

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

The Law Relating to Social Security

Volume 13 Supplement 95 – June 2011

1. Supplements to The Law Relating to Social Security are issued at regular intervals. This supplement [95] includes amendments to the Contents Volume and Volumes 1, 2, 3, 4, 5, 6, 8, 11 and 13

2. This package contains Volume 13 and incorporates the following S.I's:
2011/682 2011/1349
as well as various miscellaneous amendments.

3. These supplements are now issued in PDF format only.

4. The amended pages have been reprinted in full. The supplement number is printed at the bottom of each replacement page. This supplement contains an update of the page check list at the back of the volume.

5. Due to space constraints, DMA can only reproduce legislation currently in force. Where users are instructed to remove pages they may like to consider the need to retain such pages for their own use.

6. The last 2 supplements have amended the following volumes:

Supplement No. 94 [March 2011] Contents, 1, 2, 3, 4, 5, 6, 8, 11, 12 and 13.
Supplement No. 93 [December 2010] Contents, 1, 2, 3, 4, 5, 6, 8, 11, 12 and 13.

7. While every effort is made to ensure the accuracy of this work, the DMA Customer Support Services - Publications team would be happy to hear from anyone who spots errors. Please contact:

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8. Starting in Supplement 76 the triangles ►◄ signifying additions, deletions or amendments to Statutory Instruments will be numbered to aid reference. Numbering will start at 1 on each page however, only those pages being updated will be affected.

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2010 No. 2377 (C. 116)

SOCIAL SECURITY

The Welfare Reform Act 2009 (Commencement No. 3) Order 2010

Made - - - - 27th September 2010

The Secretary of State for Work and Pensions makes the following Order in exercise of the powers conferred by section 61(3) and (4) of the Welfare Reform Act 2009(a).

Citation and interpretation

1.—(1) This Order may be cited as the Welfare Reform Act 2009 (Commencement No. 3) Order 2010.

(2) In this Order “the Act” means the Welfare Reform Act 2009.

Appointed days

2.—(1) 1st October 2010 is the day appointed for the coming into force of the following provisions of the Act—

- (a) section 12(1) and (3) (conditions for contributory jobseeker’s allowance);
- (b) section 13(1) (conditions for contributory employment and support allowance);
- (c) section 13(4) for the purpose only of conferring power to make regulations.

(2) 1st November 2010 is the day appointed for the coming into force of the following provisions of the Act—

- (a) section 12(2), (4) and (6);
- (b) section 13(2) and (3);
- (c) section 13(4) (so far as that provision is not already in force).

Signed by authority of the Secretary of State for Work and Pensions.

27th September 2010

Freud
Parliamentary Under-Secretary of State
Department for Work and Pensions

(a) 2009 c. 24.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force the following provisions of the Welfare Reform Act 2009—

- (a) section 12(1) to (4) and (6) (conditions for contributory jobseeker's allowance), and
- (b) section 13(1) to (4) (conditions for contributory employment and support allowance).

Section 12 amends the Jobseekers Act 1995 so that the first contribution condition for jobseeker's allowance is met by the claimant having paid, or being treated as having paid, at least 26 weeks of Class 1 contributions on relevant earnings at the base year's lower earnings limit in one of the two tax years prior to the claim. Subsection (3) of that section provides for a regulation-making power which will be used to make provision for determining the claimant's relevant earnings.

Section 13 makes similar amendments to the Welfare Reform Act 2007 in relation to the first contribution condition for an employment and support allowance. Subsection (2) of that section further amends that Act so that the number of tax years in which a person can pay national insurance contributions and qualify for an employment and support allowance is reduced from three years to two.

A full impact assessment has not been produced for this instrument as it has no impact on the private or voluntary sectors.

[See Annex 2 at page 2.7802 for detail of earlier commencements.]

2011 No. 682 (C. 24)

SOCIAL SECURITY

The Welfare Reform Act 2009 (Commencement No. 4) Order 2011

Made - - - -

8th March 2011

The Secretary of State for Work and Pensions makes the following Order in exercise of the powers conferred by section 61(3) and (4) of the Welfare Reform Act 2009(a).

Citation and interpretation

1.—(1) This Order may be cited as the Welfare Reform Act 2009 (Commencement No. 4) Order 2011.

(2) In this Order—

“the Act” means the Welfare Reform Act 2009;

“the 1995 Act” means the Jobseekers Act 1995(b).

Appointed day

2. 9th March 2011 is the day appointed for the coming into force of the following provisions of the Act—

- (a) section 32(1) (contracting out functions under the 1995 Act) in so far as is necessary for the purposes of paragraphs (b) and (c) of this article;
- (b) section 32(2), but only in so far as it confers power to make regulations under section 20E(3) of the 1995 Act (contracting out) in relation to the functions of the Secretary of State under regulations under section 17A (schemes for assisting persons to obtain employment: “work for your benefit” schemes etc.) of the 1995 Act; and
- (c) section 32(2) in so far as it relates to section 20E(4) to (12) of the 1995 Act, but only in so far as those provisions apply in connection with or for the purposes of regulations under section 20E(3) of the 1995 Act in relation to the functions of the Secretary of State under regulations under section 17A of the 1995 Act.

Signed by authority of the Secretary of State for Work and Pensions.

8th March 2011

Chris Grayling
Minister of State,
Department for Work and Pensions

(a) 2009 c. 24.

(b) 1995 c. 18.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force the following provisions of the Welfare Reform Act 2009—

- (a) section 32(1) (contracting out functions under the Jobseekers Act 1995), in so far as it relates to certain provisions in section 32(2) below, and
- (b) section 32(2) (contracting out), in so far as it is necessary in relation to regulations to enable the Secretary of State's functions under regulations under section 17A of the Jobseekers Act 1995 (schemes for assisting persons to obtain employment: "work for your benefit" schemes etc.) to be exercised by other persons.

Section 32(1) amends the Jobseekers Act 1995 and section 32(2) inserts a new section 20E into that Act. Section 20E of the Jobseekers Act 1995 allows the Secretary of State to make regulations which enable persons to be authorised to exercise functions of the Secretary of State.

A full impact assessment has not been published for this instrument as it has no impact on the private sectors and civil society organisations.

[See Annex 2 at page 2.7802 for details of earlier commencements.]

- (b) in Scotland, an allowance or remuneration under or by virtue of—
- (i) a scheme made by virtue of section 18 of the Local Government and Housing Act 1989; or
 - (ii) sections 11 and 16 of the Local Governance (Scotland) Act 2004^(a);

“couple” means—

- (a) a man and woman who are married to each other and are members of the same household;
- (b) a man and woman who are not married to each other but are living together as husband and wife;
- (c) two people of the same sex who are civil partners of each other and are members of the same household; or
- (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners,

and for the purposes of paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex;

“Crown tenant” means a person who occupies a dwelling under a tenancy or licence where the interest of the landlord belongs to Her Majesty in right of the Crown or to a government department or is held in trust for Her Majesty for the purposes of a government department, except (in the case of an interest belonging to Her Majesty in right of the Crown) where the interest is under the management of the Crown Estate Commissioners;

“dependent child” means any child or qualifying young person who is treated as the responsibility of the claimant or the claimant’s partner, where that child or young person is a member of the claimant’s household;

“descriptor” means, in relation to an activity specified in column (1) of Schedule 2, a descriptor in column (2) of that Schedule which describes a person’s ability to perform that activity;

“disability living allowance” means a disability living allowance under section 71 of the Contributions and Benefits Act;

“doctor” means a registered medical practitioner, or in the case of a medical practitioner practising outside the United Kingdom of whom the Secretary of State may request a medical opinion, a person registered or recognised as such in the country in which the person undertakes medical practice;

“dwelling” means any residential accommodation, whether or not consisting of the whole or part of a building and whether or not comprising separate and self-contained premises;

“dwelling occupied as the home” means the dwelling together with any garage, garden and outbuildings, normally occupied by the claimant as the claimant’s home including any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated;

“Eileen Trust” means the charitable trust of that name established on 29th March 1993 out of funds provided by the Secretary of State for the benefit of persons eligible for payment in accordance with its provisions;

“employed earner” is to be construed in accordance with section 2(1)(a) of the Contributions and Benefits Act;

“employment” includes any trade, business, profession, office or vocation and “employed” has a corresponding meaning;

“employment zone” means an area within Great Britain designated for the purposes of section 60 of the Welfare Reform and Pensions Act 1999^(b) and an “employment zone programme” means a programme established for such an area or areas designed

(a) 2004 asp. 9.

(b) 1999 c. 30.

Reg. 2

¹Defn. of “enactment” substituted in reg. 2 by reg. 11(2)(a) of S.I. 2009/2655. See reg. 1(2)(d) to this S.I. for the relevant commencement date.

²Defn. of “First-tier Tribunal” inserted in reg. 2(1) by reg. 16(2)(a) of S.I. 2011/674 as from 11.4.11.

to assist claimants for a jobseeker’s allowance to obtain sustainable employment;

▶¹“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;◀

“failure determination” has the meaning given by regulation 63(1);

“family” means–

- (a) a couple;
- (b) a couple and a member of the same household for whom one of them is or both are responsible and who is a child or a young person;
- (c) a person who is not a member of a couple and a member of the same household for whom that person is responsible and who is a child or a young person;

“first contribution condition” means the condition set out in paragraph 1(1) of Schedule 1 to the Act;

▶²“First-tier Tribunal” has the meaning given by section 3(1) of the Tribunals, Courts and Enforcement Act 2007(a);◀

“full-time student” has the meaning prescribed in regulation 131 (students: interpretation);

“the Fund” means monies made available from time to time by the Secretary of State for the benefit of persons eligible for payment in accordance with the provisions of a scheme established by the Secretary of State on 24th April 1992 or, in Scotland, on 10th April 1992;

“guaranteed income payment” means a payment made under article 14(1)(b) or 21(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005(b);

“health care professional” means–

- (a) a registered medical practitioner;
- (b) a registered nurse; or
- (c) an occupational therapist or physiotherapist registered with a regulatory body established by an Order in Council under section 60 of the Health Act 1999(c);

“Health Service Act” means the National Health Service Act 2006(d);

“Health Service (Wales) Act” means the National Health Service (Wales) Act 2006(e);

“housing association” has the meaning given to it by section 1(1) of the Housing Associations Act 1985(f);

“housing benefit expenditure” means expenditure in respect of which housing benefit is payable as specified in regulation 12(1) of the Housing Benefit Regulations 2006(g) but does not include any such expenditure in respect of which an additional amount is applicable under regulation 67(1)(c) or 68(1)(d)(housing costs);

“Immigration and Asylum Act” means the Immigration and Asylum Act 1999(h);

“income-related benefits” means the benefits listed in section 123(1) of the Contributions and Benefits Act;

“Income Support Regulations” means the Income Support (General) Regulations 1987(i);

(a) 2007 c. 15.

(b) S.I. 2005/439.

(c) 1999 c. 8. Section 60(1) was amended by the National Health Service Reform and Health Care Professions Act 2002 (c. 17), section 26(9). Section 60(2) was amended by S.I. 2002/253, article 54(3) and Schedule 5, paragraph 16(a) and S.I. 2002/254, article 48(3) and Schedule 4, paragraph 8(a).

(d) 2006 c. 41.

(e) 2006 c. 42.

(f) 1985 c. 69.

(g) S.I. 2006/213.

(h) 1999 c. 33.

(i) S.I. 1987/1967.

Reg. 2

¹“independent hospital”–

- (a) in England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section;
- (b) in Wales, has the meaning assigned to it by section 2 of the Care Standards Act 2000; and
- (c) in Scotland, means an independent healthcare service as defined in section 2(5)(a) and (b) of the Regulation of Care (Scotland) Act 2001;◀

¹Defn. of “independent hospital” substituted by reg. 25 of S.I. 2010/1881 as from 1.10.10.

²◀

²◀

²◀

“the Independent Living Fund (2006)” means the Trust of that name established by a deed dated 10th April 2006 and made between the Secretary of State for Work and Pensions of the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin of the other part;

²Defns. of “Independent Living (Extension) Fund”, “Independent Living Fund”, “Independent Living (1993) Fund” & “Independent Living Funds” omitted by reg. 3(b) of S.I. 2008/2428 as from 27.10.08.

²◀

“Jobseekers Act” means the Jobseekers Act 1995;

“Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations 1996(a);

“last day of the course” means the last day of the final academic term of the course in which the student is enrolled;

“limited capability for work assessment” means the assessment of whether a person has limited capability for work as set out in regulation 19(2) and in Schedule 2;

“London Bombings Relief Charitable Fund” means the company limited by guarantee (number 5505072) and registered charity of that name established on 11th July 2005 for the purpose of (amongst other things) relieving sickness, disability or financial need of victims (including families or dependants of victims) of the terrorist attacks carried out in London on 7th July 2005;

“lone parent” means a person who has no partner and who is responsible for, and a member of the same household as, a child or young person;

“long tenancy” means a tenancy granted for a term of years certain exceeding twenty one years, whether or not the tenancy is, or may become, terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture (or, in Scotland, irritancy) or otherwise and includes a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal unless it is a lease by sub-demise from one which is not a long tenancy;

“Macfarlane (Special Payments) Trust” means the trust of that name, established on 29th January 1990 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia;

“Macfarlane (Special Payments) (No. 2) Trust” means the trust of that name, established on 3rd May 1991 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia and other beneficiaries;

“Macfarlane Trust” means the charitable trust, established partly out of funds provided by the Secretary of State to the Haemophilia Society, for the relief of poverty or distress among those suffering from haemophilia;

“main phase employment and support allowance” means an employment and support allowance where the calculation of the amount payable in respect of the claimant includes a component under section 2(1)(b) or 4(2)(b) of the Act;

“mariner” means a person who is or has been in employment under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where–

- (a) the employment in that other capacity is for the purposes of that ship or vessel or her crew or any passengers or cargo or mails carried by the ship or vessel; and

(a) S.I. 1996/1207.

