
STATUTORY INSTRUMENTS

2008 No. 2428

The Employment and Support Allowance
(Miscellaneous Amendments) Regulations 2008

PART 1

General amendments of the principal Regulations

Amendment of the principal Regulations

2. The principal Regulations are amended as provided in this Part and in Part 2 and references in this Part and in Part 2 to a numbered regulation, paragraph or Schedule is a reference to the regulation, paragraph or Schedule of that number in the principal Regulations.

Amendment of Part 1 of the principal Regulations

3. In regulation 2(1) (interpretation)—

(a) after the definition of “attendance allowance” insert—

““basic rate” has the same meaning as in the Income Tax Act 2007(1) (see section 989 of that Act);”;

(b) omit the definitions of “Independent Living (Extension) Fund”, “Independent Living Fund”, “Independent Living (1993) Fund”, “Independent Living Funds” and “starting rate”; and

(c) after the definition of “sports award” insert—

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

Amendment of Part 3 of the principal Regulations

4. In regulation 9 (condition relating to youth – claimants aged 20 or over but under 25) after paragraph (5) add—

“(6) A claimant is to be treated as not having limited capability for work on a day which is not, for the purposes of paragraph 4(1)(d)(ii) of Schedule 1 to the Act (period of 196 consecutive days preceding the relevant period of limited capability for work), part of any consecutive days of limited capability for work.”.

Amendment of Part 5 of the principal Regulations

5.—(1) In regulation 26 (claimants receiving certain regular treatment) for paragraph (2) substitute—

(1) 2007 c. 3.
(2) 2006 c. 16.

“(2) A claimant who receives the treatment referred to in paragraph (1) is only to be treated as having limited capability for work from the first week of treatment in which the claimant undergoes no fewer than—

- (a) two days of treatment;
- (b) two days of recovery from any of the forms of treatment listed in paragraph 1(a) to (c); or
- (c) one day of treatment and one day of recovery from that treatment,

but the days of treatment or recovery from that treatment or both need not be consecutive.”.

(2) In regulation 32 (certain claimants to be treated as not having limited capability for work)—

- (a) renumber regulation 32 as 32(1);
- (b) in paragraph (1), after “claimant” insert “who is or has been a member of Her Majesty’s forces”; and
- (c) after paragraph (1) add—

“(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(3) or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990(4).

(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.”.

Amendment of Part 7 of the principal Regulations

6.—(1) In regulation 40(6) (a claimant who works to be treated as not entitled to an employment and support allowance) for “paragraph (5) above” substitute “paragraph (4)”.

(2) In regulation 45(3) and (4) (exempt work) for “£88.50” substitute “£92.00”.

Amendment of Part 9 of the principal Regulations

7.—(1) After regulation 72 (permanent health insurance) insert—

“Financial 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(5).”.

(3) 1973 c. 50. Section 2(1) was substituted by section 25(1) of the Employment Act 1988 (c.19).

(4) 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).

(5) S.I. 2005/1986.

(2) In regulation 74(1)(a) (deductions for pension payment and PPF payment) for “claimant” substitute “a claimant”.

(3) In regulation 76(1) (deductions for councillor’s allowance) for “£88.50” substitute “£92.00”.

Amendment of Part 10 of the principal Regulations

8.—(1) In regulation 94(8) (calculation of weekly amount of income) for “paragraph (9)” substitute “paragraph (8)”.

(2) In regulation 95(1) (earnings of employed earners) for “paragraphs (3) and (4)” substitute “paragraphs (2) and (3)”.

(3) In regulation 99 (deduction of tax and contributions for self-employed earners)—

(a) in paragraph (1) omit “starting rate or, as the case may be, the starting rate and the”; and

(b) in paragraph (2) for “starting rate” substitute “basic rate”.

(4) In regulation 103 (deduction in respect of tax for participants in the self-employment route)—

(a) in paragraph (1)(c) omit “starting rate of tax or, as the case may be, the starting rate and the”; and

(b) in paragraph (2) for “starting rate” substitute “basic rate”.

(5) At the end of regulation 107(5)(a) (notional income - income due to be paid or income paid to or in respect of a third party) and 112(8) (income treated as capital) for “the Independent Living Funds” substitute “the Independent Living Fund (2006)”.

(6) In regulation 109(2) (notional income - calculation and interpretation)—

(a) in sub-paragraph (a) omit “starting rate or, as the case may be, the starting rate and the”; and

(b) in sub-paragraph (b) for “starting rate” substitute “basic rate”.

(7) In regulation 111(1) (calculation of capital) for “sections 1(3)” substitute “sections 1(2)”.

(8) In regulation 115(5)(a) (notional capital) and paragraph 27(1) of Schedule 9 (capital to be disregarded) for “, the Independent Living Funds” substitute “, the Independent Living Fund (2006)”.

