
STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 10

INCOME AND CAPITAL

CHAPTER 8

Liable relatives

Interpretation

119. In this Chapter—

“claimant” includes a young claimant;

“liable relative” means—

- (a) a spouse, former spouse, civil partner or former civil partner of a claimant or of a member of the claimant’s family;
- (b) a parent of a child or young person who is a member of the claimant’s family or of a young claimant;
- (c) a person who has not been adjudged to be the father of a child or young person who is a member of the claimant’s family or of a young claimant where that person is contributing towards the maintenance of that child, young person or young claimant and by reason of that contribution the claimant may reasonably be treated as the father of that child, young person or young claimant;
- (d) a person liable to maintain another person by virtue of section 78(6)(c) of the Administration Act (liability to maintain) where the latter is the claimant or a member of the claimant’s family,

and, in this definition, a reference to a child’s, young person’s or young claimant’s parent includes any person in relation to whom the child, young person or young claimant was treated as a child or a member of the family;

“payment” means a periodical payment or any other payment made by or derived from a liable relative including, except in the case of a discretionary trust, any payment which would be so made or derived upon application being made by the claimant but which has not been acquired by the claimant but only from the date on which it could be expected to be acquired were an application made; but it does not include any payment—

- (a) arising from a disposition of property made in contemplation of, or as a consequence of—
 - (i) an agreement to separate;
 - (ii) any proceedings for judicial separation, divorce or nullity of marriage; or
 - (iii) any proceedings for separation, dissolution or nullity in relation to a civil partnership;
- (b) made after the death of the liable relative;

- (c) made by way of a gift but not in aggregate or otherwise exceeding £250 in the period of 52 weeks beginning with the date on which the payment, or if there is more than one such payment the first payment, is made; and, in the case of a claimant who continues to be in receipt of an income-related allowance at the end of the period of 52 weeks, this provision is to continue to apply thereafter with the modification that any subsequent period of 52 weeks is to begin with the first day of the benefit week in which the first payment is made after the end of the previous period of 52 weeks;
- (d) made—
 - (i) to a third party in respect of the claimant or a member of the claimant’s family; or
 - (ii) to the claimant or to a member of the claimant’s family in respect of a third party, where having regard to the purpose of the payment, the terms under which it is made and its amount it is unreasonable to take it into account;
- (e) in kind;
- (f) to, or in respect of, a child or young person who is to be treated as not being a member of the claimant’s household under regulation 156 (circumstances in which a person is to be treated as being or not being a member of the same household);
- (g) which is not a periodical payment, to the extent that any amount of that payment—
 - (i) has already been taken into account under this Part by virtue of a previous claim or determination;
 - (ii) has been recovered under section 74 of the Administration Act⁽¹⁾ (income support and other payments) or is currently being recovered; or
 - (iii) at the time the determination is made, has been used by the claimant except where the claimant has deprived himself or herself of that amount for the purpose of securing entitlement to an income-related allowance or increasing the amount of that allowance;

“periodical payment” means—

- (a) a payment which is made or is due to be made at regular intervals in pursuance of a court order or agreement for maintenance;
- (b) in a case where the liable relative has established a pattern of making payments at regular intervals, any such payment;
- (c) any payment not exceeding the amount of an income-related allowance payable had that payment not been made;
- (d) any payment representing a commutation of payments to which paragraph (a) or (b) of this definition applies whether made in arrears or in advance,

but does not include a payment due to be made before the first benefit week pursuant to the claim which is not so made;

“young claimant” means a person aged 16 or over but under 20 who makes a claim for an income-related allowance.

Treatment of liable relative payments

120. Subject to regulation 121 (disregard of payments treated as not relevant income) and except where regulation 126(1) (liable relative payments to be treated as capital) applies a payment—

- (a) to the extent that it is not a payment of income, is to be treated as income;

(1) Section 74 has been amended by the Jobseekers Act 1995 (c. 18), paragraph 5 of the Schedule and the Act, paragraph 10(8) of Schedule 3.

(b) is to be taken into account in accordance with the following provisions of this Chapter.

Disregard of payments treated as not relevant income

121. Where the Secretary of State treats any payment as not being relevant income for the purposes of section 74A of the Administration Act⁽²⁾ (payment of benefit where maintenance payments collected by Secretary of State), that payment is to be disregarded in calculating a claimant's income.

Period over which periodical payments are to be taken into account

122.—(1) The period over which a periodical payment is to be taken into account is to be—

- (a) in a case where the payment is made at regular intervals, a period equal to the length of that interval;
- (b) in a case where the payment is due to be made at regular intervals but is not so made, such number of weeks as is equal to the number (and any fraction is to be treated as a corresponding fraction of a week) obtained by dividing the amount of that payment by the weekly amount of that periodical payment as calculated in accordance with regulation 124(4) (calculation of the weekly amount of a liable relative payment);
- (c) in any other case, a period equal to a week.