Reg. 2

(b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on her voyage; but does not include a person who is in employment as a member of Her Majesty's forces;

“maternity allowance period” has the meaning it has in section 35(2) of the Contributions and Benefits Act;

“medical evidence”¹, except in regulation 32A, means—

- (a) evidence from a health care professional approved by the Secretary of State; and
- (b) evidence (if any) from any health care professional or a hospital or similar institution,

or such part of such evidence as constitutes the most reliable evidence available in the circumstances;

“Medical Evidence Regulations” means the Social Security (Medical Evidence) Regulations 1976(a);

²◀

“medical treatment” means medical, surgical or rehabilitative treatment (including any course or diet or other regimen), and references to a person receiving or submitting to medical treatment are to be construed accordingly;

“member of Her Majesty's forces” means a person, other than one mentioned in Part 2 of Schedule 1 who is—

- (a) over 16 years of age; and
- (b) a member of an establishment or organisation specified in Part 1 of that Schedule who gives full pay service,

but does not include any such person while absent on desertion;

³“MFET Limited” means the company limited by guarantee (number 7121661) of that name, established for the purpose in particular of making payments in accordance with arrangements made with the Secretary of State to persons who have acquired HIV as a result of treatment by the NHS with blood or blood products;◀

“mobility supplement” means any supplement under article 20 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(b) including such a supplement by virtue of any other scheme or order or under article 25A of the Personal Injuries (Civilians) Scheme 1983(c);

¹“National Minimum Wage” means the rate of the national minimum wage specified in regulation 11 of the National Minimum Wage Regulations 1999 (rate of the national minimum wage);◀

“net earnings” means such earnings as are calculated in accordance with regulation 96;

“net profit” means such profit as is calculated in accordance with regulation 98;

“New Deal options” means the employment programmes specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations and the training scheme specified in regulation 75(1)(b)(ii) of those Regulations;

“non-dependant” has the meaning prescribed in regulation 71;

“non-dependant deduction” means a deduction that is to be made under regulation 67(1)(c) (prescribed amounts) and paragraph 19 of Schedule 6 (housing costs);

“occupational pension” means any pension or other periodical payment under an occupational pension scheme but does not include any discretionary payment out of a fund established for relieving hardship in particular cases;

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993(d);

(a) S.I. 1976/615.

(b) S.I. 2006/606.

(c) S.I. 1983/686.

(d) 1993 c. 48. Section 1(1) was amended by the Pensions Act 2004 (c. 35), section 239(1) and (3), S.I. 1999/1820, article 4 and Schedule 2, Part 1, paragraph 113(a) and (b) and S.I. 2007/3014, regulation 2(b) and paragraph 1(a) of the Schedule.

¹Words in defn. of “medical evidence” & defn. of “National Minimum Wage” added by reg. 16(2)(b) & (c) of S.I. 2011/674 as from 11.4.11.

²Defn. of “medical examination centre” omitted by reg. 9(2)(a)(i) of S.I. 2010/840 as from 28.6.10.

³Defn. of “MFET Limited” inserted by reg. 12(2) of S.I. 2010/641 as from 6.4.10.

“ordinary clothing or footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities;

“partner” means where a claimant—

- (a) is a member of a couple, the other member of that couple;
- (b) is a husband or wife by virtue of a polygamous marriage, the other party to the marriage or any spouse additional to either party to the marriage;

“passenger” means any person carried on a ship except—

- (a) a person employed or engaged in any capacity on board the ship on the business of the ship; or
- (b) a person on board the ship either in pursuance of the obligation to carry shipwrecked, distressed or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled;

“payment” includes a part of a payment;

“pay period” means the period in respect of which a claimant is, or expects to be, normally paid by the claimant’s employer, being a week, a fortnight, four weeks, a month or other shorter or longer period as the case may be;

“pension fund holder” means in relation to a personal pension scheme or an occupational pension scheme, the trustees, managers or scheme administrators, as the case may be, of the scheme concerned;

“pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995(a);

“period of limited capability for work” means ¹except in paragraph (5), a period throughout which a person has, or is treated as having, limited capability for work, and does not include a period which is outside the prescribed time for claiming as specified in regulation 19 of the Social Security (Claims and Payments) Regulations 1987(b)◀;

¹Words substituted in the defn. of “period of limited capability for work” by reg. 9(2)(a)(ii) of S.I. 2010/840 as from 28.6.10.

“period of study” means the period beginning with the date on which a person starts attending or undertaking a course of study and ending with the last day of the course or such earlier date (if any) as that person finally abandons it or is dismissed from it;

“personal pension scheme” means—

- (a) a personal pension scheme as defined by section 1 of the Pension Schemes Act 1993(e);
- (b) an annuity contract or trust scheme approved under section 620 or 621 of the Income and Corporation Taxes Act 1988(d) or a substituted contract within the meaning of section 622(3) of that Act which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(f) of Schedule 36 to the Finance Act 2004(e);
- (c) a personal pension scheme approved under Chapter 4 of Part 14 of the Income and Corporation Taxes Act 1988 which is treated as having become a registered pension scheme by virtue of paragraph 1(1)(g) of Schedule 36 to the Finance Act 2004;

“policy of life insurance” means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;

(a) 2005 c. 26.

(b) S.I. 1987/1968.

(c) 1993 c. 48. Section 1(1) has been amended by the Pensions Act 2004 (c. 35), section 239(1), (2) and (3), S.I. 1999/1820, article 4 and Schedule 2, Part 1, paragraph 113(a) and (b) and S.I. 2007/3014, regulation 2(b) and paragraph 1(a) of the Schedule. Section 1(2) to (6) was inserted by the Pensions Act 2004 (c. 35), section 239(1) and (4).

(d) 1988 c. 1. Sections 620, 621 and 622 were repealed by the Finance Act 2004 (c. 12), section 326 and Schedule 42, Part 3.

(e) 2004 c. 12.

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“polygamous marriage” means any marriage entered into under a law which permits polygamy where—

- (a) either party has for the time being any spouse additional to the other party; and
- (b) the claimant, the other party to the marriage and the additional spouse are members of the same household;

¹“public authority” includes any person certain of whose functions are functions of a public nature;◀

²“the qualifying age for state pension credit” means—

- (a) in the case of a woman, pensionable age, and
- (b) in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man;◀

“qualifying person” means a person in respect of whom payment has been made from the Fund, the Eileen Trust ³, MFET Limited◀, the Skipton Fund or the London Bombings Relief Charitable Fund;

“qualifying remunerative work” has the meaning given by Part 1 of the Tax Credits Act;

“qualifying young person” has the meaning given by section 142 of the Contributions and Benefits Act (child and qualifying young person);

“relative” means close relative, grand-parent, grand-child, uncle, aunt, nephew or niece;

“relevant disease” means—

- (a) in England and Wales, any disease, food poisoning, infection, infectious disease or notifiable disease—
 - (i) to which section 20(1) of the Public Health (Control of Disease) Act 1984(a) (stopping of work to prevent spread of disease) applies;
 - (ii) to which—
 - (aa) regulation 3 (public health enactments applied to certain diseases) of, and Schedule 1 to,
 - (bb) regulation 9(1) (provisions for preventing the spread of typhus and relapsing fever) of, and Schedule 3 to, or
 - (cc) regulation 9(2) (provisions for preventing the spread of food poisoning and food borne infections) of, and Schedule 4 to, the Public Health (Infectious Diseases) Regulations 1988(b) apply;
 - (iii) to which regulation 9 (powers in respect of persons leaving aircraft) of the Public Health (Aircraft) Regulations 1979(c) applies; or
 - (iv) to which regulation 10 (powers in respect of certain persons on ships) of the Public Health (Ships) Regulations 1979(d) applies; and
- (b) in Scotland, any food poisoning or infectious disease—
 - (i) to which section 71(1) of the Health Services and Public Health Act 1968(e) (compensation for stopping employment to prevent spread of disease in Scotland) applies; or
 - (ii) to which—
 - (aa) regulations 8 and 9 (examination, etc. of persons on aircraft and powers in respect of persons leaving aircraft) of the Public Health (Aircraft) (Scotland) Regulations 1971(f); or

¹Defn. of “public authority” inserted by reg. 11(2)(b) of S.I. 2009/2655. See reg. 1(2)(d) to this S.I. for the relevant commencement date.

²Defn. of “the qualifying age for state pension credit” inserted by reg. 11(2)(b) of S.I. 2009/2655. See reg. 1(2)(d) to this S.I. for the relevant commencement date.

³Words inserted in defn. of “qualifying person” by reg. 12(3)(a) of S.I. 2010/641 as from 6.4.10.

(a) 1984 c. 22. Section 20 was amended by section 59 of, and Schedule 3 to, the Food Safety Act 1990 (c. 16).

(b) S.I. 1988/1546.

(c) S.I. 1979/1434.

(d) S.I. 1979/1435.

(e) 1968 c. 46. Section 71 was amended by section 64 of, and Schedule 6 to, the National Health Service (Scotland) Act 1972 (c. 58) and section 180 of, and Schedule 14 to, the Local Government etc. (Scotland) Act 1994 (c. 39).

(f) S.I. 1971/131.

- (bb) regulations 9 and 10 (examination, etc. of persons on ships and powers in respect of certain persons on ships) of the Public Health (Ships) (Scotland) Regulations 1971(a),

apply;

“relevant enactment” means the Army Act 1955(b), the Air Force Act 1955(c), the Naval

Discipline Act 1957(d), the Matrimonial Proceedings Children Act 1958(e), the Social Work (Scotland) Act 1968(g), the Family Law Reform Act 1969(g), the Children and Young Persons Act 1969(h), the Matrimonial Causes Act 1973(i), the Domestic Proceedings and Magistrates’ Courts Act 1978(j), the Adoption (Scotland) Act 1978(k), the Family Law Act 1986(l), the Children Act 1989(m) and the Adoption and Children Act 2002(n);

“remunerative work” has the meaning prescribed in regulations 41 and 42 except in relation to Schedules 6 and 7;

“second contribution condition” means the condition set out in paragraph 2(1) of Schedule 1 to the Act;

“self-employed earner” is to be construed in accordance with section 2(1)(b) of the Contributions and Benefits Act;

“self-employment route” means assistance in pursuing self-employed earner’s employment whilst participating in—

- (a) an employment zone programme; or
- (b) a programme provided or other arrangements made under section 2 of the Employment and Training Act 1973(o) (functions of the Secretary of State) or section 2 of the Enterprise and New Towns (Scotland) Act 1990(p) (functions in relation to training for employment etc.);

¹“service user group” means a group of individuals that is consulted by or on behalf of—

- (a) a Health Board, Special Health Board or the Agency in consequence of a function under section 2B of the National Health Service (Scotland) Act 1978,
- (b) a landlord authority in consequence of a function under section 105 of the Housing Act 1985,
- (c) a public authority in consequence of a function under section 49A of the Disability Discrimination Act 1995,
- (d) a best value authority in consequence of a function under section 3 of the Local Government Act 1999,

¹Defn. of “service user group” inserted by reg. 11(2)(b) of S.I. 2009/2655. See reg. 1(2)(d) to this S.I. for the relevant commencement date.

(a) S.I. 1971/132.

(b) 1955 c. 18.

(c) 1955 c. 19.

(d) 1957 c. 53.

(e) 1958 c. 40.

(f) 1968 c. 49.

(g) 1969 c. 46.

(h) 1969 c. 54.

(i) 1973 c. 18.

(j) 1978 c. 22.

(k) 1978 c. 28.

(l) 1986 c. 55.

(m) 1989 c. 41.

(n) 2002 c. 38.

(o) 1973 c. 50. Section 2 was substituted by the Employment Act 1988 (c. 19), section 25(1). Sections 2(3A) and (3B) were inserted by the Trade Union Reform and Employment Rights Act 1993 (c. 19) section 47(1) and apply to Scotland only.

(p) 1990 c. 35. Section 2(3) was amended by the Trade Union Reform and Employment Rights Act 1993, sections 47(2) and (4)(a) and 51 and Schedule 10. Section 2(4) was amended by the Trade Union Reform and Employment Rights Act 1993, section 47(2) and (4)(b). Section 2(6) was repealed by S.I. 1999/1820.