(9) In regulation 131(1) (interpretation) in the definition of “student loan” for “73(3)” substitute “73(f)”.

Amendment of Part 11 of the principal Regulations

9.—(1) In regulation 144 (waiting days)—

(a) in paragraph (2)(a) for “or statutory sick pay” substitute “, statutory sick pay or a maternity allowance”; and

(b) at the end of paragraph (2)(c) add—

“, or

(d) the claimant is the other member of a couple to whom regulation 4I(2) of the Social Security (Claims and Payments) Regulations 1987(6) applies and the former claimant was not entitled to an employment and support allowance in respect of 3 days at the beginning of the period of limited capability for work which relates to the former claimant’s entitlement.”.

(2) In regulation 146 (advance awards), in paragraph (3)(b) for “29”, substitute “30”.

(3) In regulation 156(5)(d) and (6)(g) (circumstances in which a person is to be treated as being or not being a member of the household) for “Adoption Agencies Regulations 1983” substitute “Adoption and Children Act 2002(7)”.

Amendment of Part 12 of the principal Regulations

10. In regulation 160(3)(b) (exceptions from disqualification for imprisonment) omit “or section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (transfer of prisoners for treatment for mental disorder)”.

Amendment of Part 13 of the principal Regulations

11. In regulation 164 (assessment of income and capital in urgent cases)—

- (a) in paragraph (1)(a)(i) for “the Independent Living Funds” substitute “the Independent Living Fund (2006)”; and
- (b) in paragraph (2)(c) omit “Part 2 or”.

Amendment of Schedule 2 to the principal Regulations

12. In Schedule 2 (assessment of whether a claimant has limited capability for work)—

- (a) in paragraphs 3(b) and (c) (bending or kneeling) for “pick a light object” substitute “pick up a light object”;
- (b) in paragraph 10(c) (continence other than enuresis (bed wetting) where the claimant has an artificial stoma), re-number—
 - (i) paragraph (iii) as (iv);
 - (ii) paragraph (iv) as (v);
 - (iii) paragraph (v) as (vi); and
 - (iv) paragraph (vi) as (vii);
- (c) in paragraph 10(c) (continence other than enuresis (bed wetting) where the claimant has an artificial stoma), after paragraph (ii), insert—
 - “(iii) Where the claimant’s artificial stoma relates solely to the evacuation of the bowel, has no voluntary control over voiding of the bladder.”;
- (d) in paragraph 10(c)(iii) as re-numbered, in column (3) add “15”;
- (e) in paragraph 10(c)(v) as re-numbered, for “at last once a month” substitute “at least once a month”;
- (f) in paragraph 12(e) (learning or comprehension in the completion of tasks) omit “the following day”;
- (g) in paragraph 16(b) (initiating and sustaining personal action)—
 - (i) before “verbal prompting” insert “daily”; and
 - (ii) omit “for the majority of the time”;
- (h) in paragraph 19(b) (coping with social situations) in column (3) add “9”; and
- (i) in paragraph 21(d) (dealing with other people) after “significant distress”, omit “to himself”.

Amendment of Schedule 3 to the principal Regulations

13. In paragraph 7 (maintaining personal hygiene) of Schedule 3 (assessment of whether a claimant has limited capability for work-related activity) in sub-paragraphs (b) and (c) for “(excluding back)” substitute “(excluding own back)”.

Amendment of Schedule 4 to the principal Regulations

14.—(1) In Schedule 4 (amounts)—

(a) in paragraph 1(3) in column (1)—

(i) in paragraph (f)(ii) for “was” substitute “were”; and

(ii) for paragraph (h) substitute—

“(h) where the claimant is aged not less than 18 but less than 25 and the claimant’s partner is a person under 18 who—

(i) would not qualify for an income-related allowance if the person were not a member of a couple;

(ii) would not qualify for income support if the person were not a member of a couple;

(iii) does not satisfy the requirements of section 3(1)(f)(iii) of the Jobseekers Act (prescribed circumstances for persons aged 16 but less than 18); and

(iv) is not the subject of a direction under section 16 of that Act (persons under 18: severe hardship);”;

(b) in paragraph 11—

(i) in sub-paragraph (3) (carer premium) for “paragraph 9(1)” substitute “paragraph 8(1)”; and

(ii) in sub-paragraph (4)(b) (enhanced disability premium) for “paragraph 89” substitute “paragraph 7”.