(2) The period under paragraph (1) is to begin on the date on which the payment is treated as paid under regulation 125 (date on which a liable relative payment is to be treated as paid).

Period over which payments other than periodical payments are to be taken into account

123.—(1) Subject to paragraph (2), the number of weeks over which a payment other than a periodical payment is to be taken into account is to be equal to the number (and any fraction is to be treated as a corresponding fraction of a week) obtained by dividing that payment by the aggregate of £2 and the amount of an income-related allowance which would be payable had the payment not been made.

(2) Where a liable relative makes a periodical payment and any other payment concurrently and the weekly amount of that periodical payment, as calculated in accordance with regulation 124 (calculation of the weekly amount of a liable relative payment), is less than the aggregate of £2 and the amount of an income-related allowance which would be payable had the payments not been made that other payment, subject to paragraph (3), is to be taken into account over a period of such number of weeks as is equal to the number obtained (and any fraction is to be treated as a corresponding fraction of a week) by dividing that payment by an amount equal to the extent of the difference between the amount as calculated under this paragraph and the weekly amount of the periodical payment.

(3) If—

- (a) the liable relative ceases to make periodical payments, the balance (if any) of the other payment is to be taken into account over the number of weeks equal to the number (and any fraction is to be treated as a corresponding fraction of a week) obtained by dividing that balance by the amount referred to in paragraph (1);
- (b) the amount of any subsequent periodical payment varies, the balance (if any) of the other payment is to be taken into account over a period of such number of weeks as is equal to the number obtained (and any fraction is to be treated as a corresponding fraction of a week)

(2) Section 74A was inserted by the Child Support Act 1995 (c. 34), section 25 and amended by the Civil Partnership Act 2004 (c. 33), sections 254(1) and 261(4), Part 4 of Schedule 24 and paragraph 60(a) to (c) of Schedule 30 and the Act, section 28(1) and paragraph 10(1) and (9) of Schedule 3.

by dividing that balance by an amount equal to the extent of the difference between the amount referred to in paragraph (2) and the weekly amount of the subsequent periodical payment.

(4) The period under paragraph (1) or (2) is to begin on the date on which the payment is treated as paid under regulation 125 (date on which a liable relative payment is to be treated as paid) and under paragraph (3) is to begin on the first day of the benefit week in which the cessation or variation of the periodical payment occurred.

Calculation of the weekly amount of a liable relative payment

124.—(1) Where a periodical payment is made or is due to be made at intervals of one week, the weekly amount is to be the amount of that payment.

(2) Where a periodical payment is made or is due to be made at intervals greater than one week and those intervals are monthly, the weekly amount is to be determined by multiplying the amount of the payment by 12 and dividing the product by 52.

(3) Where a periodical payment is made or is due to be made at intervals and those intervals are neither weekly nor monthly, the weekly amount is to be determined by dividing that payment by the number equal to the number of weeks (including any part of a week) in that interval.

(4) Where a payment is made and that payment represents a commutation of periodical payments whether in arrears or in advance, the weekly amount is to be the weekly amount of the individual periodical payments so commuted as calculated under paragraphs (1) to (3) as is appropriate.

(5) The weekly amount of a payment to which regulation 123 (period over which payments other than periodical payments are to be taken into account) applies, is to be equal to the amount of the divisor used in calculating the period over which the payment or, as the case may be, the balance is to be taken into account.

Date on which a liable relative payment is to be treated as paid

125.—(1) A periodical payment is to be treated as paid—

- (a) in the case of a payment which is due to be made before the first benefit week pursuant to the claim, 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 unless, having regard to the manner in which an income-related allowance is due to be paid in the particular case, it would be more practicable to treat it as paid on the first day of a subsequent benefit week.

(2) Subject to paragraph (3), any other payment is to be treated as paid—

- (a) in the case of a payment which is made before the first benefit week pursuant to the claim, on the day in the week in which it is 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 paid unless, having regard to the manner in which an income-related allowance is due to be paid in the particular case, it would be more practicable to treat it as paid on the first day of a subsequent benefit week.

(3) Any other payment paid on a date which falls within the period in respect of which a previous payment is taken into account, not being a periodical payment, is to be treated as paid on the first day following the end of that period.

Liabe relative payments to be treated as capital

126.—(1) Subject to paragraph (2), where a liable relative makes a periodical payment concurrently with any other payment, and the weekly amount of the periodical payment as calculated in accordance with regulation 124(1) to (4) is equal to or greater than the amount referred to in regulation 123(2) less the £2 referred to therein, the other payment is to be treated as capital.

(2) If, in any case, the liable relative ceases to make periodical payments, the other payment to which paragraph (1) applies is to be taken into account under paragraph (1) of regulation 123 but, notwithstanding paragraph (4) thereof, the period over which the payment is to be taken into account is to begin on the first day of the benefit week following the last one in which a periodical payment was taken into account.