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- (e) a local authority landlord or registered social landlord in consequence of a function under section 53 of the Housing (Scotland) Act 2001,
- (f) a relevant English body or a relevant Welsh body in consequence of a function under section 242 of the National Health Service Act 2006,
- (g) a Local Health Board in consequence of a function under section 183 of the National Health Service (Wales) Act 2006,
- (h) the Commission or the Office of the Health Professions Adjudicator in consequence of a function under sections 4, 5, or 108 of the Health and Social Care Act 2008,
- (i) the regulator or a ¹private registered provider of social housing◀ in consequence of a function under sections 98, 193 or 196 of the Housing and Regeneration Act 2008, or
- (j) a public or local authority in Great Britain in consequence of a function conferred under any other enactment,

¹Words substituted in the defn. of “service user group” by Sch. 1, para. 70 of S.I. 2010/671 as from 01.04.10.

for the purposes of monitoring and advising on a policy of that body or authority which affects or may affect persons in the group, or of monitoring or advising on services provided by that body or authority which are used (or may potentially be used) by those persons;◀

“single claimant” means a claimant who neither has a partner nor is a lone parent;

“Skipton Fund” means the ex-gratia payment scheme administered by the Skipton Fund Limited, incorporated on 25th March 2004, for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with the scheme’s provisions;

“sports award” means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc. Act 1993(a) out of sums allocated to it for distribution under that section;

²“state pension credit” means a state pension credit under the State Pension Credit Act 2002(b);◀

²◀

“subsistence allowance” means an allowance which an employment zone contractor has agreed to pay to a person who is participating in an employment zone programme;

“the Tax Credits Act” means the Tax Credits Act 2002(c);

“terminally ill”, in relation to a claimant, means the claimant is suffering from a progressive disease and death in consequence of that disease can reasonably be expected within 6 months;

²Defn. of “state pension credit” inserted & defn. of “starting rate” omitted by regs. 3(b) & (c) of S.I. 2008/2428 as from 27.10.08.

(a) 1993 c. 39. Section 23(2) was amended by S.I. 1996/3095, article 2 and S.I. 1999/1563, article 2(1) and (6). There are other amending instruments but none is relevant.

(b) 2006 c. 16.

(c) 2002 c. 21.

- (b) the claimant suffers from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if the claimant were found not to have limited capability for work.

Conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made

In reg. 30 of this S.I., modifications made by schedule 1, part 2 of S.I. 2010/1907 do not apply. See page 13.9417, paras. 34-39 for details as from 1.10.10.

30.—(1) A claimant is, if the conditions set out in paragraph (2) are met, to be treated as having limited capability for work until such time as it is determined—

- (a) whether or not the claimant has limited capability for work;
- (b) whether or not the claimant is to be treated as having limited capability for work otherwise than in accordance with this regulation; or
- (c) whether the claimant falls to be treated as not having limited capability for work in accordance with regulation 22 (failure to provide information in relation to limited capability for work) or 23 (failure to attend a medical examination to determine limited capability for work).

(2) The conditions are—

- (a) that the claimant provides evidence of limited capability for work in accordance with the Medical Evidence Regulations; and
- (b) that it has not, within the 6 months preceding the date of claim, been determined, in relation to the claimant's entitlement to any benefit, allowance or advantage which is dependent on the claimant having limited capability for work, that the claimant does not have limited capability for work or is to be treated as not having limited capability for work under regulation 22 or 23 unless—
- (i) the claimant is suffering from some specific disease or bodily or mental disablement from which the claimant was not suffering at the time of that determination;
- (ii) a disease or bodily or mental disablement from which the claimant was suffering at the time of that determination has significantly worsened; or
- (iii) in the case of a claimant who was treated as not having limited capability for work under regulation 22 (failure to provide information), the claimant has since provided the information requested under that regulation; ¹or
- (c) that it has not, within the 6 months preceding the date of claim, been determined, in relation to the claimant's entitlement to any benefit, allowance or advantage, which is dependent upon the claimant being incapable of work, that the claimant is capable of work, or is to be treated as capable of work under regulation 7 or 8 of the Social Security (Incapacity for Work) (General) Regulations 1995 ("the 1995 Regulations")^(a), unless—
- (i) the claimant is suffering from some specific disease or bodily or mental disablement from which the claimant was not suffering at the time of that determination,
- (ii) a disease or bodily or mental disablement from which the claimant was suffering at the time of that determination has significantly worsened, or
- (iii) in the case of a claimant who was treated as capable of work under regulation 7 of the 1995 Regulations (failure to provide information), the claimant has since provided the information requested by the Secretary of State under that regulation.◀

¹Words in reg. 30(2)(b)(iii) & reg. 30(2)(c) inserted by reg. 9(8) of S.I. 2010/840 as from 28.6.10.

(a) S.I. 1995/311.

Regs. 30-32A

¹Words substituted in reg. 30(3) by reg. 16(3) of S.I. 2011/674 as from 11.4.11.

*⁽³⁾ Paragraph (2)(b) does not apply where a claimant has made and is pursuing an appeal against a decision that embodies a determination that the claimant does not have limited capability for work and that appeal has not yet been determined by ¹the First-tier Tribunal◀.

**See Sch. 2, part 3, para. 50 of S.I. 2010/1907 at page 13.9419 for details of modifications to reg. 30 in certain situations as from 1.10.10.*

Claimant who claims jobseeker's allowance to be treated as not having limited capability for work

²Reg. 31 revoked by reg. 25(1) of S.I. 2010/1907 as from 1.10.10.

31. ▶²◀

Certain claimants to be treated as not having limited capability for work

³Reg. 32 re-numbered 32(1), words added to re-numbered para. (1) & paras. (2) & (3) inserted by reg. 5(2)(a)-(c) of S.I. 2008/2428 as from 27.10.08.

▶³32.—(1)◀ A claimant ▶³who is or has been a member of Her Majesty's forces◀ is to be treated as not having limited capability for work on any day which is recorded by the Secretary of State for Defence as a day of sickness absence from duty.

▶³(2) A claimant is to be treated as not having limited capability for work on any day on which the claimant attends a training course in respect of which the claimant is paid a training allowance or premium pursuant to arrangements made under section 2 of the Employment and Training Act 1973(a) or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990(b).

(3) Paragraph (2) is not to apply—

- (a) for the purposes of any claim to employment and support allowance for a period commencing after the claimant ceased attending the training course in question; or
- (b) where any training allowance or premium paid to the claimant is paid for the sole purpose of travelling or meal expenses incurred or to be incurred under the arrangement made under section 2 of the Employment and Training Act 1973 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990.◀

⁴Reg. 32A inserted by reg. 9(9) of S.I. 2010/840 as from 28.6.10.

▶⁴Claimants to be treated as not having limited capability for work at the end of the period covered by medical evidence

⁵Reg. 32A re-numbered 32A(1), words deleted in reg. 32A(1)(a) & reg. 32A(2) inserted by reg. 16(4)(a)-(c) of S.I. 2011/674 as from 11.4.11.

32A.▶⁵—(1)◀ Where the Secretary of State is satisfied that it is appropriate in the circumstances of the case then a claimant may be treated as not having limited capability for work if—

- (a) the claimant has supplied medical evidence ▶⁵◀;
- (b) the period for which medical evidence was supplied has ended;
- (c) the Secretary of State has requested further medical evidence; and
- (d) the claimant has not, before whichever is the later of either the end of the period of 6 weeks beginning with the date of the Secretary of State's request or the end of 6 weeks beginning with the day after the end of the period for which medical evidence was supplied—
 - (i) supplied further medical evidence, or
 - (ii) otherwise made contact with the Secretary of State to indicate that they wish to have the question of limited capability for work determined.◀

▶⁵(2) In this regulation “medical evidence” means evidence provided under regulation 2 or 5 of the Medical Evidence Regulations.◀

(a) 1973 c. 50. Section 2(1) was substituted by section 25(1) of the Employment Act 1988 (c. 19).

(b) 1990 c. 35. Section 2(3) was amended by section 47(2), (4)(a), section 51 of and Schedule 10 to the Trade Union Reform and Employment Act 1993 (c. 19).

“volunteer” means a person who is engaged in voluntary work otherwise than for a relative, where the only payment received or due to be paid to the person by virtue of being so engaged is in respect of any expenses reasonably incurred by the person in connection with that work.

Claimants who are treated as not entitled to any allowance at all by reason of regulation 40(1) are to be treated as not having limited capability for work

44.—(1) Where a claimant is treated as not entitled to an employment and support allowance by reason of regulation 40(1), subject to paragraph (2), the claimant is to be treated as not having limited capability for work.

(2) Paragraph (1) does not apply where the claimant remains entitled to a contributory allowance, but is not entitled to an income-related allowance by reason of regulation 40(1).

(3) Paragraph (1) applies even if—

- (a) it has been determined that the claimant has or is to be treated as having, under any of regulations 20 (certain claimants to be treated as having limited capability for work), 25 (hospital in-patients), 26 (claimants undergoing certain regular treatment) or 29 (exceptional circumstances), limited capability for work; or
- (b) the claimant meets the conditions set out in regulation 30(2) for being treated as having limited capability for work until a determination is made in accordance with the limited capability for work assessment.

Exempt work

45.—(1) The categories of work referred to in regulation 40(2)(f) are set out in the following paragraphs.

(2) Work for which the earnings in any week do not exceed £20.00.

(3) Work for which the earnings in any week do not exceed \blacktriangleright^1 16 x National Minimum Wage, subject to paragraph (9A), \blacktriangleleft and which—

- (a) is part of the claimant’s treatment programme and is done under medical supervision while the claimant is an in-patient, or is regularly attending as an out-patient, of a hospital or similar institution; or
- (b) is supervised by a person employed by a public or local authority or \blacktriangleright^2 by a \blacktriangleleft voluntary organisation \blacktriangleright^2 or community interest company \blacktriangleleft engaged in the provision or procurement of work for persons who have disabilities.

(4) Work which is done for less than 16 hours a week, for which earnings in any week do not exceed \blacktriangleright^1 16 x National Minimum Wage, subject to paragraph (9A), \blacktriangleleft and which—

- \blacktriangleright^2 (a) is done during a period of specified work, provided that—
 - (i) the claimant has not previously done specified work,
 - (ii) since the beginning of the last period of specified work, the claimant has ceased to be entitled to a relevant benefit for a continuous period exceeding 12 weeks, or
 - (iii) not less than 52 weeks have elapsed since the last period of specified work; or \blacktriangleleft
- (b) done by a claimant who has or is treated as having limited capability for work-related activity.
- \blacktriangleright^2 (c) for the purposes of this regulation, a period of specified work begins on the first day on which any specified work is undertaken and continues for a period of 52 weeks, whether or not any further specified work is undertaken during that period. \blacktriangleleft

¹Amounts substituted in reg. 45(3) & (4) by reg. 16(5) of S.I. 2011/674 as from 11.4.11.

²In reg. 45, words added to para. (3)(b), para. (4)(a) substituted & para. (4)(c) inserted by reg. 9(10)(a)-(c) of S.I. 2010/840 as from 28.6.10.

(a) As established under the Companies (Audit, Investigations and Community Enterprise) Act 2004 c. 27.

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(5) Work done in the course of receiving assistance in pursuing self-employed earner's employment whilst participating in a programme provided or other arrangements made under section 2 of the Employment and Training Act 1973(a) (functions of the Secretary of State) or section 2 of the Enterprise and New Towns (Scotland) Act 1990(b) (functions in relation to training for employment etc.).

(6) Work done where the claimant receives no payment of earnings and where the claimant—

- (a) is engaged by a charity or voluntary organisation; or
- (b) is a volunteer,

where the Secretary of State is satisfied in any of those cases that it is reasonable for the claimant to provide the service free of charge.

(7) Work done in the course of participating in a work placement approved in writing by the Secretary of State before the placement starts.

(8) The number of hours for which a claimant is engaged in work is to be determined—

- (a) where no recognisable cycle has been established in respect of a claimant's work, by reference to the number of hours or, where those hours are likely to fluctuate, the average of the hours, which the claimant is expected to work in a week;
- (b) where the number of hours for which the claimant is engaged fluctuate, by reference to the average of hours worked over—
 - (i) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences);
 - (ii) in any other case, the period of five weeks immediately before the date of claim or the date on which a superseding decision is made under section 10 (decisions superseding earlier decisions) of the Social Security Act 1998(c), or such other length of time as may, in the particular case, enable the claimant's average hours of work to be determined more accurately.

(9) For the purposes of determining the number of hours for which a claimant is engaged in work, that number is to include any time allowed to that claimant by the claimant's employer for a meal or for refreshment, but only where that claimant is, or expects to be, paid earnings in respect of that time.

¹Reg. 45(9A) inserted by reg. 16(5) of S.I. 2011/674 as from 11.4.11.

¹(9A) Where the amount determined by the calculation in paragraphs (3) and (4) would, but for this paragraph, include an amount of—

- (a) less than 50p, that amount shall be rounded up to the nearest 50p; or
- (b) less than £1 but more than 50p, that amount shall be rounded up to the nearest £1.◀

(10) In this regulation—

“relevant benefit” means—

- (a) an employment and support allowance; or
- (b) credits under regulations made under section 22(5) of the Contributions and Benefits Act(d),

(a) 1973 c. 50. Section 2 was substituted by section 25(1) of the Employment Act 1988. Subsections (4) and (6) of section 2 were repealed by section 29(4) of and Schedule 7 to the Employment Act 1989. Subsections (3A) and (3B) of section 2, which apply to Scotland only, inserted by the Trade Union Reform and Employment Rights Act 1993.