Amendment of Schedule 5 to the principal Regulations

15. In Schedule 5 (special cases) in paragraph 9(2)(b) (polygamous marriage) for “parents” substitute “partners”.

Amendment of Schedule 6 to the principal Regulations

16. In Schedule 6 (housing costs)—

(a) in the heading for “68(2)(d)” substitute “68(1)(d)”;

(b) in paragraph 2 (remunerative work)—

(i) in sub-paragraph (1)—

(aa) for “the following provisions of this paragraph” substitute “sub-paragraphs (2) to (8)”; and

(bb) for “person” the first time it occurs substitute “non-dependant (referred to in this paragraph as “person”)”; and

(ii) for sub-paragraph (8) substitute—

“(8) A person is to be treated as not being engaged in remunerative work on any day in which that person falls within the circumstances prescribed in

regulation 43(2) (circumstances in which partners of claimants entitled to an income-related allowance are not to be treated as engaged in remunerative work).

(9) Whether a claimant or the claimant’s partner is engaged in, or to be treated as being engaged in, remunerative work is to be determined in accordance with regulations 41 or 42 (meaning of “remunerative work” for the purposes of paragraph 6(1)(e) and (f) of Schedule 1 to the Act) as the case may be.”;

(c) in paragraph 3(2) (previous entitlement to other income-related benefits) for “income support” substitute “an income-related allowance”;

(d) in paragraph 6 (housing costs not met)—

(i) for sub-paragraph (2)(b) substitute—

“(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;”; and

(ii) in sub-paragraph (12)(b) for “children of different sexes aged 10 or over” substitute “persons of different sexes aged 10 or over but aged under 20”;

(e) in paragraph 9(3) (new housing costs) for “paragraph 2” substitute “paragraph 3”;

(f) in paragraph 12 (general provisions applying to new and existing housing costs) after sub-paragraph (10) add—

“(11) Sub-paragraph (12) applies to a person who, had the person been entitled to income support and not an employment and support allowance, would have been a person to whom any of the following transitional or savings provisions would have applied—

(a) regulation 4 of the Income Support (General) Amendment No. 3 Regulations 1993⁽⁸⁾ (“the 1993 Regulations”);

(b) regulation 28 of the Income-related Benefits Schemes (Miscellaneous Amendments) Regulations 1995⁽⁹⁾ (“the 1995 Regulations”).

(12) Where this sub-paragraph applies, the amount of housing costs applicable in the particular case shall be determined as if—

(a) in a case to which regulation 4(1) of the 1993 Regulations would have applied, sub-paragraphs 12(4) to (9) do not apply;

(b) in a case to which regulation 4(4) of the 1993 Regulations would have applied, the appropriate amount is £150,000; and

(c) in a case to which the 1995 Regulations would have applied, the appropriate amount is £125,000.”;

(g) for paragraph 15(11)(b) (linking rule) substitute—

“(b) is in full-time education and in receipt of disability living allowance;”;

(h) in paragraph 19(7) (non-dependant deductions)—

(i) in sub-paragraph (a) for “non-dependent” substitute “non-dependant”; and

(ii) for sub-paragraph (f) substitute—

“(f) to whom, but for paragraph (5) of regulation 71 (definition of non-dependant) paragraph (4) of that regulation would apply;”; and

⁽⁸⁾ S.I. 1993/1679.

⁽⁹⁾ S.I. 1995/516.

- (i) in paragraph 19(8)(b) for “the Independent Living Funds” substitute “the Independent Living Fund (2006)”.

Amendment of Schedule 7 to the principal Regulations

17. In paragraphs 5 and 6, each time it occurs, and in paragraph 7(3)(b) of Schedule 7 (sums to be disregarded in the calculation of earnings) for “£88.50” substitute “£92.00”.

Amendment of Schedule 8 to the principal Regulations

- 18.** In Schedule 8 (sums to be disregarded in the calculation of income other than earnings)—
- (a) in paragraph 9(b)—
 - (i) before “employment and support allowance” insert “income-related”; and
 - (ii) for “a jobseeker’s allowance” substitute “an income-based jobseeker’s allowance”;
 - (b) at the end of paragraphs 22(2) and 41(1) for “the Independent Living Funds” substitute “the Independent Living Fund (2006)”; and
 - (c) in paragraph 52(1)(a) for “widowers or surviving civil partners” substitute “widower or surviving civil partner”.

Amendment of Schedule 9 to the principal Regulations

- 19.** In Schedule 9 (capital to be disregarded)—
- (a) in paragraph 17(2)(a) for “in consequences of that personal injury” substitute “in consequence of that personal injury”;
 - (b) in paragraph 27(1) for “the Independent Living Funds” substitute “the Independent Living Fund (2006)”;
 - (c) at the end of paragraph 31 for “the Independent Living Funds” substitute “the Independent Living Fund (2006)”;
 - (d) in paragraph 35 for “in consequence of reduction” substitute “in consequence of a reduction”; and
 - (e) in paragraph 47(1) for “Any payment for a sports award” substitute “Any payment of a sports award”.