified purposes and with effect in accordance with reg. 1(3) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), **reg. 16(12)**

7.—(1) In a case to which this paragraph applies, £20; but notwithstanding regulation 83 (calculation of income and capital of members of claimant's family and of a polygamous marriage), if this paragraph applies to a claimant it will not apply to the claimant's partner except where, and to the extent that, the earnings of the claimant which are to be disregarded under this paragraph are less than £20.

(2) Subject to sub-paragraph (3), this paragraph applies in the case of a claimant to whom regulation 40(2)(a), (b) or (e), 43(1)(a), (d), (e) or (f), or (2) or 45(5) applies.

(3) Where a claimant is doing the work set out in regulation 40(2)(b) and is also undertaking any of the categories of work set out in regulation 45(2) to (4), this paragraph applies only to the extent that the claimant's earnings are less than the limit of—

(a) £20 set out in regulation 45(2); or

(b) [^{F8}16 x National Minimum Wage] set out in regulation 45(3) and (4),

as the case may be.

(4) This paragraph applies, in a case where the claimant's partner is in part-time employment and paragraph 6 does not apply.

Textual Amendments

- F8** Words in Sch. 7 para. 7 substituted (for specified purposes and with effect in accordance with reg. 1(3) of the amending S.I.) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), **reg. 16(12)**

8. Notwithstanding the foregoing provisions of this Schedule, where two or more payments of earnings of the same kind and from the same source are to be taken into account in the same benefit week, because it has not been practicable to treat the payments under regulation 93(1)(b) (date on which income treated as paid) as paid on the first day of the benefit week in which they were due to be paid, there is to be disregarded from each payment the sum that would have been disregarded if the payment had been taken into account on the date on which it was due to be paid.

9. Any earnings derived from employment which are payable in a country outside the United Kingdom for such period during which there is a prohibition against the transfer to the United Kingdom of those earnings.

10. Where a payment of earnings is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.

11. Any earnings which are due to be paid before the date of claim and which would otherwise fall to be taken into account in the same benefit week as a payment of the same kind and from the same source.

^{F9}11A.—(1) In the case of an income-related employment and support allowance, where earnings to which sub-paragraph (2) applies (in aggregate with the claimant's other income (if any) calculated in accordance with this Part) exceed the applicable amount (calculated as specified in section 4(2) and (3) of the Act) less 10 pence, the amount of those earnings corresponding to that excess.

Status: Point in time view as at 16/12/2014.

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, SCHEDULE 7. (See end of Document for details)

(2) This sub-paragraph applies to earnings, in so far as they exceed the amount disregarded under paragraph 7, derived by the claimant's partner from employment as a member of any territorial or reserve force prescribed in Part 1 of Schedule 6 to the Social Security (Contributions) Regulations 2001 in respect of annual continuous training for a maximum period of 15 days in any calendar year.]

Textual Amendments

F9 Sch. 7 para. 11A inserted (5.11.2012) by [The Social Security \(Miscellaneous Amendments\) \(No. 2\) Regulations 2012 \(S.I. 2012/2575\)](#), regs. 1(2), **5(3)**

12. In the case of a claimant who—

- (a) has been engaged in employment as a member of any territorial or reserve force prescribed in Part 1 of Schedule 6 to the Social Security (Contributions) Regulations 2001 ^{F10}; and
- (b) by reason of that employment has failed to satisfy any of the conditions for entitlement to an income-related allowance other than paragraph 6(1)(a) of Schedule 1 to the Act (income not in excess of the applicable amount),

any earnings from that employment paid in respect of the period in which the claimant was not entitled to an income-related allowance.

Textual Amendments

F10 [S.I. 2001/1004](#).

13. In the case of a person to whom paragraph (5) of regulation 6 of the Income Support Regulations applies, any earnings.

14. In this Schedule—

“part-time employment” means, if the person were entitled to income support, employment in which the person 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);

“remunerative work”, for the purposes of this paragraph and paragraphs 1, 3 and 4, has the meaning prescribed in regulation 5, except for paragraphs (3B) and (4) of that regulation, of the Income Support Regulations.

Status:

Point in time view as at 16/12/2014.

Changes to legislation:

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, SCHEDULE 7.