(b) 1990 c. 35. Section 2 amended by sections 47(4)(a) and (b) and 51 of and Schedule 10 to the Trade Union Reform and Employment Rights Act 1993. Section 2 also amended by articles 1(2) and 4 of and paragraph 100(2) of Schedule 2 to Scotland Act 1998 (Consequential Modifications) Order (No. 2) 1999.

(c) 1998 c. 14. Section 10 was amended by sections 18 and 26(3) of and by paragraph 23 of Schedule 7 to and by Schedule 10 to the Transfer of Functions Act 1999.

(d) 1992 c. 4. Section 22 was amended by Paragraph 22 of Schedule 2 to the Jobseeker's Act 1995.

in respect of which the question of the claimant's limited capability for work arises under the Act;

*"specified work" means work done in accordance with paragraph (4);

"supervised work" means work done in accordance with paragraph (3)(a) or (b);

"volunteer" has the same meaning it has in regulation 43;

"work placement" means practical work experience with an employer, which is neither paid nor undertaken in expectation of payment.

**See Sch. 2, part 3, para. 51 of S.I. 2010/1907 at page 13.9420 for details of modifications to the defn. of "specified work" in reg. 45(10) in certain situations as from 1.10.10.*

Effect of work on entitlement to contributory allowance where claimant is receiving certain regular treatment

46. Where a claimant who is entitled to a contributory allowance and is treated as having limited capability for work by virtue of regulation 26 works on any day during a week when the claimant is, in accordance with regulation 26, receiving certain regular treatment or recovering from that treatment, that work is to have no effect on the claimant's entitlement to the contributory allowance.

PART 8 CONDITIONALITY

CHAPTER 1

Work-focused health-related assessment

Requirement to take part in a work-focused health-related assessment

47.—(1) The Secretary of State may require a claimant who satisfies the requirements in paragraph (2) to take part in one or more work-focused health-related assessments as a condition of continuing to be entitled to the full amount of employment and support allowance payable to the claimant.

(2) The requirements referred to in paragraph (1) are that the claimant—

- (a) is either—
 - (i) entitled to an employment and support allowance; or
 - (ii) a person who has made a claim for an employment and support allowance to which regulations under section 5(1)(c) of the Administration Act apply;
- (b) is not a member of the support group; and
- (c) has not reached the age at which a woman of the same age as the claimant would attain pensionable age.

(3) Any requirement to take part in a work-focused health-related assessment ceases to have effect if the claimant ceases to satisfy the requirements in paragraph (2).

Work-focused health-related assessment

48. For the purposes of section 11(7)(c) of the Act, matters to be assessed in the work-focused health-related assessment include—

- (a) difficulties which are likely to be experienced as a result of the claimant's physical or mental condition in relation to obtaining or remaining in work and how these might be managed or alleviated; and
- (b) the claimant's views on the impact of the claimant's physical or mental condition in relation to obtaining or remaining in work and any aspirations in relation to work in the light of that condition.

- (c) who is a member of the household of a person to whom sub-paragraph (a) or (b) applies.

(4) Subject to paragraph (5), this paragraph applies to—

- (a) a person who jointly occupies the claimant's dwelling and who is either—
- (i) a co-owner of that dwelling with the claimant or the claimant's partner (whether or not there are other co-owners); or
 - (ii) jointly liable with the claimant or the claimant's partner to make payments to a landlord in respect of the person's occupation of that dwelling;
- (b) a partner of a person to whom sub-paragraph (a) applies.

(5) Where a person is a close relative of the claimant or the claimant's partner, paragraph (4) applies to that person only if the claimant's, or the claimant's partner's, co-ownership, or joint liability to make payments to a landlord in respect of occupation of the dwelling arose either before 11th April 1988 or, if later, on or before the date on which the claimant or the claimant's partner first occupied the dwelling in question.

(6) For the purposes of this regulation a person resides with another only if they share any accommodation except a bathroom, a lavatory or a communal area but not if each person is separately liable to make payments in respect of occupation of the dwelling to the landlord.

(7) In this regulation "communal area" means any area (other than rooms) of common access (including halls and passageways) and rooms of common use in sheltered accommodation.

CHAPTER 2

Deductions from the contributory allowance

Permanent health insurance

72.—(1) For the purposes of sections 2(1)(c) and 3 of the Act (deductions from contributory allowance) pension payment is to include a permanent health insurance payment.

(2) In this regulation "permanent health insurance payment" means any periodical payment arranged by an employer under an insurance policy providing benefits in connection with physical or mental illness or disability, in relation to a former employee on the termination of that person's employment.

►¹Financial Assistance Scheme

72A.—(1) For the purposes of sections 2(1)(c) and 3 of the Act (deductions from contributory allowance) pension payment is to include a Financial Assistance Scheme payment.

(2) In this regulation "Financial Assistance Scheme payment" means a payment made under the Financial Assistance Scheme Regulations 2005(a).◀

¹Reg. 72A inserted by reg. 7(1) of S.I. 2008/2428 as from 27.10.08.

Councillor's allowance

73. For the purposes of section 3(1)(c) of the Act—

- (a) a councillor's allowance is a payment of a prescribed description; and
- (b) the prescribed bodies carrying out public or local functions are those councils referred to in the definition of "councillor".

(a) S.I. 2005/1986.

Regs. 74-76

Deductions for pension payment and PPF payment**74.—(1) Where—**

¹Words substituted in reg. 74(1)(a) by reg. 7(2) of S.I. 2008/2428 as from 27.10.08.

- (a) ►¹a claimant◄ is entitled to a contributory allowance in respect of any period of a week or part of a week;
- (b) there is—
 - (i) a pension payment;
 - (ii) a PPF periodic payment; or
 - (iii) any combination of the payments specified in paragraphs (i) and (ii),

payable to that person in respect of that period (or a period which forms part of that period or includes that period or part of it); and

- (c) the amount of the payment, or payments when taken together, exceeds—
 - (i) if the period in question is a week, £85.00; or
 - (ii) if that period is not a week, such proportion of the amount mentioned in paragraph (i) as falls to be calculated in accordance with regulation 94(1) or (6) (calculation of weekly amount of income),

the amount of that allowance is to be reduced by an amount equal to 50% of the excess.

(2) For the purposes of this Chapter “payment” means a payment or payments, as the case may be, referred to in paragraph (1)(b).

Payments treated as not being payments to which section 3 applies

***75.** The following payments are to be treated as not being payments to which section 3 applies—

- (a) any pension payment made to a claimant as a beneficiary on the death of a member of any pension scheme;
- (b) any PPF periodic payment made to a claimant as a beneficiary on the death of a person entitled to such a payment;
- (c) where a pension scheme is in deficit or has insufficient resources to meet the full pension payment, the extent of the shortfall;
- (d) any pension payment made under an instrument specified in section 639(2) of the Income Tax (Earnings and Pensions) Act 2003(a);
- (e) any guaranteed income payment;
- (f) any permanent health insurance payment in respect of which the employee had contributed to the premium to the extent of more than 50%.

**See Schedule 1, para. 38 of S.I. 2010/1907 at page 13.9417 for details of modifications to this regulation as from 1.10.10.*

Deductions for councillor’s allowance

²Amount in reg. 76(1) substituted by reg. 16(6)(a) of S.I. 2011/674 as from 11.4.11.

76.—(1) Where the net amount of councillor’s allowance to which a claimant is entitled in respect of any week exceeds ►²16 x National Minimum Wage, subject to paragraph (3)◄, an amount equal to the excess is to be deducted from the amount of a contributory allowance to which that person is entitled in respect of that week, and only the balance remaining (if any) is to be payable.

(2) In paragraph (1) “net amount”, in relation to any councillor’s allowance to which a claimant is entitled, means the aggregate amount of the councillor’s allowance or allowances, or remuneration to which that claimant is entitled for the week in question, reduced by the amount of any payment in respect of expenses wholly, exclusively and necessarily incurred by that claimant, in that week, in the performance of the duties of a councillor.

(a) 2003 c. 1.

►¹(3) Where the amount determined by the calculation in paragraph (1) would, but for this paragraph, include an amount of—

- (i) less than 50p, that amount shall be rounded up to the nearest 50p; or
- (ii) less than £1 but more than 50p, that amount shall be rounded up to the nearest £1.◀

¹Reg. 76(3) inserted by reg. 16(6)(b) of S.I. 2011/674 as from 11.4.11.

Date from which payments are to be taken into account

77. Where regulations 74(1) and 76(1) apply, deductions must have effect, calculated where appropriate in accordance with regulation 94(1) or (6), from the first day of the benefit week in which the payment or councillor's allowance is paid to a claimant who is entitled to a contributory allowance in that week.

Date from which a change in the rate of the payment takes effect

78. Where a payment or councillor's allowance is already being made to a claimant and the rate of that payment or that allowance changes, the deduction at the new rate must take effect, calculated where appropriate in accordance with regulation 94(1) or (6), from the first day of the benefit week in which the new rate of the payment or councillor's allowance is paid.

Calculation of payment made other than weekly

79.—(1) Where the period in respect of which a payment or councillor's allowance is paid is otherwise than weekly, an amount calculated or estimated in accordance with regulation 94(1) or (6) is to be regarded as the weekly amount of that payment or allowance.

(2) In determining the weekly payment, where two or more payments are payable to a claimant, each payment is to be calculated separately in accordance with regulation 94(1) or (6) before aggregating the sum of those payments for the purposes of the reduction of a contributory allowance in accordance with regulation 74.

(4) Where grant income as defined in Chapter 10 of this Part has been paid to a claimant who ceases to be a full-time student before the end of the period in respect of which that income is payable and, as a consequence, the whole or part of that income falls to be repaid by that claimant, that income is to be taken into account over the period beginning on the date on which that income is treated as paid under regulation 93 (date on which income is treated as paid) and ending—

- (a) on the date on which repayment is made in full;
- (b) where the grant is paid in instalments, on the day before the next instalment would have been paid had the claimant remained a full-time student; or
- (c) on the last date of the academic term or vacation during which that claimant ceased to be a full-time student,

whichever is the earlier.

(5) Where, but for this paragraph—

- (a) earnings not of the same kind are derived from the same source; and
- (b) the periods in respect of which those earnings would fall to be taken into account overlap, wholly or partly,

those earnings are to be taken into account over a period equal to the aggregate length of those periods and that period is to begin with the earliest date on which any part of those earnings would otherwise be treated as paid under regulation 93.

(6) In a case to which paragraph (5) applies, earnings under regulation 95 (earnings of employed earners) are to be taken into account in the following order of priority—

- (a) earnings normally derived from the employment;
- (b) any payment to which paragraph (1)(b) or (c) of that regulation applies;
- (c) any payment to which paragraph (1)(j) of that regulation applies;
- (d) any payment to which paragraph (1)(d) of that regulation applies.

(7) Where earnings to which regulation 95(1)(b) to (d) applies are paid in respect of part of a day, those earnings are to be taken into account over a period equal to a day.

(8) Any earnings to which regulation 95(1)(j) applies which are paid in respect of, or on the termination of, part-time employment, are to be taken into account over a period equal to one week.

(9) In this regulation “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);

(10) For the purposes of this regulation the claimant’s earnings and income which does not consist of earnings are to be calculated in accordance with Chapters 3 and 6 respectively of this Part.

Calculation of earnings of self-employed earners

92.—(1) Except where paragraph (2) applies, where a claimant’s income consists of earnings from employment as a self-employed earner the weekly amount of the claimant’s earnings is to be determined by reference to the claimant’s average weekly earnings from that employment—

- (a) over a period of one year; or
- (b) where the claimant has recently become engaged in that employment or there has been a change which is likely to affect the normal pattern of business, over such other period as may, in any particular case, enable the weekly amount of the claimant’s earnings to be determined more accurately.

Regs. 92-93

¹Reg. 92(2) substituted by reg. 10(4) of S.I. 2009/583 as from 6.4.09.

▶¹(2)(a) Where the claimant's earnings consist of any items to which this paragraph applies those earnings shall be taken into account over a period equal to such number of weeks as is equal to the number obtained (and any fraction shall be treated as a corresponding fraction of a week) by dividing the earnings by the amount of employment and support allowance which would be payable had the payment not been made plus an amount equal to the total of the sums which would fall to be disregarded from the payment under Schedule 7 (earnings to be disregarded) as is appropriate in the claimant's case;

(b) this paragraph applies to—

- (i) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark; or
- (ii) any payment in respect of any book registered under the Public Lending Right Scheme 1982 or work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982, where the claimant is the first owner of the copyright, design, patent or trademark, or an original contributor to the book or work concerned.◀

(3) For the purposes of this regulation the claimant's earnings are to be calculated in accordance with Chapter 4 of this Part.

Date on which income is treated as paid

²Words in reg. 93(1) & reg. 93(3) & (4) deleted by reg. 16(7) of S.I. 2011/674 as from 11.4.11.

93.—(1) Except where paragraph (2) ▶²◀ applies, a payment of income to which regulation 91 (calculation of earnings derived from employed earner's employment and income other than earnings) applies is to be treated as paid—

- (a) in the case of a payment which is due to be paid before the first benefit week pursuant to the claim, on the date on which it is due to be paid;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid or the first succeeding benefit week in which it is practicable to take it into account.

(2) Employment and support allowance, income support, jobseeker's allowance, maternity allowance, short-term or long-term incapacity benefit, or severe disablement allowance is to be treated as paid on the day of the benefit week in respect of which it is payable.

(3)–(4) ▶²◀

CHAPTER 5

*Participants in the self-employment route***Interpretation**

100. In this Chapter “special account” means, where a claimant was carrying on a commercial activity in respect of which assistance is received under the self-employment route, the account into which the gross receipts from that activity were payable during the period in respect of which such assistance was received.

Treatment of gross receipts of participants in the self-employment route

101. The gross receipts of a commercial activity carried on by a claimant in respect of which assistance is received under the self-employment route, are to be taken into account in accordance with the following provisions of this Chapter.

Calculation of income of participants in the self-employment route

102.—(1) The income of a claimant who has received assistance under the self-employment route is to be calculated by taking into account the whole of the monies in the special account at the end of the last day on which such assistance was received and deducting from those monies—

- (a) an amount in respect of income tax calculated in accordance with regulation 103 (deduction in respect of tax for participants in the self-employment route); and
- (b) any sum to which paragraph (4) refers.

(2) Income calculated pursuant to paragraph (1) is to be apportioned equally over a period which starts on the date the income is treated as paid under paragraph (3) and is equal in length to the period beginning with the day on which assistance was first received under the self-employment route and ending on the last day on which such assistance was received.

(3) Income calculated pursuant to paragraph (1) is to be treated as paid—

- (a) in the case where it is due to be paid before the first benefit week in respect of which the participant or the participant’s partner first claims an income-related allowance following the last day on which assistance was received under the self-employment route, on the day in the week in which it is due to be paid which corresponds to the first day of the benefit week;
- (b) in any other case, on the first day of the benefit week in which it is due to be paid.

(4) This paragraph refers, where applicable in each benefit week in respect of which income calculated pursuant to paragraph (1) is taken into account pursuant to paragraphs (2) and (3), to the sums which would have been disregarded under paragraph 7(1) of Schedule 7 had the income been earnings.

Deduction in respect of tax for participants in the self-employment route

103.—(1) The amount to be deducted in respect of income tax under regulation 102(1)(a) (calculation of income of participants in the self-employment route) in respect of the period determined under regulation 102(2) is to be calculated as if—

- (a) the chargeable income is the only income chargeable to tax;
- (b) the personal allowance applicable to the person receiving assistance under the self-employment route by virtue of sections 35 and 45 to 55 of the Income Tax Act 2007 is allowable against that income; and

Regs. 103-104

¹Words omitted in reg. 103(1)(c) and substituted in para. (2) by reg. 8(4)(a) & (b) of S.I. 2008/2428 as from 27.10.08.

(c) the rate at which the chargeable income less the personal allowance is assessable to income tax is the ¹basic rate of tax.

(2) For the purpose of paragraph (1), the ¹basic rate of tax to be applied and the amount of the personal allowance deductible is, where the period determined under regulation 102(2) is less than a year, to be calculated on a pro rata basis.

(3) In this regulation, “chargeable income” means the monies in the special account at the end of the last day upon which assistance was received under the self-employment route.

CHAPTER 6

*Other income***Calculation of income other than earnings**

²Words omitted in reg. 104(1) by reg. 16(8) of S.I. 2011/674 as from 11.4.11.

104.—(1) For the purposes of regulation 91 (calculation of earnings derived from employed earner’s employment and income other than earnings) ²the income of a claimant which does not consist of earnings to be taken into account will, subject to paragraphs (2) to (7), be the claimant’s gross income and any capital treated as income under regulation 105 (capital treated as income).

(2) There is to be disregarded from the calculation of a claimant’s gross income under paragraph (1), any sum, where applicable, specified in Schedule 8.

(3) Where the payment of any benefit under the benefit Acts is subject to any deduction by way of recovery the amount to be taken into account under paragraph (1) is to be the gross amount payable.

³Words substituted in reg. 104(4) & (5) by reg. 7(2) of S.I. 2008/1599 as from 27.10.08.

(4) ³Paragraphs (5) and (5A) ³applies where—

- (a) a relevant payment has been made to a claimant in an academic year; and
- (b) that claimant abandons, or is dismissed from, that claimant’s course of study before the payment to the claimant of the final instalment of the relevant payment.

(5) ³Where a relevant payment is made quarterly, the amount of a relevant payment to be taken into account for the assessment period for the purposes of paragraph (1) in respect of a claimant to whom paragraph (4) applies, is to be calculated by applying the formula—

$$\frac{A-(B \times C)}{D}$$

where—

A = the total amount of the relevant payment which that claimant would have received had that claimant remained a student until the last day of the academic term in which the person abandoned, or was dismissed from, the course, less any deduction under regulation 137(6) (treatment of student loans);

B = the number of benefit weeks from the benefit week immediately following that which includes the first day of that academic year to the benefit week immediately before that which includes the day on which the claimant abandoned, or was dismissed from, that claimant’s course;

C = the weekly amount of the relevant payment, before the application of the £10 disregard, which would have been taken into account as income under regulation 137(3) had the claimant not abandoned or been dismissed from, the course and, in the case of a claimant who was not entitled to an income-related allowance immediately before that claimant abandoned or was dismissed from the course, had that claimant, at that time, been entitled to an income-related allowance;

Regs. 147A-148**►¹Claimants appealing a decision**

¹Reg. 147A inserted by reg. 9(15) of S.I. 2010/840 as from 28.6.10.

***147A.**—(1) This regulation applies where a claimant has made and is pursuing an appeal against a decision of the Secretary of State that embodies a determination that the claimant does not have limited capability for work.

(2) Subject to paragraph (3), where this regulation applies, a determination of limited capability for work by the Secretary of State under regulation 19 shall not be made until the appeal is determined by the First-tier Tribunal.

(3) Paragraph (2) does not apply where either—

- (a) the claimant suffers from some specific disease or bodily or mental disablement from which the claimant was not suffering when entitlement began; or
- (b) a disease or bodily or mental disablement from which the claimant was suffering at that date has significantly worsened.

(4) Where this regulation applies and the Secretary of State makes a determination—

- (a) in a case to which paragraph (3) applies (including where the determination is not the first such determination) that the claimant does not have or, by virtue of regulation 22 or 23, is to be treated as not having limited capability for work; or
- (b) subsequent to a determination that the claimant is to be treated as having limited capability for work by virtue of a provision of these Regulations other than regulation 30, that the claimant is no longer to be so treated,

this regulation and regulation 30 apply as if that determination had not been made.

(5) Where this regulation applies and—

- (a) the claimant is entitled to an employment and support allowance by virtue of being treated as having limited capability for work in accordance with regulation 30;
- (b) neither of the circumstances in paragraph (3) applies, or, subsequent to the application of either of those circumstances, the claimant has been determined not to have limited capability for work; and
- (c) the claimant's appeal is dismissed, withdrawn or struck out,

the claimant is to be treated as not having limited capability for work with effect from the beginning of the first day of the benefit week following the date on which the Secretary of State was notified by the First-tier Tribunal that the appeal is dismissed, withdrawn or struck out.

(6) Where a claimant's appeal is successful, subject to paragraph (7), any finding of fact or other determination embodied in or necessary to the decision of the First-tier Tribunal or on which the First-tier Tribunal's decision is based shall be conclusive for the purposes of the decision of the Secretary of State, in relation to an award made in a case to which this regulation applies, as to whether the claimant has limited capability for work or limited capability for work-related activity.

(7) Paragraph (6) does not apply where, due to a change of circumstances after entitlement to which this regulation applies began, the Secretary of State is satisfied that it is no longer appropriate to rely on such finding or determination.◀

**See Sch. 2, part 3, para. 55 of S.I. 2010/1907 at page 13.9420 for details of modifications to reg. 147A in certain situations as from 1.10.10.*

CHAPTER 2*Work or training beneficiaries***Work or training beneficiaries**

148.—(1) Subject to paragraph (2), a claimant is a “work or training beneficiary” on any day in a linking term where the claimant—

Regs. 148-150

¹Regs. 148(1)(a) & (c), 149(1) & 150 substituted & in reg. 148(c) defn. of “conversion decision” inserted by regs. 21(2) & (3), 22(2) & (3) & 23(2) of S.I. 2010/2430 as from 1.11.10 in certain situations, see reg. 22(4) of the S.I. for details.

- ▶¹(a) had limited capability for work—
 - (i) for more than 13 weeks in the most recent past period of limited capability for work; or
 - (ii) for 13 weeks or less in the most recent past period of limited capability for work where the claimant became entitled to an award of an employment and support allowance by virtue of a conversion decision which took effect from the commencement of the most recent past period of limited capability for work;◀
 - (b) ceased to be entitled to an allowance or advantage at the end of that most recent past period of limited capability for work; and
 - ▶¹(c) became engaged in work or training within one month of so ceasing to be entitled.◀
- (2) A claimant is not a work or training beneficiary if—
- (a) the most recent past period of limited capability for work was ended by a determination that the claimant did not have limited capability for work; and
 - (b) that determination was on the basis of a limited capability for work assessment.
- (3) For the purposes of this Part—
- “allowance or advantage” means any allowance or advantage under the Act or the Contributions and Benefits Act for which entitlement is dependent on limited capability for work;
- ▶¹“conversion decision” has the meaning given in regulation 5(2)(a) of the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010;◀
- “linking term” means a period of 104 weeks from the first day immediately following the last day in a period of limited capability for work;
- “work” means work, other than work under regulation 45 (exempt work), for which payment is made or which is done in expectation of payment.

Linking rules – limited capability for work

149.—▶¹(1) Where the circumstances in paragraph (2) apply, a work or training beneficiary is to be treated as having limited capability for work from the first day within the linking term in respect of which that beneficiary claims an employment and support allowance ▶²until it is determined whether that beneficiary has, or is treated as having, limited capability for work following a limited capability for work assessment.◀◀

²Words added in reg. 149(1) by reg. 16(9) of S.I. 2011/674 as from 11.4.11.

- (2) The circumstances are that—
- (a) the work or training beneficiary provides evidence of limited capability for work in accordance with the Medical Evidence Regulations (which prescribe the form of the doctor’s statement or other evidence required in each case); and
 - (b) ▶¹it had been determined that the work or training beneficiary had limited capability for work in the most recent past period of limited capability for work or where that determination was embodied in a conversion decision◀—
 - (i) the claimant having been assessed in accordance with a limited capability for work assessment; or
 - (ii) as a result of the claimant being treated as having limited capability for work in accordance with regulation 20, 25, 26, 29 or 33(2) (persons to be treated as having limited capability for work).

▶¹Linking rules – limited capability for work-related activity

150. Where a work or training beneficiary was a member of the support group when the most recent past period of limited capability for work came to an end, that work or training beneficiary is to be treated as having limited capability for work-related

activity from the first day within the linking term in respect of which that beneficiary claims an employment and support allowance ▶¹until it is determined whether that beneficiary has, or is treated as having, limited capability for work-related activity in accordance with regulation 34 or 35◀.◀

¹Words added in reg. 150 by reg. 16(10) of S.I. 2011/674 as from 11.4.11.

CHAPTER 3

*Temporary absence from Great Britain***Absence from Great Britain**

151.—(1) A claimant who is entitled to an employment and support allowance is to continue to be so entitled during a period of temporary absence from Great Britain only in accordance with this Chapter.

(2) A claimant who continues to be entitled to a contributory allowance during a period of temporary absence will not be disqualified for receiving that allowance during that period under section 18(4) of the Act.

Short absence

152. A claimant is to continue to be entitled to an employment and support allowance during the first 4 weeks of a temporary absence from Great Britain if—

- (a) the period of absence is unlikely to exceed 52 weeks; and
- (b) while absent from Great Britain, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance.

Absence to receive medical treatment

153.—(1) A claimant is to continue to be entitled to an employment and support allowance during the first 26 weeks of a temporary absence from Great Britain if—

- (a) the period of absence is unlikely to exceed 52 weeks;
- (b) while absent from Great Britain, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance;
- (c) the claimant is absent from Great Britain solely—
 - (i) in connection with arrangements made for the treatment of the claimant for a disease or bodily or mental disablement directly related to the claimant's limited capability for work which commenced before leaving Great Britain; or
 - (ii) because the claimant is accompanying a dependent child in connection with arrangements made for the treatment of that child for a disease or bodily or mental disablement;
- (d) those arrangements relate to treatment—
 - (i) outside Great Britain;
 - (ii) during the period whilst the claimant is temporarily absent from Great Britain; and
 - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment; and
- (e) ▶²◀

(2) In paragraph (1)(d)(iii), “appropriately qualified” means qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

²Reg. 153(1)(e) deleted by reg. 11(15) of S.I. 2009/2655 as from 26.10.09.

Absence in order to receive NHS treatment

154. A claimant is to continue to be entitled to an employment and support allowance during any period of temporary absence from Great Britain if—

Regs. 154-156

- (a) while absent from Great Britain, the claimant continues to satisfy the other conditions of entitlement to that employment and support allowance;
- (b) that period of temporary absence is for the purpose of the claimant receiving treatment at a hospital or other institution outside Great Britain where the treatment is being provided—
 - (i) under section 6(2) of the Health Service Act (Performance of functions outside England) or section 6(2) of the Health Service (Wales) Act (Performance of functions outside Wales);
 - (ii) pursuant to arrangements made under section 12(1) of the Health Service Act (Secretary of State’s arrangements with other bodies), section 10(1) of the Health Service (Wales) Act (Welsh Ministers’ arrangements with other bodies), paragraph 18 of Schedule 4 to the Health Service Act (Joint exercise of functions) or paragraph 18 of Schedule 3 to the Health Service (Wales) Act (Joint exercise of functions); or
 - (iii) under any equivalent provision in Scotland or pursuant to arrangements made under such provision; ►¹◀

¹Words in reg. 154(b)(iii) & reg. 154(c) omitted by reg. 9(16) of S.I. 2010/840 as from 28.6.10.

Absence of member of family of member of Her Majesty’s forces

155.—(1) A claimant is to continue to be entitled to an employment and support allowance during any period of temporary absence from Great Britain if—

- (a) the claimant is a member of the family of a member of Her Majesty’s forces and temporarily absent from Great Britain by reason only of the fact that the claimant is living with that member; ►²◀

²Words in reg. 155(1)(a) & reg. 155(1)(b) omitted by reg. 9(17) of S.I. 2010/840 as from 28.6.10.

(2) In this regulation “member of the family of a member of Her Majesty’s forces” means the spouse, civil partner, son, daughter, step-son, step-daughter, father, father-in-law, step-father, mother, mother-in-law or step-mother of such a member.

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(a) (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(b) or the Prisons (Scotland) Act 1989(c);
- (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(d) or by a voluntary organisation under section 59(1)(a) of that Act(e);
- (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 ¹Adoption and Children Act 2002(f) or the Adoption Agencies (Scotland) Regulations 1996(g).

¹Words in reg. 156(5)(d) substituted by reg. 9(3) of S.I. 2008/2428 as from 27.10.08.

(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

(a) 1978 c. 29.

(b) 1952 c. 52.

(c) 1989 c. 45.

(d) 1989 c. 41. Section 23(2)(a) was amended by section 49(3) of the Children Act 2004 (c. 31).

(e) Section 59(1)(a) was amended by section 49(4) of the Children Act 2004 (c. 31).

(f) 2002 c. 38.

(g) S.I. 1996/3266.

- (vii) a claimant who is, whether in the United Kingdom or elsewhere, receiving medically approved care provided in accommodation other than residential accommodation;
 - (viii) a full-time student to whom sub-paragraph (3) or (6)(b) does not apply;
 - (ix) a claimant other than a claimant to whom sub-paragraph (8) applies, who is receiving care provided in residential accommodation; or
 - (x) a claimant to whom sub-paragraph (6)(a) does not apply and who has left the dwelling that claimant occupies as the home through fear of violence in that dwelling, or by a person who was formerly a member of that claimant's family; and
- (d) the period of that claimant's absence is unlikely to exceed a period of 52 weeks, or in exceptional circumstances, is unlikely substantially to exceed that period.

(12) A claimant to whom sub-paragraph (11) applies is to be treated as occupying the dwelling that claimant normally occupies as the home during any period of absence not exceeding 52 weeks beginning with the first day of that absence.

(13) In this paragraph—

"medically approved" means certified by a medical practitioner;

"patient" means a person who is undergoing medical or other treatment as an in-patient in a hospital or similar institution;

►¹"period of study" has the meaning given in regulation 131 (interpretation); ◀
 "residential accommodation" means accommodation which is a care home, an Abbeyfield Home or an independent hospital;

"training course" means such a course of training or instruction provided wholly or partly by or on behalf of or in pursuance of arrangements made with, or approved by or on behalf of, ►²Skills Development Scotland, ◀ Scottish Enterprise, Highlands and Islands Enterprise, a government department or the Secretary of State.

¹Defn. of "period of study" inserted in para. 5(13) of Sch. 6 by reg. 11(17)(a) of S.I. 2009/2655 as from 26.10.09.

²Words inserted in defn. of "training course" by reg. 10(2)(c) of S.I. 2009/583 as from 6.4.09.

Housing costs not met

6.—(1) No amount may be met under the provisions of this Schedule—

- (a) in respect of housing benefit expenditure; or
- (b) where the claimant is living in a care home, an Abbeyfield Home or an independent hospital except where the claimant is living in such a home or hospital during a temporary absence from the dwelling the claimant occupies as the home and in so far as they relate to temporary absences, the provisions of paragraph 5(8) to (12) apply to that claimant during that absence.

(2) Subject to the following provisions of this paragraph, loans which, apart from this paragraph, qualify under paragraph 16 (loans on residential property) must not so qualify where the loan was incurred during the relevant period and was incurred—

- (a) after 27th October 2008; or
- ³(b) after 2nd May 1994 and the housing costs applicable to that loan were not met by virtue of the former paragraph 5A of Schedule 3 to the Income Support Regulations, or paragraph 4(2)(a) of Schedule 3 to the Income Support Regulations, paragraph 4(2)(a) of Schedule 2 to the Jobseeker's Allowance Regulations or paragraph 5(2)(a) of Schedule 2 to the State Pension Credit Regulations; ◀
- (c) subject to sub-paragraph (3), in the 26 weeks preceding 27th October 2008 by a person—
 - (i) who was not at that time entitled to income support, income-based jobseeker's allowance or state pension credit; and
 - (ii) who becomes, or whose partner becomes entitled to an income-related allowance after 27th October 2008 and that entitlement is within 26 weeks of an earlier entitlement to income support, an income-based jobseeker's allowance or state pension credit of the claimant or the claimant's partner.

³Para. 6(2)(b) substituted by reg. 16(d)(i) of S.I. 2008/2428 as from 27.10.08.

Sch. 6

(3) Sub-paragraph (2)(c) will not apply in respect of a loan where the claimant has interest payments on that loan met without restrictions under an award of income support in respect of a period commencing before 27th October 2008.

(4) The “relevant period” for the purposes of this paragraph is any period during which the person to whom the loan was made—

- (a) is entitled to an income-related allowance, an income-based jobseeker’s allowance, income support or state pension credit; or
- (b) has a partner and the partner is entitled to an income-related allowance, an income-based jobseeker’s allowance, income support or state pension credit,

together with any linked period, that is to say a period falling between two periods separated by not more than 26 weeks in which one of the paragraphs (a) or (b) is satisfied.

(5) For the purposes of sub-paragraph (4), a person is to be treated as entitled to an income-related allowance during any period when that person or that person’s partner was not so entitled because—

- (a) that person or that person’s partner was participating in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker’s Allowance Regulations or in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations; and
- (b) in consequence of such participation that person or that person’s partner was engaged in remunerative work or had an income¹ equal to or less than in excess of the claimant’s applicable amount as prescribed in Part 9.

(6) A person treated by virtue of paragraph 15 as being in receipt of an income-related allowance for the purposes of this Schedule is not to be treated as entitled to an income-related allowance for the purposes of sub-paragraph (4).

(7) For the purposes of sub-paragraph (4)—

- (a) any week in the period of 26 weeks ending on 1st October 1995 on which there arose an entitlement to income support such as is mentioned in that sub-paragraph must be taken into account in determining when the relevant period commences; and
- (b) two or more periods of entitlement and any intervening linked periods must together form a single relevant period.

(8) Where the loan to which sub-paragraph (2) refers has been applied—

- (a) for paying off an earlier loan, and that earlier loan qualified under paragraph 16 during the relevant period; or
- (b) to finance the purchase of a property where an earlier loan, which qualified under paragraph 16 or 17 during the relevant period in respect of another property, is paid off (in whole or in part) with monies received from the sale of that property,

then the amount of the loan to which sub-paragraph (2) applies is the amount (if any) by which the new loan exceeds the earlier loan.

(9) Notwithstanding the preceding provisions of this paragraph, housing costs must be met in any case where a claimant satisfies any of the conditions specified in sub-paragraphs (10) to (13), but—

- (a) those costs must be subject to any additional limitations imposed by the sub-paragraph; and
- (b) where the claimant satisfies the conditions in more than one of these sub-paragraphs, only one of them will apply in that claimant’s case and the one that applies will be the one most favourable to the claimant.

(10) The conditions specified in this sub-paragraph are that—

- (a) during the relevant period the claimant or a member of the claimant’s family acquires an interest (“the relevant interest”) in a dwelling which that claimant then occupies or continues to occupy, as the home; and

¹Words added to Sch. 6, para. 6(5)(b) by reg. 16(11)(a) of S.I. 2011/674 as from 11.4.11 in certain situations. See reg. 1(3) of the S.I. for details.

- (a) the dwelling occupied as the home, excluding any part which is let, is larger than is required by the claimant, that claimant's partner (if the claimant has a partner), any person under the age of 20 and any other non-dependants having regard, in particular, to suitable alternative accommodation occupied by a household of the same size; or
- (b) the immediate area in which the dwelling occupied as the home is located is more expensive than other areas in which suitable alternative accommodation exists; or
- (c) the outgoings of the dwelling occupied as the home which are met under paragraphs 16 to 18 are higher than the outgoings of suitable alternative accommodation in the area.

(2) For the purposes of paragraphs (a) to (c) of sub-paragraph (1), no regard is to be had to the capital value of the dwelling occupied as the home.

(3) Subject to the following provisions of this paragraph, the amount of the loan which falls to be met is to be restricted and the excess over the amounts which the claimant would need to obtain suitable alternative accommodation will not be allowed.

(4) Where, having regard to the relevant factors, it is not reasonable to expect the claimant and the claimant's partner to seek alternative cheaper accommodation, no restriction is to be made under sub-paragraph (3).

(5) In sub-paragraph (4) "the relevant factors" are—

- (a) the availability of suitable accommodation and the level of housing costs in the area; and
- (b) the circumstances of the claimant and those who live with the claimant, including, in particular, the age and state of health of any of those persons, the employment prospects of the claimant and, where a change in accommodation is likely to result in a change of school, the effect on the education of any person below the age of 20 who lives with the claimant.

(6) Where sub-paragraph (4) does not apply and the claimant or the claimant's partner was able to meet the financial commitments for the dwelling occupied as the home when these were entered into, no restriction is to be made under this paragraph during the 26 weeks immediately following the date on which—

- (a) the claimant became entitled to an income-related allowance where the claimant's housing costs fell within one of the cases in sub-paragraph (1) on that date; or
- (b) a decision took effect which was made under section 10 of the Social Security Act 1998 on the ground that the claimant's housing costs fell within one of the cases in sub-paragraph (1),

nor during the next 26 weeks if and so long as the best endeavours of the claimant are used to obtain cheaper accommodation.

(7) For the purposes of calculating any period of 26 weeks referred to in sub-paragraph (6), and for those purposes only, a person is to be treated as entitled to an income-related allowance for any period of 12 weeks or less in respect of which that person was not in receipt of an income-related allowance and which fell immediately between periods in respect of which that person was in receipt of that allowance.

(8) Any period in respect of which—

- (a) an income-related allowance was paid to a claimant; and
- (b) it was subsequently determined that such a claimant was not entitled to an income-related allowance for that period,

will be treated for the purposes of sub-paragraph (7) as a period in respect of which that claimant was not in receipt of an income-related allowance.

(9) Paragraphs (c) to (f) of sub-paragraph (1) of paragraph 15 will apply to sub-paragraph (7) as they apply to paragraphs 8 and 9 but with the modification that the words "Subject to sub-paragraph (2)" were omitted and references to "the claimant" were references to the person mentioned in sub-paragraph (7).

Sch. 6

(10) References to an income-related allowance in sub-paragraphs (6) and (7) must be treated as including references to income support, income-based jobseeker's allowance and state pension credit in respect of any period which falls immediately before the appointed day.

Linking rule

¹Words deleted in para. 15(1) by reg. 16(11)(b) of S.I. 2011/674 as from 11.4.11.

15.—(1) ¹ for the purposes of this Schedule—

- (a) a claimant is to be treated as being in receipt of an income-related allowance during the following periods—
 - (i) any period in respect of which it was subsequently determined that that claimant was entitled to an income-related allowance; and
 - (ii) any period of 12 weeks or less or, as the case may be, 52 weeks or less, in respect of which that claimant was not in receipt of an income-related allowance and which fell immediately between periods in respect of which—
 - (aa) that claimant was, or was treated as being, in receipt of an income-related allowance;
 - (bb) that claimant was treated as entitled to an income-related allowance for the purpose of sub-paragraph (9) or (10); or
 - (cc) (i) above applies;
- (b) a claimant is to be treated as not being in receipt of an income-related allowance during any period other than a period to which (a)(ii) above applies in respect of which it is subsequently determined that that claimant was not so entitled;
- (c) where—
 - (i) the claimant was a member of a couple or a polygamous marriage; and
 - (ii) the claimant's partner was, in respect of a past period, in receipt of an income-related allowance for that claimant's partner and the claimant; and
 - (iii) the claimant is no longer a member of that couple or polygamous marriage; and
 - (iv) the claimant made a claim for an income-related allowance within 12 weeks or, as the case may be, 52 weeks, of ceasing to be a member of that couple or polygamous marriage,

the claimant must be treated as having been in receipt of an income-related allowance for the same period as the claimant's former partner had been or had been treated, for the purposes of this Schedule, as having been;
- (d) where the claimant's partner's applicable amount was determined in accordance with paragraph 1(1) (single claimant) or paragraph 1(2) (lone parents) of Part 1 of Schedule 4 (prescribed amounts) in respect of a past period, provided that the claim was made within 12 weeks or, as the case may be, 52 weeks, of the claimant and that claimant's partner becoming one of a couple or polygamous marriage, the claimant is to be treated as having been in receipt of an income-related allowance for the same period as the claimant's partner had been or had been treated, for the purposes of this Schedule, as having been;
- (e) where the claimant is a member of a couple or a polygamous marriage and the claimant's partner was, in respect of a past period, in receipt of an income-related allowance for that claimant's partner and the claimant, and the claimant has begun to receive an income-related allowance as a result of an election by the members of the couple or polygamous marriage, that claimant is to be treated as having been in receipt of an income-related allowance for the same period as that claimant's partner had been or had been treated, for the purposes of this Schedule, as having been;

- (iii) claimant made a claim for an income-related allowance within 12 weeks or, as the case may be, 52 weeks, of the date on which the person entitled to an income-related allowance mentioned in paragraph (i) above ceased to be so entitled,

the claimant is to be treated as being in receipt of an income-related allowance for the same period as that person had been or had been treated, for the purposes of this Schedule, as having been.

(2) ▶¹◀

(3) For the purposes of this Schedule, where a claimant has ceased to be entitled to an income-related allowance because that claimant or that claimant's partner is—

- (a) participating in arrangements for training made under section 2 of the Employment and Training Act 1973^(a) or section 2 of the Enterprise and New Towns (Scotland) Act 1990^(b); or
- (b) attending a course at an employment rehabilitation centre established under that section,

¹Para. 15(2) omitted by reg. 16(11)(c) of S.I. 2011/674 as from 11.4.11.

the claimant is to be treated as if that claimant had been in receipt of an income-related allowance for the period during which that claimant or that claimant's partner was participating in such arrangements or attending such a course.

(4) For the purposes of this Schedule, a claimant who has ceased to be entitled to an income-related allowance because—

- (a) that claimant or that claimant's partner was participating in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations, in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations or in an employment zone scheme; and
- (b) in consequence of such participation the claimant or the claimant's partner was engaged in remunerative work or had an income in excess of the claimant's applicable amount as prescribed in Part 9,

will be treated as if the claimant had been in receipt of an income-related allowance for the period during which that claimant or that claimant's partner was participating in that programme or activity.

(5) Where, for the purposes of sub-paragraphs (1), (3) and (4), a claimant is treated as being in receipt of an income-related allowance, for a certain period, that claimant will, subject to sub-paragraph (6), be treated as being entitled to an income-related allowance for the same period.

(6) Where the appropriate amount of a loan exceeds the amount specified in paragraph 12(4), sub-paragraph (5) will not apply except—

- (a) for the purposes of paragraph 8(1) or 9(1); or
- (b) where a claimant has ceased to be in receipt of an income-related allowance for a period of 104 weeks or less because that claimant or that claimant's partner is a work or training beneficiary within the meaning of regulation 148 (work or training beneficiaries).

(7) For the purposes of this Schedule, in determining whether a claimant is entitled to or to be treated as entitled to an income-related allowance, entitlement to a contribution-based jobseeker's allowance immediately before a period during which that claimant or that claimant's partner is participating in an employment programme specified in regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations, in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of those Regulations is to be treated as entitlement to an income-related allowance for the purposes of any requirement that a claimant is, or has been, entitled to an income-related allowance for any period of time.

(a) 1973 c. 50.

(b) 1990 c. 35.

Sch. 6

(8) For the purposes of this Schedule, sub-paragraph (9) applies where a claimant is not entitled to an income-related allowance by reason only that the claimant has—

- (a) capital exceeding £16,000; or
- (b) income ►¹equal to or◀ exceeding the applicable amount which applies in that claimant's case; or
- ¹(bb) an amount of contributory allowance payable in respect of a claimant under section 2 that is equal to, or exceeds, the applicable amount in the claimant's case; or◀
- (c) both capital exceeding £16,000 and income exceeding the applicable amount which applies in that claimant's case.

¹In Sch. 6, words in para. 15(8)(b) & para. 15(8)(bb) inserted by reg. 16(11)(d)(i) & (ii) of S.I. 2011/674 as from 11.4.11.

(9) A claimant to whom sub-paragraph (8) applies is to be treated as entitled to an income-related allowance throughout any period of not more than 39 weeks which comprises only days—

- (a) on which that claimant is entitled to a contributory allowance, a contribution-based jobseeker's allowance, statutory sick pay or incapacity benefit; or
- (b) on which that claimant is, although not entitled to any of the benefits mentioned in paragraph (a) above, entitled to be credited with earnings equal to the lower earnings limit for the time being in force in accordance with regulation 8A or 8B of the Social Security (Credits) Regulations 1975(a).

(10) Subject to sub-paragraph (11), a claimant to whom sub-paragraph (8) applies and who is either a lone parent or a person who is described in paragraph 4 or 5 of Schedule 1B of the Income Support Regulations (persons caring for another person) is, for the purposes of this Schedule, to be treated as entitled to an income-related allowance throughout any period of not more than 39 weeks following the refusal of a claim for an income-related allowance made by or on behalf of that claimant.

(11) Sub-paragraph (10) will not apply in relation to a claimant mentioned in that sub-paragraph who, during the period referred to in that sub-paragraph—

- (a) is engaged in, or is treated as engaged in, remunerative work or whose partner is engaged in, or is treated as engaged in, remunerative work;
- ²(b) is in full-time education and in receipt of disability living allowance;◀
- (c) is temporarily absent from Great Britain, other than in the circumstances specified in regulation 152 or 153(1)(c)(ii) (temporary absence from Great Britain).

²Para. 15(11)(b) substituted by reg. 16(g) of S.I. 2008/2428 as from 27.10.08.

(12) In a case where—

- (a) sub-paragraphs (9) and (10) apply solely by virtue of sub-paragraph (8)(b); and

(a) S.I. 1975/556, the relevant amending instruments are S.I. 1996/2367, S.I. 2000/3120, S.I. 2001/518, S.I. 2001/1711, S.I. 2002/490, S.I. 2003/521 and S.I. 2007/1749.

SCHEDULE 7

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 ►¹sub-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.

¹In Sch. 7, words in paras. 1(1)(b) & 2(1) & para. 1(2)(a) substituted by reg. 11(18)(a)-(c) of S.I. 2009/2655. See reg. 1(2)(d) to this S.I. for the relevant commencement date.

(2) This sub-paragraph applies to—

- ¹(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(a) (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.

2.—(1) In the case of a claimant to whom this paragraph applies, any earnings (other than a payment of the nature described in ►¹paragraph 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.

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.

(a) 1996 c. 18. Sections 34 and 70 were amended by section 1(2) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8).

Sch. 7

¹Amounts in paras. 5, 6 & 7 substituted by reg. 16(12) of S.I. 2011/674 as from 11.4.11 in certain situations. See reg. 1(3) of the S.I. for details.

²Para. 5A inserted in Sch. 7 by reg. 9(19) of S.I. 2010/840 as from 28.6.10.

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, ¹16 x National Minimum Wage◀ in regulation 45(3) or (4).

²5A. 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.◀

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, ¹16 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, ¹16 x National Minimum Wage◀, but only up to a maximum of £20.

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) ¹16 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.

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.

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(a); and
- (b) by reason of that employment has failed to satisfy any of the conditions for

(a) S.I. 2001/1004.

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.

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.

SCHEDULE 8

Regulation 104(2)

SUMS TO BE DISREGARDED IN THE CALCULATION OF INCOME OTHER THAN EARNINGS

1. Any amount paid by way of tax on income which is taken into account under regulation 104 (calculation of income other than earnings).

2. Any payment in respect of any expenses incurred, or to be incurred, by a claimant who is—

- (a) engaged by a charitable or voluntary organisation; or
- (b) a volunteer,

if the claimant otherwise derives no remuneration or profit from the employment and is not to be treated as possessing any earnings under regulation 108(3) (notional income).

¹2A. Any payment in respect of expenses arising out of the claimant’s participation in a service user group.◀

¹Para. 2A inserted in Sch. 8 by reg. 11(19)(a) of S.I. 2009/2655. See reg. 1(2)(d) to this S.I. for the relevant commencement date.

3. In the case of employment as an employed earner, any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment.

4. In the case of a payment under Parts 11 to 12ZB of the Contributions and Benefits Act(a) or any remuneration paid by or on behalf of an employer to the claimant who for the time being is unable to work due to illness or maternity or who is taking paternity leave or adoption leave—

- (a) any amount deducted by way of primary Class 1 contributions under the Contributions and Benefits Act;
- (b) one-half of any sum paid by the claimant by way of a contribution towards an occupational or personal pension scheme.

5. In Northern Ireland, in the case of a payment under Parts 11 to 12ZB of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b), or any remuneration paid by or on behalf of an employer to the claimant who for the time being is unable to work due to illness or maternity or who is taking paternity leave or adoption leave—

(a) Part 12ZB was inserted by the Employment Act 2002, section 4 and amended by the Income Tax (Earnings and Pensions) Act 2003 (c. 1), section 722 and paragraphs 169 and 184 of Schedule 6, the Work and Families Act 2006, sections 2 and 11(1) and paragraph 21 of Schedule 1, the National Health Service (Consequential Provisions) Act 2006 (c. 43), section 2 and paragraphs 142, 149 and 150, the Act section 67 and Schedule 8, S.I. 2006/1031 and S.I. 2006/2012.

(b) 1992 c. 7.

Sch. 8

- (a) any amount deducted by way of primary Class 1 contributions under that Act;
- (b) one-half of any sum paid by way of a contribution towards an occupational or personal pension scheme.

6. Any guardian's allowance.

7.—(1) Any child tax credit.

(2) Any child benefit.

¹(3) Any increase in respect of a dependent child or dependent young person under section 80 or 90 of the Contributions and Benefits Act.◀

8. Any mobility component of disability living allowance.

9. Any concessionary payment made to compensate for the non-payment of—

- (a) any payment specified in paragraph 8 or 11;
- (b) an ²income-related◀ employment and support allowance, income support or ²an income-based jobseeker's allowance◀.

10. Any mobility supplement or any payment intended to compensate for the non-payment of such a supplement.

11. Any attendance allowance or the care component of disability living allowance.

12. Any payment to the claimant as holder of the Victoria Cross or George Cross or any analogous payment.

13.—(1) Any payment—

- (a) by way of an education maintenance allowance made pursuant to—
 - (i) regulations made under section 518 of the Education Act 1996(a);
 - (ii) regulations made under section 49 or 73(f) of the Education (Scotland) Act 1980(b); or
 - (iii) directions made under section 73ZA of the Education (Scotland) Act 1980(c) and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992(d); or
- (b) corresponding to such an education maintenance allowance, made pursuant to—
 - (i) section 14 or section 181 of the Education Act 2002(e); or
 - (ii) regulations made under section 181 of that Act.

(2) Any payment, other than a payment to which sub-paragraph (1) applies, made pursuant to—

- (a) regulations made under section 518 of the Education Act 1996;
- (b) regulations made under section 49 of the Education (Scotland) Act 1980; or
- (c) directions made under section 73ZA of the Education (Scotland) Act 1980 and paid under section 12(2)(c) of the Further and Higher Education (Scotland) Act 1992;

in respect of a course of study attended by a child or a young person or a person who is in receipt of an education maintenance allowance made pursuant to any provision specified in sub-paragraph (1).

(a) 1996 c. 56. Section 518 was substituted by the School Standards and Framework Act 1998 (c. 31), section 129.

(b) 1980 c. 44.

(c) Section 73ZA was inserted by the Further and Higher Education (Scotland) Act 2005 asp. 6, section 19.

(d) 1992 c. 37.

(e) 2002 c. 32. Section 14 was amended by the Children Act 2004 (c. 31), section 59 and the Education Act 2005 (c. 18), Schedule 14, paragraph 23(1) to (3).

2008 No. 3270

SOCIAL SECURITY

The Employment and Support Allowance (Up-rating Modification) (Transitional) Regulations 2008

<i>Made</i> - - - -	<i>18th December 2008</i>
<i>Laid before Parliament</i>	<i>29th December 2008</i>
<i>Coming into force</i> -	<i>20th January 2009</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 24(1) and 25(2)(c), (3)(a) and (5) of, and paragraph 10 of Schedule 4 to, the Welfare Reform Act 2007(a).

This Instrument contains only regulations made by virtue of, or consequential upon, paragraph 10 of Schedule 4 to the Welfare Reform Act 2007 and is made before the end of the period of 6 months beginning with the coming into force of that paragraph(b).

Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance (Up-rating Modification) (Transitional) Regulations 2008 and come into force on 20th January 2009.

Modification of section 150 of the Administration Act

2.—(1) This regulation applies where a claimant is entitled to incapacity benefit or severe disablement allowance which includes an amount under one of the provisions referred to in paragraph (2).

(2) The provisions referred to in paragraph (1) are—

- (a) section 69(1)(c) of the Contributions and Benefits Act (severe disablement allowance: age related addition);
- (b) regulation 10 of the Social Security (Incapacity Benefit) Regulations 1994(d) (increase in rate of incapacity benefit etc.); and
- (c) regulation 18(1)(c) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995(e) (rate of long-term incapacity benefit in transitional cases).

(a) 2007 c. 5. Section 24(1) is cited for the meaning given to "prescribed" and "regulations".

(b) See section 173(5) of the Social Security Administration Act 1992 (c. 5). The requirement to refer regulations to the Social Security Advisory Committee does not apply where regulations are contained in a statutory instrument before the end of the period of 6 months beginning with the coming into force of the enactment under which the regulations were made or consequential upon a specified enactment and made before the end of the period of 6 months beginning with the coming into force of that enactment.

(c) Section 69 was repealed by section 65 of the Welfare Reform and Pensions Act 1999 (c. 30) but saved for existing claimants by article 4 of the Welfare Reform and Pensions Act 1999 (Commencement No. 9, and Transitional and Savings Provisions) Order 2000 (S.I. 2000//2958).

(d) S.I. 1994/2946. The relevant amending Instrument is S.I. 2008/632.

(e) S.I. 1995/310. The relevant amending Instrument is S.I. 2008/632.

EMPLOYMENT AND SUPPORT ALLOWANCE (UP-RATING MODIFICATION) (TRANSITIONAL) REGULATIONS 2008

(3) Where this regulation applies, section 150 of the Administration Act(a) (annual up-rating of benefits) is to have effect as if the following were inserted after subsection (5)–

“(5A) The Secretary of State may, in respect of each of the tax years beginning with 2009-10 and ending with 2013-14, include in the draft of an uprating order a reduction in an amount under–

- (a) section 69(1) of the Contributions and Benefits Act (severe disablement allowance: age related addition);
- (b) regulation 10 of the Social Security (Incapacity Benefit) Regulations 1994 (increase in rate of incapacity benefit etc.); and
- (c) regulation 18(1)(c) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995 (rate of long-term incapacity benefit in transitional cases).”.

Signed by authority of the Secretary of State for Work and Pensions.

18th December 2008

Tony McNulty
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of these Regulations)

The regulations contained in this Instrument are either made by virtue of, or are consequential upon, provisions in Part 1 of the Welfare Reform Act 2007. This Instrument is made before the expiry of the period of 6 months beginning with the coming into force of those provisions; the regulations in it are therefore exempt in accordance with section 173(5) of the Social Security Administration Act 1992 from the requirement in section 172(1) of that Act to refer proposals to make Regulations to the Social Security Advisory Committee and are made without reference to that Committee.

Regulation 2 modifies the effect of section 150 of the Social Security Administration Act 1992 so that the up-rating order made under that section may reduce certain amounts.

These Regulations have no impact on the cost of business, charities or the voluntary sector and an Impact Assessment has not been published. However, an Impact Assessment has been completed for the wider set of rate alignment measures announced in the White Paper “Raising expectations and increasing support” (Cm 7506) and can be found at <http://www.dwp.gov.uk/welfarereform/raisingexpectations/impact-assessment.pdf>.

(a) 1992 c. 5. Section 150 was amended by paragraph 28 of Schedule 8 to the Pension Schemes Act 1993 (c. 48), sections 2(3) and 9(4) of the Social Security (Incapacity for Work) Act 1994 (c. 18) (“the 1994 Act”), paragraph 64 of Schedule 2 to the Jobseekers Act 1995 (c. 18), section 131(2) of the Pensions Act 1995 (c. 26), paragraph 24 of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c. 30), paragraph 16 of Schedule 2 to the State Pension Credit Act 2002 (c. 16), paragraph 35 of Schedule 3, and Schedule 6, to the Tax Credits Act 2002 (c. 21), paragraph 14 of Schedule 7 to the Employment Act 2002 (c. 22), paragraph 21 of Schedule 11 to the Pensions Act 2004 (c. 35), paragraph 10(21) of Schedule 3 to the Welfare Reform Act 2007 (c. 5), section 6(1) to (4) of, and paragraph 21 of Schedule 1 to, the Pensions Act 2007 (c. 22), paragraph 8 of the Schedule to S.I. 2005/2053 and by article 2 of S.I. 2006/2839. *See* also section 4(8) of the 1994 Act and regulation 18(3) of S.I. 1995/310.

2011 No. 1349

SOCIAL SECURITY

The Employment and Support Allowance (Work-Related Activity) Regulations 2011

Made - - - -

26th May 2011

Coming into force -

1st June 2011

In accordance with section 26(1)(b) of the Welfare Reform Act 2007(a), and section 8(3) of the Welfare Reform Act 2009(b), a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 9 and 10 of the Social Security Act 1998(c), and sections 11, 12(1) and (2), 13, 14, 15(d), 16, 17(3)(b), 24(1)(e) and 25 of the Welfare Reform Act 2007.

In accordance with section 173(1) of the Social Security Administration Act 1992(f), the Secretary of State has obtained the agreement of the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to them.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance (Work-Related Activity) Regulations 2011 and shall come into force on 1st June 2011.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Welfare Reform Act 2007;

“the ESA Regulations” means the Employment and Support Allowance Regulations 2008(g);

“action plan” means an action plan issued in accordance with regulation 5;

“carer’s allowance”, “child”, “lone parent”, “medical treatment” and “working day” have the meaning given in regulation 2(1) of the ESA Regulations.

(a) 2007 c. 5.

(b) 2009 c. 24.

(c) 1998 c. 14.

(d) Subsections (1), (1A) and (2) of section 15 were substituted for subsections (1) and (2), as originally enacted, by section 10 of the Welfare Reform Act 2009 (c. 24).

(e) Section 24(1) is an interpretation provision and is cited because of the meaning it gives to the word “prescribed”.

(f) 1992 c. 5.

(g) S.I. 2008/794.

(2) For the purpose of these Regulations where a written notice is given by sending it by post it is taken to have been received on the second working day after posting.

PART 2

Work-related activity

Requirement to undertake work-related activity

3.—(1) The Secretary of State may require a person who satisfies the requirements in paragraph (2) to undertake work-related activity(**a**) as a condition of continuing to be entitled to the full amount of employment and support allowance payable to that person.

(2) The requirements referred to in paragraph (1) are that the person—

- (a) is required to take part in, or has taken part in, one or more work-focused interviews pursuant to regulation 54 of the ESA Regulations;
- (b) is not a lone parent who is responsible for and a member of the same household as a child under the age of 5;
- (c) is not entitled to a carer's allowance; and
- (d) is not entitled to a carer premium under paragraph 8 of Schedule 4 to the ESA Regulations.

(3) A requirement to undertake work-related activity ceases to have effect if the person becomes a member of the support group(**b**).

(4) A requirement imposed under paragraph (1)—

- (a) must be reasonable in the view of the Secretary of State, having regard to the person's circumstances; and
- (b) may not require the person to—
 - (i) apply for a job or undertake work, whether as an employee or otherwise; or
 - (ii) undergo medical treatment.

(5) A person who is a lone parent and in any week is responsible for and a member of the same household as a child under the age of 13, may only be required to undertake work-related activity under paragraph (1) during the child's normal school hours.

Directions about work-related activity

4.—(1) The circumstances in paragraph (2) are the circumstances prescribed for the purposes of section 15(1)(a) of the Act.

(2) The circumstances referred to in paragraph (1) are that—

- (a) the person has been identified by the Secretary of State as having a barrier to work and in the view of the Secretary of State has refused to address that barrier; and
- (b) the Secretary of State considers that the activity specified in the direction given under section 15(1) of the Act is a prerequisite to the person's ability to obtain or remain in work.

Notification of work-related activity and action plans

5.—(1) The Secretary of State must notify a person of a requirement to undertake work-related activity by including the requirement in a written action plan given to the person.

(a) For the meaning of "work-related activity" see sections 13(7) and 24(1) of the Act.

(b) For the meaning of "member of the support group" see section 24(4) of the Act.

- (2) The action plan must specify—
- (a) the work-related activity which the person is required to undertake; and
 - (b) any other information that the Secretary of State considers appropriate.

Requirement to undertake work-related activity at a particular time not to apply

6. The Secretary of State may determine that a requirement as to the time at or by which work-related activity is to be undertaken is not to apply, or is to be treated as not having applied, if in the view of the Secretary of State it would be, or would have been, unreasonable to require the person to undertake the activity at or by that time.

Reconsideration of action plans

- 7.—(1) A person may request reconsideration of an action plan.
- (2) On receipt of a request the Secretary of State must reconsider the action plan.
- (3) A decision of the Secretary of State following a request must be in writing and given to the person.

Failure to undertake work-related activity

8.—(1) A person who is required to undertake work-related activity but fails to do so must show good cause for the failure within 5 working days of the date on which the Secretary of State gives notice of the failure.

(2) The Secretary of State must determine whether a person who is required to undertake work-related activity has failed to do so and, if so, whether the person has shown good cause for the failure.

(3) In deciding whether a person has shown good cause for the failure, the Secretary of State must take account of all the circumstances of the case including in particular the person's physical or mental health or condition.

PART 3

Contracting Out

Contracting out

9.—(1) Any function of the Secretary of State specified in paragraph (2) may be exercised by, or by employees of, such person (if any) as may be authorised by the Secretary of State.

- (2) The functions are—
- (a) any function under—
 - (i) regulation 3 (requirement to undertake work-related activity);
 - (ii) regulation 5 (notification of work-related activity and action plans);
 - (iii) regulation 6 (requirement to undertake work-related activity not to apply);
 - (iv) regulation 7 (reconsideration of action plans);
 - (b) any function under regulation 64(1)(a) and (c) and (1A) of the ESA Regulations (decisions in relation to cessation of reduction).

PART 4

Amendment to the ESA Regulations

Amendment to regulation 2(1) of the ESA Regulations (interpretation)

- [Regulation 10 amends regulation 2(1) of S.I.2008/794.]
- [Regulation 11 revokes regulations 47, 48, 49, 51, 52 & 53 of S.I. 2008/794.]
- [Regulation 12 amends regulation 56(1) of S.I. 2008/794]
- [Regulation 13 amends regulation 57 of S.I. 2008/794.]
- [Regulation 14 amends regulation 58 of S.I. 2008/794.]
- [Regulation 15 amends regulation 61(3) of S.I. 2008/794.]
- [Regulation 16 amends regulation 62 of S.I. 2008/794.]
- [Regulation 17 amends regulation 63 of S.I. 2008/794.]
- [Regulation 18 amends regulation 64 of S.I. 2008/794.]
- [Regulation 19 amends Schedule 8 of S.I. 2008/794.]
- [Regulation 20 amends Schedule 9 of S.I. 2008/794.]

PART 5

Amendment to the Social Security and Child Support (Decisions and Appeals)
Regulations 1999

**Amendment to the Social Security and Child Support (Decisions and Appeals)
Regulations 1999**

- [Regulation 21 amends regulation 1(3) of S.I. 1999/991.]

Signed by authority of the Secretary of State for Work and Pensions.

26th May 2011

Chris Grayling
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the provisions in Part 1 of the Welfare Reform Act 2007 (“the Act”).

Section 13 of the Act introduced work-related activity requirements for claimants of employment and support allowance (ESA) who are not in the “support group” (defined in section 24(4) as persons in respect of whom it is determined that they have, or are to be treated as having, limited capability for work-related activity).

Regulation 3 sets out the circumstances in which the Secretary of State may require such a person to undertake work-related activity and who such a requirement may be applied to. It also makes clear that a requirement must be reasonable in the view of the Secretary of State, having regard to the person’s circumstances and may not require the person to apply for a job, undertake work or undergo medical treatment as part of the work-related activity requirement. It also provides that a lone parent with a child under the age of 13 may only be required to undertake work related activity during normal school hours.

Regulation 4 sets out the circumstances in which the Secretary of State may exercise the power to give a direction under section 15 of the Act.

Regulation 5 sets out the way in which the Secretary of State must notify a person of a requirement to undertake work-related activity, by including the requirement in a written action plan.

Regulation 6 provides that the requirement to undertake work-related activity at or by a particular time may be adjusted in certain circumstances.

Regulation 7 sets out a right to request reconsideration of the action plan. On receipt of the request the action plan must be reconsidered and a decision notified to the person.

Regulation 8 sets out what happens if a person fails to undertake work-related activity and provides an opportunity to show good cause for the failure. If good cause is not shown, a sanction may be given under regulation 63 of the Employment and Support Allowance Regulations 2008 (S.I. 2008/794) “the ESA Regulations” as amended by regulation 17 of these Regulations.

Regulation 9 makes provision for contracting out the work-related activity functions (with the exception of functions relating to the consideration of good cause and the imposition of sanctions).

Regulations 10-21 make certain consequential and miscellaneous amendments to the ESA Regulations:

Regulations 10, 13(4), 14 and 16 revoke regulations regarding action plans relating to work focused interviews. Action plans will only be required if work related activity is imposed under these Regulations.

Regulation 11 revokes provisions relating to work-focused health related assessments which are no longer required of ESA claimants.

Regulations 12 and 13 allow for work-focused interviews to be carried out other than in person and regulation 15 substitutes new good cause provisions for failures to take part in a work-focused interview, to align with regulations in relation to failures to undertake work-related activity.

Regulations 17 and 18 apply the existing ESA sanctions regime for failure to take part in a work-focused interview to a failure to undertake work-related activity and provide for when a sanction will cease.

Regulations 19 and 20 provide that travel and other expenses paid to persons in connection with their undertaking of work-related activity are disregarded as income and capital for the purposes of income related ESA.

Regulation 21 makes consequential amendments to the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I. 1999/991).

A full impact assessment has been produced for this instrument. Copies are available in the libraries of both Houses of Parliament, and may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 6B Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.

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